

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 349 of 1993

Date of Decision: 15.10.1993

Pushparani Ray

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No.

MEMBER (ADMINISTRATIVE)

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Respondents

For the applicant

M/s. Ganeswar Rath
P.K. Mohapatra
A.K. Patnaik
Advocates

For the respondents

Mr. B. Pal,
Mr. O. N. Ghosh,
Standing Counsel
(Rly. Administration)

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C O R A M:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR .H.RAJENDRA PRASAD, MEMBER (ADMN): In this application the petitioner, Smt. Pushparani, widow of Shri Prafulla Kumar Ray, formerly Casual Mechanic, S.E.Railway, Mancheswar, has prayed for a direction to be issued to the opposite parties to pay her:

- i) the family pension due to her from the date of death of her husband;
- ii) arrears of salary, if any, till the demise of her husband, i.e., 31.7.1985; and
- iii) bonus for the year 1985 - 86.

2. Shri Prafulla Kumar Ray was engaged as a Casual Mechanic in the S.E.Railway on 2.12.1968 and continued to work in the same capacity till 31.7.1985 on which date he passed away. The Railway authorities conferred temporary status on him retrospectively with effect ^{from} 1.1.1981. The

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applicant claims that every employee dying in harness with a service of more than one year is entitled to family pension and other retirement benefits. She states that she has preferred several representations, but without avail.

3. In 1989, it was decided by the Railway Board that all casual workers who were on their rolls on 1.4.1973, having rendered three years or more aggregate casual service and awaiting their turn for regularisation on the said date, shall be eligible for regularisation with effect from the same date. The decisions were conveyed and instructions issued on 26.4.1989, by which time, however, Shri Prafulla Kumar Ray was no longer alive. It is the applicant's contention that her husband's regularisation became automatically due by virtue of these orders, since the deceased official fulfilled all the eligibility-criteria; and that despite the delay in communicating the decision and subsequent failure of the authorities to examine his claim and do him justice posthumously, the benefit of regularisation, with attendant monetary benefits, would have to be extended to him retrospectively from 1.1.1981 to 31.7.1985, and to his legal heirs thereafter. She further complains that the bonus, to which her husband was rightfully entitled, has been lying undisbursed and not paid to her so far.

4. The learned Standing Counsel for the respondents, Shri B. Pal, clarified at the outset that the death of Shri Prafulla Kumar Ray was not due to any accident, or

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even in course of or due to official duties, but entirely due to natural causes. He stated that the applicant is not entitled to family pension, or any other pensionary benefits, since his services had not been regularised until his demise. Although, he admits, the bonus due to late Shri Ray is lying undisbursed with the respondents, it was because the same could not be paid in the absence of any application or claim from the legal heirs of the deceased employee.

5. It is noticed that a decision was taken in April, 1989 to regularise the casual labourers and to offer them Group 'D' posts from 1st April, 1973. Two of the three conditions laid down were that the employee concerned should have (i) been on the rolls of Railways on 1.4.1973, and (ii) rendered three years or more/aggregate casual service. Applying these twin-tests to the instant case, it is clear that Shri Ray, who was initially engaged as casual mechanic on 2.12.1968, was fully eligible for regularisation on 1.4.1973. Since, however, the decisions regarding regularisation of casual employee was taken only in April, 1989, the tangible benefits flowing out of the decision could not be extended to Shri Ray since he was no longer alive to receive them. It is clear too that he ought be deemed to have been regularised with effect from 1.4.1973. I do not see any constraint which could possibly stand in the way of such retrospective regularisation and the grant of consequential benefits.

6. As regards the contention of the respondents that the services of Shri Ray had not been regularised until his

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death, it may be observed that,— besides what has been stated above, according to which Shri Ray should be deemed to have been regularised with effect from 1.4.1973 — there is the additional factor of a series of judicial pronouncements. In cases of this nature the Courts have taken a consistent view that where an employee renders ^{Service in a} casual employment uninterruptedly for several years, he should be deemed to have been regularised and that all consequential benefits should be paid to him, or, to his legal heirs. The following decisions are relevant in this regard:

- 1) O.A.No.1124/89, C.A.T., Calcutta Bench, Reported in A.T.R.1992(1)CAT 141 (Malati Kar & Others vs. Union of India & Others)
- 2) AIR 1982 SC 54 (Robert D' Souza vs. Executive Engineer)
- 3) 1989 SCC (L&S) 417 (State of Maharashtra vs. Jagannath Achyut Karandikar)
- 4) AIR 1988 SC 390 (Ram Kumar Vs. Union of India)
- 5) 1985 (2) SCC 468 (Inderpal Yadav vs. Union of India)
- 6) O.A.No.207 of 1990 of this Bench (Sukanti & another vs. Union of India & Others)
- 7) O.A.No.397 of 1992 (Seba Bewa & others vs. Union of India & Others)

7. According to the decisions arrived at in these cases, any casual employee who has rendered uninterrupted service for a number of years should be deemed to have been regularised and that all pensionary benefits due to him or his legal heirs should invariably be extended to the claimant.

8. In the instant case, the applicant's husband

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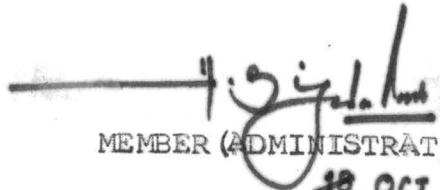
was eligible for ~~regularisation~~ on a certain crucial date, determined for the purpose by the Railway authorities themselves. Additionally, the judicial decisions referred to above also reinforce the applicant's plea. Such being the facts & circumstances, I do not see how the claim of the applicant can be resisted at all.

9. I have no hesitation to hold, therefore, that Smt. Pushparani Ray is indeed entitled to all death-cum-retirement benefits due to her late husband. I accordingly direct that the arrears, if any, on account of the difference in emoluments from 1.4.1973 to 31.7.1985, be calculated and paid to her at the earliest. Furthermore, the arrears of family pension with effect from 31.7.1985 to date should also be calculated and paid to her. Likewise, the undisbursed Bonus should also be arranged to be paid. Since the lady appears to be in great distress after the demise of her husband, I further direct that, in order to mitigate her hardship, all amounts due to her in accordance with this order be arranged to be drawn and kept ready before 30.11.1993. The applicant is directed to call on Respondent No.3, i.e. the Senior Project Manager (Construction) S.E.Railway, Cuttack, on the forenoon of Tuesday 30th November, 1993. It shall be the responsibility of R-3, primarily, to ensure that all necessary advance action is taken in the meanwhile, so that all payments due to her shall be made on 30.11.1993 when Smt. Pushparani Ray calls on him. The applicant, on her part, shall submit to Respondent No.3, the claim-papers with regard to each

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of these payments on or before Friday, 05 November, 1993.

The application is thus disposed of. No costs are awarded.


MEMBER (ADMINISTRATIVE)

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Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 15.10.1993/B.K.Sahoo