

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 157 of 1992

PT. NO.

DATE OF DECISION 19th July 1996

Smt. Rudiben Rambha **Petitioner**

Mr. P.M. Pathak **Advocate for the Petitioner (s)**

Versus

The Union of India & another **Respondent**

Mr. A.S. Kothari **Advocate for the Respondent (s)**

CORAM

The Hon'ble Mr. K. Ramamoorthy, Member (A)

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Smt. Rudiben Rambha
Near T.V. Station
Dwarka.

... Applicant

(Advocate Mr. P.H. Pathak)

Versus

Union of India
Notice to be served through
1) The General Manager
Western Railway
Churchgate
Bombay.
2) Executive Engineer (C)
(Special)
Jamnagar at present
having office at
Railway Station Kalupur
Ahmedabad.

... Respondents.

(Advocate: Mr. A.S. Kothari)

JUDGEMENT

O.A. No. 157 of 1992

Date: 19th July 1996

Per Hon'ble Mr. K. Ramamoorthy, Member (A):

The present application relates to the question of compassionate appointment.

The applicant is the widow of a railway servant who expired on 16.8.89 in harness leaving behind widow and six children. The eldest son was then 13 years of age. The said railway servant was working as a daily rated casual labour since 1979. The applicant had sought for a compassionate appointment soon after the death of railway servant i.e. on 5.9.89 as at Annexure A-2. This was also followed by Advocate's Notice dated 31.1.90 wherein it had been specifically averred that four representations from 15.10.89 to 27.11.89 were neither replied nor complied with. Though the applicant had raised the

issue of compassionate appointment alongwith the normal family pension (the widow of the railway servant was not granted any family pension either), the relief sought for in the present application is limited to seeking compassionate appointment as per the scheme of the Railway Board.

In their written reply, the respondents have averred that the applicant was not a regular employee of the railways though the fact of the applicant's having obtained temporary status with effect from 1.1.83 has been admitted in particular. The short point averred in the statement relates to the issue as to whether the applicant with his T.S. could be termed as a Railway servant within the meaning of the scheme for appointment on compassionate ground referred to in Railway Board's letter dated 7.4.83 Annexure A-4.

The rights and privileges available to railway servants with temporary status has been a matter of consideration at the level of various courts including the Apex Court from time to time. In the case of Ram Kumar and others, Petitioners Versus Union of India and others, (AIR 1988 Supreme Court 390), the Supreme Court have stated in para 7 of their judgement as under:-

" 7. With the acquisition of temporary status the casual labourers are entitled to:-

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.

- (6) Provident Fund and terminal gratuity.
- (7) Allotment of railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorised by the Ministry of Railways.

It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits".

In the very same judgement the Apex Court has referred to para 2511 of the Railway Establishment Manual wherein, it has been laid down that "Casual Labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants". In the judgement, however, the question of availability of retirement benefits to the casual labourer has not been conceded. However, in regard to the family pension as available to families of deceased casual labourers with temporary status, there have been subsequent judgements granting family pension also (1996 (1) S C SLJ 89 Prabhavati Devi Vs. Union of India & Others).

In this particular application since the relief sought relates to only one of compassionate appointment, it will have to be decided whether such employees are covered by the scheme of compassionate appointment. It is not in dispute that basic welfare measures adopted by the railways have all been made available to casual labourer with temporary status and the offer of compassionate appointment to wards of Railway

indigent

servant in ~~indifferent~~ circumstances is but one such welfare scheme. In fact there is a specific reference in the M.L. JAND Railways' Establishment Manual to an order No. E (NG/II/82/RC I/22 dated 2.2.83 wherein it has been laid down that compassionate appointment scheme has been made available to casual labourers also though the offer of appointment to their wards will be generally only as casual labour. The learned counsel for the applicant also brought to our notice a specific judgement of the CAT Madras delivered on 24.10.1990 wherein the Tribunal has also directed railways to consider the case of applicant for appointment on compassionate grounds in terms of 1986 circular of the Railway Board dated 31.12.1986 empowering the General Manager to exercise his discretionary power.

In the circumstances, this Tribunal has no hesitation in holding that the wards of casual labourers, particularly when the casual labourer is also awarded with temporary status, is entitled to the benefit of the compassionate appointment scheme.

The learned counsel for the respondents also referred to the issue of delay which has been caused in this case inasmuch as the applicant had died in 1989 itself. There is no case for accepting this contention of the railway department since it is on record that the widow of the applicant had soon after the death of the applicant approached the railway department who had not even chosen to send a formal reply in this regard. The lethargy on the part of the Respondent Department cannot be now cited to deny the compassionate appointment which was otherwise due to the applicant.

In view of the above reasons, respondent department is directed to consider applicant's ^{coming} case as within the scheme for compassionate appointment. Since by this time, the applicant's son has also attained majority, the appointment can be offered to either as may be preferred by the applicant, if such a request is specifically received within the next 15 days from the applicant. The respondent department may take a decision in the matter within four months of receipt of this judgement.

There will be, however, no order as to costs.



(K. Ramamoorthy)
Member (A)

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