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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 38 OF 1996

Present : Hon'ble Mr. S. Biswas, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

Smt. Gouri Bala Das,
W/o Late Lakshman Das
R/o Vill Ramdasbai, Fatehpur
1st Lane, Lal Behari Adak's Bagan
P.O. Garden Reach, 24 Parganas

VS

1. Union of India through the
General Manager, S.E.Rly.
Garden Reach, Calcutta-43
2. General Manager, S.E.Rly.
Garden Reach, Calcutta
3. Divl. Rly. Manager,
S.E.Rly. Kharagpur.
4. Chief Personnel officer (Sett)
S.E.Rly. Garden Reach, Calcutta-43

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Mr. C.Samadder, Counsel

Heard on : 6/5/2002 : Order On : 14/5/2002

ORDER

M.L.Chauhan, J.M.:

The applicant is the widow of late Lakshman Das, who was a Khalasi under the Electrical Foreman, S.E.Rly. Garden Reach. It is averred that the husband of the applicant was appointed as Khalasi on 9.4.64 and died on 14.8.70 while in service. It is further stated that on the death of her husband, the applicant received only the PF dues on 25.9.75. It is further stated that sanction for payment of ex-gratia pension was accorded by the Sr. DPO, Kharagpur in favour of the applicant vide letter dt. 29.7.89, but to the surprise of the applicant, she received a communication dt. 1.12.89 from the CPD, S.E.Rly. Calcutta wherein it was intimated that her deceased husband was a subscriber to SRPF (NC) Scheme and as such she was not entitled to any ex-gratia pension. It is averred by the applicant that her husband was duly screened, medically examined and declared fit and that he was working against a permanent post of Khalasi in the

Electrical Deptt. and accordingly ex gratia pension was sanctioned in her favour but she was shocked to receive the letter dt. 29.3.91 by which she was intimated that she was also not eligible for family pension as her husband was a substitute Khalasi and not a regular railway employee. Being aggrieved, the present OA has been filed praying for a direction to the respondents to treat the service of her deceased husband as regular one and to grant her family pension and other benefits as per rules with interest.

2. The respondents have contested the application by filing a reply affidavit in which it is stated that husband of the applicant was a substitute and was not regularised before his death. Therefore, the applicant is not entitled to any family pension as per rules. It is denied that a substitute is a temporary railway employee. It is further stated that no ex gratia pension was ever sanctioned in favour of the applicant.

3. We have heard the ld. counsel for the parties and perused the documents placed on record.

4. Ld. counsel for the applicant relying on the decision of the Apex Court in the case of Prabhavati Devi -vs-UOI & Ors, (1996) 7 SCC 27, contended that since the husband of the applicant was a substitute in a regular scale of pay under the railway and he was screened and also medically examined, he was to be treated as a temporary railway employee and hence on his death, the applicant was entitled to family pension and other retiral benefits.

5. On the other hand, the ld. counsel for the respondents has placed reliance on the decision of the Apex Court in the case of Rabia Bikaner ^{1997 SCC(L&S) 1524} (supra) and Ram Kumar -vs- UOI & Ors, (1988) 2 SCR 138, contended that the husband of the applicant was not entitled to any retiral benefits as he was not regularised against a regular post till his death, which was a condition precedent for the grant of pension to the husband of the applicant as per Railway Services (Pension) Rules, 1993 as also the rules in vogue at the time of death of the husband of the applicant. Therefore, the applicant is also not entitled to any

family pension as claimed.

6. Thus, the main point which requires our consideration is whether the applicant is entitled to get family pension including pensionary benefits of her late husband. In order to decide the point in controversy, it will be useful to consider the relevant provisions of Railway Pension Rules, 1993 and the Manual of Railway Pension Rules 1950 and the provisions of IREM.

Rule 101(2) of the Manual of Rly. Pension Rules, 1950 reads as under :-

" In the case of a temporary Railway Servant the benefits comprise :-

a) If he quits service on account of superannuation; invalidation or reduction of establishment - a terminal gratuity'

b) If he dies while in service -

i) a death gratuity to his family; and

ii) a family pension if, at the time of death, the employee had completed one year's continuous (qualifying service.)

Rule 20 of Chapter III of RS (Pension) Rules, 1993 reads as under :-

"Qualifying service of a Rly. servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity."

