

RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

ORIGINAL APPLICATION NO. 224 OF 2002.

ALLAHABAD THIS THE 13th DAY OF July 2007.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman,

Bhondu (who died during the pendency of the O.A. and after him his widow Smt. Shanti Devi has been substituted in his place)

.....Applicant

(By Advocate: Sri Amrendra Kumar Srivastava).

VERSUS.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Rail Manager, Northern Railway, Allahabad Division, Allahabad.
3. Senior Divisional Superintending Engineer (CORD.) Northern Railway, Allahabad Division, Allahabad.
4. Senior Divisional Accounts Officer, Northern Railway, Allahabad Division, Allahabad.

.....Respondents

(By Advocate: Shri A.C. Mishra)

ORDER

The Original Applicant, Bhondu was engaged as a Gangman in the office of Assistant Engineer (Line) in Allahabad Division of Northern Railway on 1.5.1985 and he continued working as such till he was declared medically unfit on 16.6.1998. By that time, he had completed 13 years, one month and 15 days service. He filed this O.A. for issuing a mandamus to the respondents to give him a pensionary benefits w.e.f. 16.6.1998.

2. In their reply, respondents have said that services of late Shri Bhondu could be regularized w.e.f 20.10.1992 and earlier to it, he worked as Casual Labour with temporary status and so he could not complete minimum period of 10 years, so as to entitle him for pensionary benefits. According to them, only half of period from 1.5.1985 to 19.10.1992, (when he worked as Casual Labour with temporary status) was to be counted for pensionary benefits and even if that half period is added to the service rendered after regularization,

[Signature]

minimum period of 10 years falls short by few months and so it was not possible to give him pensionary benefits.

3. I have heard Shri Amrendra Kumar Srivastava, appearing for the applicant and Shri Jitendra Prasad holding brief of A.C Mishra for the respondents.

4. Before I pass on to the judicial pronouncement cited by Shri A.K. Srivastava, I would like to refer to the Rules namely Railway Services (Pension) Rules 1993. Rule 18 of the said Rules, provides that a 'temporary railway servant', who retires on superannuation or on being declared permanently incapacitated for further railway service, by the appropriate Medical Authority after having rendered temporary service of not less than ten years, shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale, as admissible to permanent railway servant under these rules. The first question is as to whether late Shri Bhondu was "a temporary railway servant. The respondents have themselves accepted in reply that he was temporary railway servant as his services were regularized w.e.f. 20.10.1992. The next question is, as to whether, he rendered minimum 10 years of service, as such temporary railway servant, before he was permanently incapacitated on 16.6.1998. The position of late Shri Bhondu was not that of casual labour but was that of a casual labour with temporary status. After surveying various judicial pronouncements and the provisions contained in Indian Railway Establishment Manual, a Division Bench of Gujarat High Court has recently held in Rukhiben Rupabhai Vs. U.O.I A.T.J 2006 (2) page-1 that describing an employee as casual/temporary status and depriving him of statutory and constitutional rights under Articles 14, 16 (2), 41 and 42 will not be legally justified. It has been observed that after a person has served the department for a number of years before his superannuation or incapacitation, he should not be deprived of pensionary benefits. This Tribunal (Allahabad) has also taken a similar view in its order dated 20.4.2005, passed in O.A. No.748/2004, Amardeo Vs. Union of India that pension is a social welfare measure to assist the retiring person to sustain himself and his family and he should not be left in lurch. The learned member also referred to decision of Mumbai Bench of this Tribunal in Vinayak Balkrishna Keer Vs. U.O.I and others, 2003 (3), A.T.J. 593 and decision of Andra Pradesh High Court in General Manager, South Railway and others Vs. Shaik Abdul Khader, 2004 (2) A.T.J. 23 for saying

that even the service rendered prior to conferment of the temporary status, could be counted as to make an employee eligible for pension. Sri S. Singh has not been able to show any law/decision taking a view, contrary to one taken in order dated 20.4.2005 of this Bench in O.A. No.748/04.

5. If the period of service rendered before conferment of temporary status, can be taken to recoup the short fall, in the minimum qualifying service, as referred to in Rule 18 of the Rules of 1993, Then by the same logic, short fall of few months in the case of Bhondu, can be recouped from remaining half of the period, from 1.5.1985 to 19.10.1992. It would be highly unjust and unfair to deny even the minimum pension to late Shri Bhondu, who served the department for more than 13 years, before he was declared physically invalid. Shri Srivastava has referred to other judicial pronouncements, so as to say that pension cannot be denied to such a service. I think when almost all important pronouncements, have been considered by Gujarat High Court, in Rukhiben's case (supra), there is no need for referred to all such decisions.

6. I am of the view that late Shri Bhondu was entitled to minimum pension and any short fall in qualifying service of 10 years, could be recouped from remaining half of the period from 1.5.1985 to 19.10.1992 during the course of which he served with temporary status.

7. The O.A. is finally disposed of with directions to the respondents, to grant minimum pension to late Shri Bhondu, by recouping short fall of few months in qualifying service of 10 years as referred to in Rule 18 of Rules of 1993, from the remaining half of the service so rendered by him from 1.5.1985 to 19.10.1992, and pay arrears of such pension to his widow Smt. Shanti Devi, within a period of three months from the date a certified copy of this order is received by respondent No.2, failing which they shall also be liable to pay interest thereon @ 12% per annum. No order as to costs.

13.7.07
Vice-Chairman

Manish/-