

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. 380 of 1993

DATE OF DECISION :- 17.11.99

Smt. Bhana Bhain : Petitioner [s]

Mr. K.K. Shah : Advocate for the petitioner [s]

Versus

Union of India & ors : Respondent [s]

Ms. N.S. Shevde Advocate for the Respondent [s]

CORAM

THE HON'BLE MR. V.RAMAKRISHNAN : VICE CHAIRMAN

THE HON'BLE MR A.S.SANGHAVI : MEMBER [J]

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 ? ~

Smt. Bhana Bhain w/o
Late Arjun Jaisingh,
Represented through S. Natesan. Iyer,
Block No. M-1, Room 8,
Prashant Appartment,
Opp. S.T. Nagar,
Nadiad-387 001.
(Advocate : Mr. K. K. Shah)

VERSUS

1. Union of India,
notice to be served through,
General Manager (Establishment),
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai-400 020.
2. Divisional Railway Manager (Establishment),
Western Railway,
Pratapnagar,
Vadodara-390 004.
(Advocate : Mr. N.S. Shevde)

Date 17-11-99

JUDGMENT

O.A. NO. 380 OF 1993

PER : HON'BLE MR. A.S. SANGHAVI : MEMBER (J)

Mr. K.K. Shah, for the applicant and Mr. N.S. shevde, for the respondents. The applicant who is the widow of Arjun Jaisingh, an employee of the railway, who died on dated 2.4.92 has prayed for pensionary benefits by way of family pension from the date of the expiry of Arjun Jaisingh, with all consequential benefits. According to the case of the applicant, her husband, Arjun Jaisingh had joined the service of the railway on 22.12.71, as a casual

Gangman under Permanent Way Inspector, western Railway. He was working continuously with the same division and had put up 8383 working days. He was also conferred temporary status on dated 1.7.85, but, in spite of his continuous working, he was not regularised and absorbed in the permanenet cadre. When he died on dated 2.4.92, he was in the service of the railway and had, in all, put up 21 years of service as a temporary status casual labourer. According to the applicant, on account of her husband having put in more than 21 years of service, she had become entitled to get family pension from the date of the death of her husband. Her request for family pension, however, turned down by the railway authorities and hence, he has preferred this O.A.

2. The respondents, on the other hand, in the reply contended that the husband of the applicant was conferred with the temporary status, but, he was not regularised in the service, and therefore, the applicant is not entitled to claim family pension. Since her husband was not absorbed in the regular service, he was not entitled to the pensionary benefits and consequently, his widow is also not entitled to claim family pension.

3. It is also contended by the respondents that the applicant's husband was entitled to the provident fund and a sum of Rs. 6,308 has already been paid to the applicant, while DCRG of Rs. 3518/- has been sanctioned and sent to the Accounts Office for arranging payment to the applicant. The applicant, according to the respondents, is not entitled to any further benefits.

4. Mr. K.K. Shah, learned advocate appearing for the applicant relying on a decision in the case of Smt. Malati Kar & Ors Vs UOI & Ors decided by the Calcutta Bench of the central administrative tribunal and reported in AIR 1992 (1) CAT 141 has submitted that those casual labourers who had been given temporary status and who had not been regularised for no fault of theirs, were deemed to have been regularised considering their long service and the widow of the said employee was entitled to claim family pension. He has submitted that earlier, the Calcutta Bench of the Tribunal had granted such application against which, the railway had filed an appeal to the Supreme Court, but that appeal in the case of Joydeb Santra VS UOI was dismissed by the Supreme Court, thereby, upholding the judgement of the Tribunal. He has therefore, urged that the judgement of the Calcutta Tribunal be followed and the respondents be directed to pay the family pension to the applicant from the date of the expiry of her husband.
5. Mr. Shevde, learned advocate for the respondents, on the other hand has submitted that the decision of the Calcutta Bench does not apply to the facts of the instant case and in any case, the Supreme Court in the recent decision has laid down that the widows of the temporary status employees are not entitled to claim family pension. According to him, the applicant has been paid DCRG and the P.F. amount and now nothing remains to be paid to the applicant.
6. Though Mr. K.K. Shah, learned advocate for the applicant has contended that the decision in the case of Smt. Malati Kar (supra) is still applicable, we

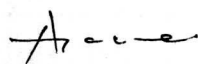
find from the decision in the case of UOI & Ors Vs Rabia Bikaner reported in 1997 (4) Scale, 625, that the supreme Court has taken a complete contrary view and therefore, by implication, the decision in the case of Smt. Malati Kar is set aside. Referring to the question regarding the family pension scheme of the railway applicable to the widow of the casual labourers, the supreme Court in the aforesaid decision has laid down as under :-


Every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, 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 to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not available or in some cases, they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible to the family pension benefits.

7. In the instant case, the applicant's husband was neither empanelled nor screened for regular appointment. He was also not appointed as a substitute.

8. Referring to the case of Ram Kumar Vs UOI (1988) 2 SCR 138 and also to the case of the UOI Vs Sukanti & Anr, SLP No. 3341/93 decided on dated 30.7.96, the Supreme court has held that no retiral benefits were available to the widow of the casual labourers, who died not being regularised till his death.

9. It is quite obvious, from these decisions of the Supreme Court narrated above, that the S.C. has laid down clear and unequivocal terms that the widow of the casual labourer who was not regularised in service, is not entitled to the family pension. Hence, the decision of the Calcutta Bench of the tribunal cited by Mr. Shah, can not be made applicable to the facts of the instant case. The husband of the applicant, was not regularised in the service, though conferred with the temporary status, and therefore, was not entitled to any retiral benefits and consequently, the applicant is also not entitled to claim any family pension after his death on 2.4.92. The O.A. therefore deserves to be rejected and hence in the conclusion, we reject the O.A. with no order as to costs.


(A.S. Sanghavi)
Member (J)


(17/01/98)
(V. Ramakrishnan)
Vice Chairman

Pt

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

061/380/93

of 19

Transfer application No.

Old Writ Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated:

25-11-99

Countersigned:

Amrinder
25-11-99

Section Officer/Court Officer.

Signature of the
Dealing Assistant.



CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

CAUSE TITLE

O.A.

380/93

NAME OF THE PARTIES

Smt. Bhagy Bhadr

VERSUS

U.O.I. & ORS.

SR.NO.

DESCRIPTION OF DOCUMENTS

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Written Statement

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Truly att. 17-11-99

(6 pages)