

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 51/1996

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

Smt. Prova Mondal

-v e r s u s-

1. Union of India represented by General Manager, S.E. Railway for himself and for Union of India, Garden Reach, Calcutta-43.
2. Senior Divisional Personnel Officer, S.E. Railway, Kharagpur, Kharagpur-1.
3. Permanent Way Inspector, S.E. Railway, Panskura, P.O. Panskura, Dist. Midnapore.
4. Inspector of Works, S.E. Railway, Santragachi, P.O. Jagacha, Dist. Howrah.

...Respondents.

For the applicant : Mr. M.M. Roychoudhury, counsel.

For the respondents : Mr. P. Chatterjee, counsel.

Heard on S/B on 25.4.2000

Order on 19-5-2000

O R D E R

B.P. Singh, AM

Smt. Prova Mondal, wife of late Santosh, Ex-Gangman has filed this O.A. for grant of family pension in her favour by praying for the following reliefs:-

"8.

- a) That the Hon'ble Tribunal may be graciously pleased to order and direct the respondents to bring all the papers and documents of this case so that conscionable justice may be done by granting the Family Pension with arrears to the applicant in accordance with the provisions of "Family Pension Scheme for Railway Employees, 1964", as amended from time to time by the Railway Board."

2. The fact of the case is that the applicant is only widow of her late husband Santosh who was a temporary gangman under respondent No.3 and who died in service on 3.3.1975 after completing a continuous service of about 11 years 8 months as per Annexure-A/1. The applicant

was paid a gratuity of Rs.2232/- by the respondent authorities for her deceased husband as per Annexure-A/2. The applicant submitted an application for family pension in her favour on 19.11.92 as it is evident from Annexure-A/3. She did not receive any reply and she has not been given family pension so far. The applicant also submitted representation dated 4.7.94 vide Annexure-A/4 for grant of family pension alongwith arrears which also remained unreplied. The applicant submits that Railway Board has issued circular for grant of family pension to widows of the deceased employees like her with all arrears subject to deduction from the arrears pension all Provident Fund, bonus etc. The applicant submits that she is eligible for family pension with arrears under the provision of family pension scheme for Railway employees, 1964 as amended from time to time. She should have been considered for grant of the same vide her applications as per Annexure-A/3 and A/4. The same was not done which is clear violation of provision of Arts. 14, 16 and 19 of the Constitution. The applicant further submits that to be eligible for pension other benefits drawn by <sup>or</sup> ~~the~~ <sub>her</sub> paid to her should have been deducted from the arrears of pension as per orders of the Railway Board circulated by S.E. Railway Administration ~~in~~ Circular Srl. No. 28 of 1992. Being aggrieved the applicant filed this O.A. with the prayers quoted above.

3. I have heard Shri M.M. Roychoudhury, Id. counsel for the petitioner and Shri P. Chatterjee, Id. counsel appearing for the respondents. The Id. counsel for the petitioner submitted that the husband of the applicant died on 3.3.1975 as a temporary Gangman after completing more than 11 years 8 months service. He was appointed temporarily and got 11 increments. He had more than one year of regular service at the time of his death. He was also allotted Provident Fund A/c No. which <sup>is</sup> ~~was~~ <sub>is</sub> allotted to the regular employees only. The application for family pension of the applicant was forwarded to the competent authority by the office. In view of this fact, he submitted that the husband of the applicant was a temporary Govt. railway employee and, therefore, was covered under the Pension Rules and his family was entitled for family pension.

The Id. counsel Shri Roychoudhury for the applicant drew our attention to Rule 2501 (Railway Establishment Manual 1968) in which casual labour is defined. From this definition it would be clear that the husband of the applicant was not a casual labour according to the above rules. He further submitted that Rule 2513 of R.E.M. 1968 list out the nature of jobs which casual labour performs. From this also it is clear that the husband of the applicant was not a casual labour. He further drew our attention to Rule 1304 R.E.M. 1971 which provides about allotment of Provident Fund A/c No. to all railway servants after one year of regular service, ~~and confirmed~~. It also provides that casual labour are not railway servants. The definition of railway servants is given in Rule 102(13). It clearly excludes the casual labour. He submitted emphatically that the husband of the applicant was not casual labour but a temporary Govt. servant and, therefore, was entitled for pension and his family was entitled for family pension. Therefore, the applicant should be granted family pension according to the rules with all arrears.

4. Shri Chatterjee, Id. counsel for the respondents submitted that the applicant's husband was working under the PWI, Panskura as a casual Gangman on daily rated basis and before being regularised in service he expired on 3.3.75. He was not a temporary gangman as stated by the applicant. He got temporary status only. He further submitted that a temporary railway employee and a railway employee who attained temporary status are not identical. A temporary railway servant holds a lien against the cadre post whereas a casual labour on attaining temporary status does not hold any lien against the cadre post. A casual labour on temporary status after being regularised in service followed by due screening and medical fitness becomes eligible for all retirement benefits. In the instant case, the husband of the applicant viz. Sri Santosh merely attained temporary status and was not regularised in service. This being the factual position, the applicant was paid death-cum-retirement gratuity in compliance with provision of Estt. Sri. No. 93/86. The Id. counsel further submitted that as per Railway Retirement Rules, the applicant was only eligible for her husband's PF amount and Death-cum-Retirement Gratuity as per Gratuity Act, 1972. She has

