

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1232 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. B. P. Singh, Administrative Member

Parul Bala Nath, W/O Late Maheswar
of Panagarh Railway Colony, Qrt.No.66B
P.O. Panagarh Bazar, Dist. Burdwan

... Applicant

VS

1. Union of India to be represented
by General Manager, Eastern Railway,
having its office at 17, Netaji
Subhas Road, Calcutta-700 001

2. Divisional Railway Manager,
Eastern Railway, Asansol Division,
P.O. Asansol, Dist. Burdwan

3. Sr. Divisional Personnel Officer,
Eastern Railway, Asansol Division,
P.O. Asansol, Dist. Burdwan

4. Sr. Divisional Engineer, Asansol
Division, Eastern Railway, P.O.
Asansol, Dist. Burdwan

5. P.W.I. Mankar, Eastern Railway
P.O. Mankar, Dist. Burdwan

.... Respondents

For the Applicant : Mr. N. Ganguly, counsel

For the Respondents: Mr. P. K. Arora, counsel

Heard on 22.12.1998

: : Date of order: 02-2-1999

O R D E R

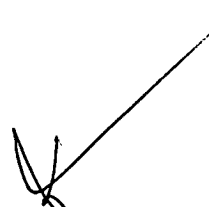
D. Purkayastha, JM

By this application one, Smt. Parul Bala Nath, widow of late Maheswar claimed the benefit of family pension on the ground that her husband, late Maheswar while in service in the Railway under the control of the respondents expired on 6.1.89 leaving the applicant and her two daughters as his sole heirs and successors. It is stated by the applicant that after the death

is entitled to get family pension, but the same has not been paid to the applicant inspite of her repeated representation submitted to the respondents. It is also stated by the applicant that she served notice on the respondents on 12.9.96, but to no effect and she has filed this application for getting family pension under the scheme.


2. The respondents denied the claim of the by filing the written reply stating interalia that the claim of the applicant is speculative and after thought and thereby is not tenable. It is stated that the applicant's husband, late Maheswar was appointed initially as a casual Gangman on 16.12.67 and he was given all the privileges as are admissible to temporary railway employee on his attaining temporary status on 16.8.78 under Sl. Circular No.5038 of 1962. Accordingly, he was allotted with a P.F. Account No. and recovery towards his P.F. subscription was effected from 1.9.79 and he expired on 6.1.89 i.e., before absorption in regular vacancy after screening. It is also stated v by the respondents that the Railway employees are entitled for pension after completion of requisite minimum ten years of qualifying service which will be counted from the date of absorption against regular vacancy. The applicant's husband late Maheswar does not come under the purview of the pension rules because he was not absorbed against the regular vacancy before death. Thereby she is not entitled to get any family pension as per extant rules. However, on compassionate ground she has been appointed as Group 'D' staff after the death of her husband. Thereby the application is devoid of merit and liable to be dismissed.

3. Mr. N.Ganguly, learned counsel appearing on behalf of the applicant submits that the applicant is entitled to get family pension since he attained the temporary status in the Department and it is admitted by the respondents that her husband attained temporary status on 16.8.78. So, there is laches on the



part of the Department for the purpose of regular appointment against the regular vacancy though he served for more than 12 years in the Department. Hence, for the administrative laches the respondents cannot deny the benefit of the family pension, as claimed by the applicant in her application. So, the relief sought for in the application should be allowed. Mr. Arora, learned advocate appearing on behalf of the Railway respondents has contended that in view of the judgment of the Hon'ble Apex Court in the case of Union of India & others vs. Rabia Bikaner, reported in 1997(2) SCSLJ 263, the applicant is not entitled to get any benefit since her husband was not regularised against a vacancy for the purpose of counting pension. So, the application should be dismissed.

4. We have anxiously considered the submission of the learned counsel of both the parties with reference to judgment of the Hon'ble Apex Court in the case of Ram Kumar ^{and others} /vs. Union of India and others, reported in AIR 1988 SC 390, where the Hon'ble Apex Court while accepting the provision of the relevant rules has come to a conclusion that the pensionary benefits are not admissible to casual labour acquiring temporary status and it is found that the Hon'ble Apex Court also took a note of the Rule 2315 of the Indian Railway Establishment Manual which provides for regular scales of pay and allowance for the substitutes working in regular establishment. In Rabia Bikaner (Supra) case the facts are more or less similar to the present one and we find that the applicant admittedly was not regularised in the vacancy. So, in view of the judgment of the Hon'ble Apex Court mentioned above we are of the view that the applicant's husband has not been regularised in the regular vacancy in the Department, thereby she is not entitled to get any family pension under the recruitment rules ^{or Pension Rule} and hence the application must be rejected.



5. In view of our discussion made above we do not find any merit in the application and accordingly it is dismissed without awarding any costs.

B. P. Singh

(B. P. Singh) 21299

MEMBER (A)

D. Purkayastha

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MEMBER (J)