

9

9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.212 OF 1996

Cuttack, this the 16th day of December '96

Subhadra Bewa Applicant

Vrs.

Union of India & others Respondents

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

N.SAHU
(N.SAHU)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 212 OF 1996
Cuttack, this the 16th December '96

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

....

Subhadra Bewa,
wife of late Akrura Biswal,
At-Tarini, F.O-Kaluparaghata,
District-Puri, Orissa

....

Applicant

-versus-

1. Union of India,
represented through the
Secretary, Railway Board,
Rail Bhawan, New Delhi
2. General Manager,
South Eastern Railway,
Garden Reach, Calcutta-43,
West Bengal
3. Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division,
At/P.O-Jatni, District-Khurda
4. Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division,
At/P.O-Jatni, District-Khurda

... Respondents

Advocates for applicant - M/s D.S.Misra,
S.Mohanty & S.Behera

Advocate for Respondents - M/s D.N.Misra &
S.K.Panda.

O R D E R

N.SAHU, MEMBER(ADMINISTRATIVE)

The prayer in this O.A. is for a

direction to Respondent Nos.3 and 4 to sanction family pension
in favour of the applicant. The applicant's husband was appointed

on 24.6.1967 as a Gangman. The connected papers enclosed to the application show that late Akrura Biswal - Muli has been styled as Ex-CPC/Gangman working under P.W.I., Kalupadaghat. He expired on 28.7.1981. The D.P.O.'s letter dated 12.7.1991 (Annexure-2) is a rejection of the claim for compassionate appointment by the competent authority. While rejecting the claim, the D.P.O stated that this facility was not available in July, 1981 to the family of casual labour with temporary status dying in harness. Learned counsel for the applicant interprets this as substantiating his claim that the Railway had recognised him as a casual labour with temporary status. On his death on 28.7.1981 he left behind a wife, four sons and one daughter.

2. Learned counsel for the applicant cited the decision of the Supreme Court in the case of Prabhavati Devi v. Union of India and others, 1996(1) Supreme 14. That was a case where the petitioner's husband was taken as a casual worker and with effect from 27.4.1983 he acquired the status of a substitute. A substitute is appointed on regular pay and allowances applicable to posts against which he is employed. The deceased kept working till 5.1.1987. He came to acquire certain rights and privileges under Rule 2311 which provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary Railway servants on completion of six months continuous service. Having become a temporary servant in this manner, he became entitled to family pension under Sub-rule 3(b) of Rule 2311. Under this Rule it is provided that the widow, minor children of a temporary Railway servant dying while in

Now

-3-

service after a continuous service of one year shall be eligible for family pension under the provisions of Paragraph 801 of the Manual of Railway Pension Rules.

In view of the background, the Supreme Court has set aside the orders of the Tribunal and ordered family pension to the widow. Sri D.S.Misra, counsel for the applicant, contends that it is not the rights of a substitute but the rights of a casual labour with temporary status that is determinative of family pension as decided by the Supreme Court. Opposing this decision, the learned counsel for the Respondents has cited the decision of Ram Kumar and others v. Union of India and others (AIR 1988 SC 390) wherein the Supreme Court gave a categorical ruling that retiral benefit of pension is not admissible to temporary Railway servants or casual labour acquiring temporary status. Sri D.S.Misra, learned counsel for the applicant, argued that as the Prabhavati's case(supra) is a later decision, this should be accepted as laying down the correct law. The learned counsel for the Respondents, on the other hand, has pointed out that the decision of the Supreme Court in Ram Kumar's case cited above was not brought to the notice of the Hon'ble Judges of the Supreme Court in Prabhavati's case. It is submitted by the learned counsel for the Respondents that a number of cases claiming family pension of this type are pending for adjudication before the larger Bench.

3. In O.A.Nos.200 and 388 of 1994 and other analogous cases, by an order dated 10.5.1995, the Division Bench of C.A.T.,

Cuttack Bench, had referred for consideration by a larger Bench, a similar issue as arising in this case. The two issues referred for consideration by the larger Bench are as under:

"(1) Whether casual employee/employees are entitled to retiral benefits or pensionary benefits, if he or they retire while working as casual labourers or even after attaining temporary status and without being regularised or made permanent against substantive permanent posts and whether the Calcutta Bench in Malati Kar's case (supra) and this Bench in the cases of Sumati Patra and Manaka Bijili (supra) holding that services of the casual employee in each of these cases "should be deemed to have been regularised", laid down the correct law;

(2) Whether the dependant of a casual labourer, who dies in harness or in indigent circumstances without having his services regularised, would be entitled for being considered for appointment on compassionate ground."

One more question to be considered by the larger Bench is whether the decision in Prabhavati's case is distinguishable as it deals with a substitute's right or is it in conflict with the law laid down by the Supreme Court in Ram Kumar's case inasmuch as both the decisions deal with the rights of a temporary status casual labour, the former approving grant of family pension and the latter negativing the claim. In view of these two rulings apparently opposed to each other, which of them should be followed as laying down the correct law on the subject?

4. Hon'ble Chairman, Principal Bench, has been requested to constitute a larger Bench to consider the reference in O.A.Nos.200 and 388 of 1994 from this Bench. The Registrar shall forward a copy of this order for placing before Hon'ble the Chairman for adding one more question of law arising from this application for consideration by the larger Bench.

Karan Singh
(N.SAHU)
MEMBER (ADMINISTRATIVE)