Rule 1501(1) of Chapter XI of IREM, Vol. I, 1989 reads thus :-

"A 'temporary railway servant' means a railway servant without a lien on a permanent post on a railway or any other administration or office under the Rly. Board."

Rule 26 of Chapter I of RS (Pension) Rules, 1993 reads thus :-

" 'Substitute' means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary Rly. servant and such substitute shall not be deemed to be a Rly. servant unless he is absorbed in the regular Rly. service."

Rule 32 of Chapter III of RS (Pension) Rules, 1993 runs as follows :-

" Service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in the case of teachers and four months in other cases of continuous service as substitute followed by absorption in regular Group C or Group D post without any break."

7. Here, we are concerned with rule 26 of Chapter I and rule 32 of Chapter III of Railway Services (Pension) Rules, 1993 read with the provisions of IREM, as the husband of the applicant was a substitute and not a temporary railway servant. Be it noted that similar provisions were also there in the earlier rules in force at the time of death of the husband of the applicant.

From a perusal of the relevant rules quoted above, it is clear that unless a "substitute" is absorbed in regular Railway Service, he cannot be deemed to be a railway servant and that the service rendered as substitute shall be counted for pensionary benefits only if he is absorbed in a regular Group C/D post under the railway without any break.

8. Admittedly, the husband of the applicant was appointed as a substitute on 9.4.64 and he died on 18.4.70 before being absorbed against a regular post though he was duly screened, medically examined and empanelled for such absorption as per his turn. But since he was not regularised before his death, on the face of the above rule position, the husband of the applicant cannot be treated as a temporary railway servant as per provision of Para 1501(1) of IREM, Vol. I reproduced above, and thus he was not entitled to any pensionary benefits.

9. So far as the contention raised by the ld. counsel for the applicant that the husband of the applicant was entitled to pensionary benefits in view of law laid down by the Apex Court, in the case of Prabhavati Devi (supra), is concerned, we are unable to agree with the same. The decision of the Apex Court in Prabhavati Devi (supra) was considered by the Apex Court in the subsequent decision of Rabia Bikaner (supra). Their lordships of the Apex Court held in para 5 as under :-

".....The above ratio is inapplicable to the cases referred to hereinbefore. The question was also considered in a recent judgement of this Court in Union of India -vs- Sukanti & Anr, (SLP) C No. 3341/93 etc. decided on July 30, 1996 wherein relying on the ratio in Ram Kumar's case this Court held that no retiral benefit was available to the widow of the casual

labour who had not been regularised till his death. Thus, we hold that the view taken by the Tribunals in granting the pensionary benefits to the respondents is clearly illegal."

Similarly, this Tribunal in the case of Smt. Sibarani Chatterjee -vs- UOI (OA No. 948 of 1996 decided on 9.2.98) after considering and relying upon the decision of the Apex Court in Rabia Bikanir case (supra) held in para 18 as under:-

" It would be against the provision of the relevant rules and the decisions of the Supreme Court, which have finally settled the position of law in this regard to hold that the petitioner's husband shall be deemed to have been regularised or absorbed in a permanent post after his empanelment as per Annexure-A/2 and before his death in harness. Annexure-A is of no avail to the petitioner. It does not concern her husband at the relevant time and it had no continual effect. It is unfortunate the petitioner's husband died after the empanelment as per annexure-A/2 but before his regularisation. There was nothing to show that there were existing vacancies at the time of his death or that any of his junior was absorbed in a regular vacancy. It must also be noted that the vires of the relevant rules have not been challenged before this Tribunal. There is nothing to show that any discriminatory action was taken against the petitioner's husband by the respondents in the matter of absorption and regularisation. Hence, the claim of the petitioner, though arouses sympathy, is not justified by law."

10. In view of what has discussed above, we are of the view that since the husband of the applicant, late Shri Lakshman Das was only a substitute and was not absorbed in regular service, as such he was not entitled to pensionary benefits. Temporary status as substitute is counted for qualifying service only if it is followed by regular absorption. Since the husband of the applicant was not absorbed regularly in the railway service, he did not have any qualifying service in terms of the railway rules reproduced above.

11. Accordingly, the application fails and it is dismissed without any order as to costs.


(M.L. CHAUHAN)

MEMBER(J)


(S. BISWAS)

MEMBER(A)