

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(This the 7 day of 8, 2009)

Present

Hon'ble Mr. A.K. Gaur, Member-J

Original Application No.683 of 2003
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Mankuwari Devi wife of Late Deputy Resident of
Village-Sohada (Keshopur) Post-Bahuriya, Bighaha,
District-Aurangabad (Bihar)

..Applicant.

By Advocate : Shri Sudama Ram

V E R S U S

1. Union of India, through the General Manager,
Eastern Railway, Kolkata.
2. The Divisional Railway Manager, Eastern
Railway, Mughalsarai.

...Respondents

By Advocate : Shri D.S. Shukla

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant through this O.A filed under section 19 of Administrative Tribunals Act, 1985 has prayed for quashing the order dated 02.05.2000 /Annexure-1 of O.A coupled with prayer for a direction to the respondents to grant family pension to the applicant w.e.f. 28.02.1988 alongwith arrears and interest.

2. Factual matrix of the case is that the husband of the applicant late Deputy was appointed as Casual Gang Man in the year 1964, who was medically examined in the year 1980 for the post of Gang Man and was declared fit. Late

Deputy/husband of the applicant died on 28.02.1988, while he was on duty at Bridge No. 548 due to Train accident. The applicant thereafter, preferred a representation dated 28.06.1988 before Divisional Railway Manager, Eastern Railway Mughalsarai for compensation and the Railway Administration paid to her about Rs.76,590/- through Cheque No.A-779012 dated 05.10.1988. The applicant also preferred representation seeking compassionate appointment which was also acceded to and her eldest son Sri Nirmal Vishwakarma was appointed as Fitter Grade-II in February, 1990. The applicant preferred representation dated 01.04.1993 before the Divisional Railway Manager, Mugalsarai for payment of ex-gratia pension. She also preferred representation dated 08.02.2000 and 19.02.2000 for payment of family pension, but as no heed was paid to the said request of the applicant, she filed O.A. No.49 of 2000 before Central Administrative Tribunal Patna Bench, which was disposed of with a direction to the respondents to decide the pending representation of the applicant. In compliance thereto the Divisional Railway Manager, Eastern Railway Mugalsarai, vide letter dated 02.05.2000 (Annexure A-1 of O.A.) intimated the applicant that as her husband was a C.P.C. Gang Man, she is not entitled to family pension.

3. Learned counsel for the applicant invited our attention to Rule 75(2)(b) of Railway Service (Pension) Rules, 1993 and submitted that when a Railway Servant dies after completion of one year of continuous service or before completion of one year continuous service, provided the deceased railway servant concerned immediately prior to his appointment was examined

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by the medical authority and declared fit, the dependant of the deceased will be entitled for family pension.

4. The respondents have filed their Counter Affidavit. Learned counsel for the respondents argued that the husband of the applicant was a casual Gang Man and not a permanent Gang Man, therefore, as per Rules, a C.P.C. or Casual Gang Man or his family is not entitled to get pension/family pension. The deceased employee was also not screened by the Competent Authority.

5. Applicant has filed rejoinder affidavit reiterating the facts stated in the original application.

6. I have heard rival contentions perused the pleadings as well as the written submissions alongwith Relevant Rules and Decisions.

7. Learned counsel for the respondents vehemently argued that the applicant is not entitled for family pension and submitted that as per relevant Rules, a casual labour gets temporary status after continuous service of 120 days in open line and 360 days in project or organization. Thereafter, he is required to be screened by the Competent Authority and appointed in order of empanelment as and when vacancies are available in the cadre post. After appointment to the cadre post, if, employee expired, widow or dependant would be eligible for family pension. Learned counsel for the respondents would

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further contend that the husband of the applicant was not a permanent employee and died before absorption against regular vacant post.

8. Learned counsel for the respondents further argued that for the purpose of absorption of temporary status casual Gang Man against the vacant regular post, a screening was made by the Competent Authority on 25.05.1989, whereas, the husband of the applicant late Deputy had already expired on 28.02.1988, therefore, as the husband of the applicant died before screening she is not entitled for family pension. Learned counsel for the respondents in support of his contention placed reliance on the decision of Hon'ble Supreme Court reported in **1997 (6) SCC-580-Union of India & Ors. Vs. Rabia Bikaner & Ors. and AISLJ (VI) 2007 (2) -231- Indian Council of Agricultural Research & Ors. Vs. Santosh** and submitted that casual labourers with temporary status are entitled to certain privileges granted to temporary railway servants but this does not entitle them to family pension. Learned counsel for the respondents vehemently argued that in the present case the husband of the applicant died prior to the screening made by the Competent Authority, therefore, she is not entitled to get family pension.

