

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
AALLAHABAD.

Dated: This the 18th day of OCTOBER 2005

Original Application No. 1095 of 2003

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Anupam Rani, W/o Late Rajesh Kumar,
R/o C/o Shri N.P. Singh, Vill: Nagla Rati,
Line Par, Tundla, Distt: Firozabad.

.....Applicant

By Adv: Sri S.S. Sharma

V E R S U S

1. Union of India through, the General Manager,
N.C. Railway, Headquarters Office,
ALLAHABAD.
2. The Divisional Railway Manager,
N.C. Railway, DRM Office,
ALLAHABAD.
3. The Senior Divisional Commercial Manager,
N.C. Railway, DRM Office,
ALLAHABAD.

.....Respondents.

By Adv: Sri A. Sthalekar

O R D E R

The applicant in this case has sought the following reliefs: -

- "a. That the Hon'ble Tribunal may graciously be pleased to quash/set aside impugned order dated: 13.11.2000 denying appointment on compassionate ground to applicant in Group 'C' post.
- b. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to treat the deceased employee as regular Group 'C' employee on the post of Mobile Booking Clerk in grade Rs. 975-1540/- (RPS)/Rs. 3200-4900/- (RSRP) w.e.f. 18.1.93 as per scheme framed by the Railway Board; orders of General Manager, N. Railway, New Delhi and judgment and order of Hon'ble CAT in this respect.

[Signature]

c. That Hon'ble Tribunal may graciously be pleased to direct the respondents to appoint the applicant in Group 'C' post on compassionate ground for which she possesses requisite qualification as per rule.

d. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay all death benefits of deceased employee i.e. gratuity, leave encashment, Group Insurance, Deposit Link Insurance etc to the applicant as per rule.

e. ...

f. ...

g. ...

h. ..."

2. Briefly stated, the husband of the applicant, Sri Rajesh Kumar was engaged as Mobile Booking Clerk from 15.3.1990 and was granted temporary status w.e.f. 21.7.1990. Earlier of course, he was in the employment in the Railways, for a short period of 17.5.1986 to 31.7.1986. After grant of temporary status, the applicant was placed in a pay scale of Rs. 975-1540 and he pay was fixed as of 21.07.1990 at Rs. 975/- and annual increment was also granted to him, the last increment being as of 01.02.1998 at Rs. 3540/- in the said scale. The service record of the applicant reflects that the nature of his appointment was 'substitute'. The applicant unfortunately expired on 21.10.1998 and before the same he was already screened for regularization but the result was not announced. (As per the counsel for the applicant on the announcement of the result juniors to the applicant were regularized with retrospective effect.)

3. On the demise of the applicant's husband, the applicant preferred application for family pension as well as compassionate appointment and by of order

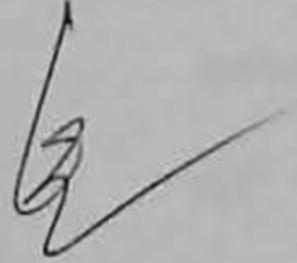
b

dated 13.11.2000 the same was rejected. The ground for rejection was that the applicant's husband was not a regular employee but only a casual worker he having not put in 120 days of work initially, there was no question of his being conferred temporary status.

4. The applicant has challenged the above order mainly on the following grounds: -

a. The applicant's husband had continuously worked at least from 15.03.1990 till 21.10.1998 and according to the respondents themselves he had completed 891 days as on 15.08.1994 and 1180 days as on 31.05.1995. Annexure A 10 refers. As per the Rules on the subject vide annexure A 8, regularization of Mobile Booking Clerks should take place after they complete 1095 working days less 52 Sundays and 16 holidays in a year (i.e. they should complete 891 days). On the basis of this order, according to the applicant her husband's services were to be regularized as early as 15.8.1994.

b. The applicant also submits that as per the existing rules family pension is admissible in the case of demise of regular employees and also substitute and as such she is eligible for the same since her husband admittedly was a substitute as per the service record. For compassionate appointment also according to the applicant she is eligible for the same by virtue of the fact that her husband should have been deemed as a regular employee on the date of his demise as he had, prior to

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his death, cleared necessary screening test and his regularization cannot be denied on account of delay in publishing the result by the respondents.

5. The Respondents have contested the OA. As per their counter the applicant having not completed 120 days of service, there is no question of granting him temporary status vide para 12 of the CA. It is on this ground that the respondents rejected the case of the applicant.

6. Rejoinder has also been filed in which it has been contended that the documents at annexure A 20 would belie the contention of the respondents. Para 4.45 of the OA refers to annexure A 20 and the respondents in there CA has nowhere doubted the genuineness of the said annexure. As per annexure 20 which is the copy of the service record of the applicant's husband, the fact that he was engaged on 15.3.1990 followed by grant of temporary status w.e.f. 21.7.1990 has been confirmed. The subsequent annual increment also confirmed that the applicant's husband had been functioning against some regular vacancy. It is not denied by the respondents that the applicant's husband prior to his demise did subject himself to necessary screening. As such once his juniors had been regularized retrospectively, the services of the applicant's husband should also have been declared as regularized after completion of 891 days i.e. on or after 15.8.1994 (Annexure A



10). This annexure (A 10) has been referred to in para 4.24 of the OA in respect of which there is no denial as it is a matter of records.

7. The applicant's counsel relies upon the case of **Prabhawati Devi Vs. Union of India & Ors, 1996 (32) ATC 515** and also **Union of India & Ors Vs. Rabia Bikaner & Ors, 1997 SCC (L&S) 1524**. Reference to the latter is only to substantiate the fact that substitutes in a regular establishment on a regular pay scale, as held in the case of Prabhawati Devi are entitled to the benefit of family pension etc.

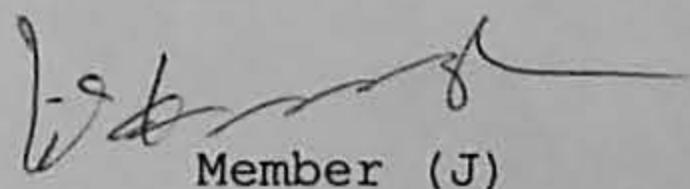
8. After hearing the arguments on both the sides and perusing the records as discussed above it is clear that the respondents have committed a patient error in treating the services of the applicant's husband as casual. The submissions of the applicant's counsel hold good and there is merit in his assertion that the services of the applicant's husband should be deemed to have been regular. The services of the applicant's husband are essentially to be treated as regular for the reasons stated above. As such the benefits flowing out of such regular service are fully available with the said employee. One such benefit is the entitlement of family pension and compassionate appointment to one of the family member. The applicant, the widow of the deceased employee is



therefore entitled to family pension as well as compassionate appointment in accordance with rules.

9. In view of the above the OA succeeds. The respondents are directed to work out the entitlement of family pension and pay the same to the applicant alongwith arrears from 21.10.1998. As the applicant is a High School passed candidate and is also stated to be typing qualified, on her making a fresh application for compassionate appointment giving full details of her qualification etc, the respondents shall consider the case of the applicant for compassionate appointment in an appropriate post suitable to her qualification.

10. While working out and payment of arrears of family pension alongwith other terminal benefit such as gratuity as admissible under Rules may be completed within a period of four months from the date of receipt of a copy of this order, payment of pension from hence should be commenced within a period of one months from the date of communication of this order. Similarly, the process of consideration of compassionate appointment should also be initiated within a period of one month from the date of communication of this order and completed as expeditiously as possible. No costs.



Member (J)

/pc/