

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 525 of 1993.

~~T.A. NO.~~

DATE OF DECISION 06-12-1995.

Mrs. Chandra Muthusamy Petitioner

Mr. B. B. Gogia Advocate for the Petitioner (s)

Versus

Union of India and ors. Respondent

Mr. B. R. Kyada 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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Mrs. Chandra Muthusamy,
Gang Woman,
Office of CPWI,
Western Railway,
Rajkot.

...Applicant.

(Advocate : Mr. B. B. Gogia)

Versus

1. Union of India,
Owning and representing
Western Railway,
Through :
General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Kothi Compound,
Rajkot.

..Respondents.

(Advocate : Mr. B. R. Kyada)

J U D G M E N T
O. A. NO. 525 OF 1993.

Date : 06-12-1995.

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

This application relates to the question of grant of family pension. The applicant is a widow of a Railway servant who expired while in service on 2-6-1990, who was engaged on the open line in Rajkot Division on 4-9-1981. He had got temporary status and it is stated that orders even regularising the other employees working along with him had also taken place somewhere in June, 1990.

It is the contention of the applicant that looking to the fact that similarly placed employees were regularised, the applicant's husband should also be deemed to have been regularised and if half the period of temporary status should be taken into account, the applicant would have

been entitled to some family pension. Since, he had died in service, one year's service would suffice for grant of family pension.

When the matter came for argument the counsel for the respondents argued that apart from the fact that the applicant had not been formally regularised by the time he died, the applicant's case cannot be taken up for consideration because the applicant had in an earlier O.A.NO. 460/90, raised the very same issue and had not pressed this particular relief therein. In the order disposing of the earlier O.A. following statement is mentioned in para-2 of the order : -

"At the time of admission the applicant had not pressed the first relief of payment of retiral benefits".

The Tribunal had called for the records and the proceedings of the O.A. and it is seen from the proceedings that there is specific reference to this fact vide order dated 12-2-1991, in the official proceedings which is also reproduced below :

"Heard Mr.Y.V.Shah learned counsel for the applicant on admission. Mr.B.R. Kyada learned counsel for the respondents present.

Mr.Shah learned counsel for the applicant restricts this application to relief 9(2) and does not press for relief 9(1). The case is admitted. The respondents to submit their reply within four weeks to which rejoinder if any may be filed by the applicant within two weeks thereafter. The matter may be listed for final hearing thereafter".

On going through the above minutes it is clear that the concession as given above can not act as ^{an estoppel} ~~res judicata~~ as such a concession might have been ^{seeking} to escape the charge of ^{screening} multiple reliefs in one application

The rules provide for restriction to only one relief in one application and hence, ~~also~~ such statements might become necessary.

In view of the above, the contention of the respondents in this regard is not upheld and the matter is taken up for disposal on merits.

In the further reply filed in the form of affidavit on 17-2-1995, the respondents have clearly explained the situation regarding the T.S. status and regularising action taken by the respondents. The relevant portion from the affidavit is reproduced below :

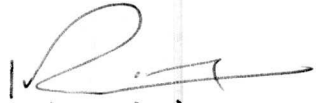
"The respondents state that Late Shri Wishwalingam TS Casual Labour, was working under CPWI Rajkot was screened on 8-1-1988 and was empanelled on 5-6-1990, as per the Screening Register he was shown as general community. The first panel for this Unit for the screening held in 1988 along with him, was issued on 6-4-1989 based on the number of working days. However, SC/ST, casual labour with less number of working days, than him, was also empanelled against vacancy reserved for SC/ST to wipe out the deficiency. The next panel for the Unit was issued on 5-6-90 in which the name of Late Shri Wishwalingam is at Sr.No.1. There were 28 vacancies on 20-4-90 and the late Shri Wishwalingam was working as a substitute against vacancy. Shri Wishwalingam died on 9-6-90 i.e., after issuing the panel, but before the regularisation memo was issued by AEN. No general community labour in the Unit of CPWI Rajkot was regularised in preference to Shri Wishwalingam except casual labour belonging to SC/ST Community. The immediate junior casual labour from general community Smt.Valiamma was also empanelled along with him and she was regularised on 16-8-1990".

From the above it is clear that the deceased Railway servant had not formally been regularised before his death and even otherwise, he could have been regularised some time in 16th August, 1990, whereas the applicant had died on 2nd June, 1990 itself. Even though the respondents have annexed four judgments as at Annexure-A/5, 11, 6, and 8, the Supreme Court have in their

Writ Petition Nos. 15863-15906 of 1984, dated 2-12-1987, Ram Kumar and others Vs. Union of India and others, AIR 1988 Supreme Court 390, have concurred with the contention of the Railways that retiral benefits of pension is not admissable to the casual labourer with temporary status (Para-12).

However, in view of the particular circumstances of this case where the applicant has put in nearly 20 years of service having started working with the Railways since, 1970 with the initial engagement in Virangam Project and also because of the fact that he did become empanelled on 6-4-1989, and again in 1990, his formal regularisation not becoming possible only not because of the action of Railways to first fill up the reserved vacancy, the case deserves special consideration. The respondents are, therefore, directed to consider whether the case of the present applicant can be considered for special consideration under Rule 2404-Sub Section (2) for declaring some part of the temporary service rendered as qualified for pension so that the widow could atleast avail of minimum family pension.

With the above directions, the present application is disposed of with however, no order as to costs.


(K. Ramamoorthy)
Member(A)

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