9. Learned counsel for the applicant argued that husband of the applicant had continuously worked after his initial appointment and was medically examined on 26.06.1986 for regular posting as Gang Man in B-I medical category in permanent gang no.7 i.e. well before his death on 28.02.1988.

Learned counsel for the applicant would contend that husband of the applicant at the time of death was working as Lohar/Blacksmith (on a promotional post) against a regular vacancy of Blacksmith. He was medically examined for the post of Gangman in the year 1980 for B-I medical category. His name appeared in the screening list of 15.10.1985 prepared by Senior D.P.O. erstwhile Eastern Railway, Mugalsarai. Learned counsel for the applicant vehemently argued that as her husband was working against a regular post and vacancy of permanent Gang No.7, he was again medically examined on 26.06.1986 before posting him against regular post of Gang Man in permanent Gang No.7, therefore, the applicant is entitled for family pension. Learned counsel for the applicant further submitted that although her husband was screened as per combined seniority list for screening of 15.10.1985 but its panel was formally not declared before his death for the reasons known to the respondents, therefore, the applicant is entitled for family pension.

10. Learned counsel for the applicant invited my attention to the following statutory provisions and railway Board's Circulars, which are as follows:-

- (i) **Rule-101(2) of Chapter-I of Manual of Railway Pension Rules, 1950-** in case of a temporary railway servant the benefit comprise-
 - (a)
 - (b) If he dies while in service-
 - (i)
 - (ii) A family pension if, at the time of death the employee had completed one year's continuous (qualifying) service.

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- (ii) **Railway Board's No.F(P) 65 PN-1/21 dated 21.10.1965;-**

" In other words, the benefits of the family pension scheme for Railway Employee, 1964 will be admissible in the case of death of such an employee while in service, only if, he had completed a minimum period of one year's continuous service from the date he was absorbed against a regular temporary post."

- (iii) **Railway Board's No.F(E) III-78 PNI/12 dated 27.02.1979:-**

"..... The President is pleased to decide that the aforesaid one year's service condition shall not apply henceforth provided the Railway Servant had been medically examined and found fit for appointment under the Government."

- (iv) **Rule 75(2)(b) of the Railway Service (Pension) Rules, 1993:-**

"75.....

(2) without prejudice to the provision contained in Sub Rule (3), where a railway servant dies-

(a) After completion of one year of continuous service or

(b) Before completion of one year of continuous service provided the deceased railway servant immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared it by that authority for railway service."

11. Learned counsel for the applicant submitted that in view of the Railway Board's No. F(P) 65 PN-1/21 dated 21.10.1965, and Sub Rule (2) (a)(b) of Rule 75 of Railway Service (Pension) Rules, 1993, (quoted above) as the husband of the applicant was not a casual labour but a Gang Man working against a regular post/vacancy of Gang Man, therefore, the applicant is entitled to family pension. Learned counsel for the applicant would further contend that the case law cited by the counsel for respondents in Rabia Bikananer's case (Supra) and ICAR Vs. Santosh (supra) are not at all applicable to the present case as the husband of the applicant was not a casual labour with temporary status but a Gang Man, a temporary regular

employee working against a regular vacancy of a Gang Man and submitted that since husband of the applicant died while working on the regular post she is entitled for family pension under rule 75(2) (a)(b) of Railway Service (Pension) Rules, 1993 (quoted above).

12. Having gone through the submissions made by counsel for either side and case laws, I am not satisfied with the submissions made by counsel for applicant that the decision rendered by Hon'ble Supreme Court in the case of Rabia Bikaner (Supra) is not applicable. In the said case Hon'ble Supreme Court has clearly held as under:-

"Under para 2511 of the Railway Establishment Manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants but this does not entitle them to family pension. Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merit as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of one year in the temporary post. If any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension. In all these cases, though some of the deceased employees had been screened, yet appointments were not given to them since temporary posts were not available or in some cases they were not even eligible for screening because the posts became available after the death. Under these circumstances, the respondents-widows are not eligible for family pension benefits."

(Underline to lay emphasis)

13. In the present case the husband of the applicant died 28.02.1988, i.e. much prior to the screening of C.P.C. Gang Man and of Project Temporary Status Gang Man^{held} on 25.05.1989. It is also seen that the husband of the applicant was not

appointed against the regular vacancy of permanent post and died before absorption against vacant post, therefore, in view of the law laid down by the Hon'ble Apex Court in the case of Rabia Bikaner (Supra), I am firmly of the opinion that as the deceased employee/husband of the applicant could not be screened by the competent Screening Committee on 25.05.1989 as he died on 28.02.1988, she is not entitled for family pension.

14. In view of the observations made above, the applicant has failed to make out any case for interference. The O.A is accordingly dismissed being devoid of merits.

15. There will be no order as to costs.


(A.K. GAUR)

MEMBER- J.

/Anand/