already been paid both. She is not at all eligible for family pension as her husband was a casual labour on daily rated basis at the time of his death. If he had been regularised in service before his death and performed at least one year continuous service, she would have been entitled for family pension as per Rules 101 (2) (b) (ii) of Railway Pension Rules, An extract of which has been annexed as Annexure-R/1. The Id. counsel further submitted that Estt. Srl. No. 5/64 clarified as to who will come under pension scheme. The said Estt. Srl. has been enclosed as Annexure-R/2 which clearly provides that the scheme was not available to the casual labour. Rather the same is applicable to all regular employees temporary or permanent. It further provides that in case of death while in service the railway servants should have completed a minimum period of one year of service. In paragraph 13 of the Estt.Srl. it has been clearly provided that this scheme is not applicable to casual labour. The Id. counsel has further submitted that as stated in paragraph 4.5 of the application Estt. Srl. No.28/92 is not applicable to the applicant. It is applicable to regular employees only. He further submitted that the applicant's husband was not regularised before the death. He was working in casual capacity at the time of his death. He stated the decision of the Hon'ble Apex Court in Civil Appeal No.4373 with 4374-4378 of 1997 (1997 AIR SCW 2847) in which it has been decided that widow of casual labour who dies before appointment to a temporary post after screening is not entitled to family pension. A copy of the judgment is enclosed as Annexure-R/3. The Id. counsel further submitted that the applicant's deceased husband rendered about 12 years service and in that matter the claim of family pension even on 'deeming provision' as per Full Bench Judgment dated 20.6.97 on O.A. 1124/1992 and O.A.No. 524/1993 is not covered. The Id. counsel submitted that the applicant was conferred temporary status according to rules. But he was not regularised till his death as he did not come under the zone of selection due to non-availability of the vacancy. He died with temporary status. He was, in other words, casual labour with temporary status till his death.

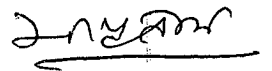
He further submits that temporary railway servant is defined in para 1501 (IRE) Vol.1 1989 excluding casual labour with temporary status. Further, Rule 101 (43) chapter I (I.R.E.) Vol.I 1985 defines Railway servant which again excludes casual labour. As such the husband of the applicant was not a temporary railway Govt. servant, but a casual labour with temporary status. As such he was entitled for gratuity and GPF. He was covered by Pension Rules, 1952. As per Rule 101(2) of this scheme he did not complete one year qualifying service at the time of death. The Family Pension Scheme, 1964 enclosed as Annexure-R/2 in para 13 makes it clear that the scheme is not applicable to the casual labour. The Id. counsel further cited various decisions in support of the above submissions that the applicant was not entitled ~~not~~<sup>to</sup> family pension. He cited the order of this Bench in O.A. No.948 of 1996 (Smt. Sibarani

Chatterjee Vs. Union of India and Ors.). It was held that unless the service of the casual labour is regularised his family cannot get benefit of family pension. Similar decision was taken in the cases of the Hon'ble Apex Court cited above as well as in (1996) 33 ATC 48 (Radhabai Krishna Mistry (Smt) Vs. Union of India and Ors. The Id. counsel further submitted that CAT Calcutta Bench case 1992 (1) A.T.J. 543 (Cal) (Smt. Malati Kar & Ors.-Vs. Union of India and Ors. decided on October 8, 1991 provided for deemed regularisation. This decision was taken note in CAT Calcutta decision dated 9.2.98 in O.A. No. 948/96. In view of the above submissions, Id. counsel submitted that the instant applicant is not entitled for the reliefs as sought for by her and the instant application is void of merit and hence liable to be dismissed.

5. From the above submissions of the Id. counsels it is evident that husband of the applicant died on 3.3.75 while in service after completing a continuous service of about 11 years 8 months in the Railway. The deceased husband of the applicant was a casual labour and was granted temporary status after putting in minimum service. He could not be regularised till his death as he did not come under the zone of selection due to non-availability of vacancy. In other words, he died as a casual

labour with temporary status. The various rules of the Railway Estt. Manual which define temporary railway servant clearly exclude the casual labour from their ambit. The provisions of Railway Pension Rules, 1953 as well as Family Pension Scheme of Railway Employees, 1964 also clearly exclude casual labour from their ambit. The decision of the Administrative Tribunal as well as the Hon'ble Apex Court also laid down that the benefit of family pension is not available to casual labour. The husband of the applicant died as a casual labour with temporary status though he had put in about 11 years of service as a casual labour with temporary status. The benefits of family pension are not available to the family of casual labour with temporary status. In view of the above ~~the~~ factual position, rule position as well as the decisions of the Hon'ble Apex Court and the Tribunals, the applicant is not entitled for the benefits of the family pension on the death of her husband who died as a casual labour with temporary status. Therefore, the application must fail. I, therefore, reject the application.

6. No order is passed as to cost.



( B.P. Singh )

Administrative Member.

a.k.c.