

In The Central Administrative Tribunal
Calcutta Bench

DA 354 of 1996

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

Hon'ble Mr. V.K. Majotra, Administrative Member

Smt. Lakshmi Bala Routh, wife of Late Gopal Chandra Routh, Ex-Temporary Store Watchman under the D.E.N.(Con.) Garden Reach, residing at Vill. Pital Saha, P.O. Kherui, Dist: Midnapore.

..... Applicant

- Versus -

- 1) Union of India, through the General Manager, S.E. Rly, Garden Reach, Calcutta.
- 2) Chief Engineer(Const.), S.E.Rly., Garden Reach, Calcutta.
- 3) Divisional Railway Manager, S.E.Rly., Kharagpur, Midnapore.
- 4) District Engineer(Const.), Garden Reach, Cal.
- 5) Assistant Engineer(Const.), S.E. Rly., Santragachi, Howrah.
- 6) Chief Permanent Way Inspector(Const.), S.E. Rly., Santragachi, Howrah.

.... Respondents

For the Applicant : None

For the Respondents: Mr. S. Choudhury, Counsel

Heard on : 06-08-2001

Date of Order : 06-08-2001

O R D E R

V.K. MAJOTRA, AM

The husband of the applicant Late Gopal Chandra Routh was initially appointed as casual Khalasi under Diesel Store (Construction), South-Eastern Railway, Santragachi on 7-6-1980. On completion of three years of continuous service he was accorded temporary status w.e.f. 1.1.1985. Subsequently, the date of

temporary status was changed from 1.1.85 to 1.1.84 vide respondents' order dated 9-10-86. It is claimed that the husband of the applicant was granted a regular scale of pay w.e.f. 1.1.84 and was finally screened for the post of Gangman after medical examination. He was placed in the scale of Rs.200-400/- (AS) w.e.f. 24.1.85 when his pay was fixed at Rs.209/- per month. He died on 31.1.1989 while he was working as Store Watchman. It is claimed that the deceased Govt. employee was absorbed in regular Railway Service and he rendered more than 5 years of continuous service in a regular time scale of pay with regular annual increment. The applicant claims that she is entitled under law family pension at the rate of Rs.375/- per month + dearness relief as admissible w.e.f. the date of death of her husband. She made an application on 17-11-1994 for grant of family pension and death gratuity etc. which remain unresponded. She has sought direction to the respondents to release in her favour family pension, death gratuity etc., with interest.

2. In their counter reply the respondents have admitted that the deceased Govt. employee i.e. the husband of the applicant was granted temporary status on 1-1-84 vide order dated 24-9-86 read with order dated 9-10-86. After medical examination in the category of C2 he was declared fit for the post of S.Watchman in the scale of Rs.200-400/- (AS). Whereas the applicant has stated that her husband's pay was fixed at Rs.209/- per month on 1.1.86, According to the respondents, his pay was fixed at Rs.200/- ~~400/-~~ per month. According to the respondents, the screening was to be held on 23.8.89. However, it could not be conducted as the applicant's husband died on 31.1.1989. Thus, he could not be absorbed against the regular vacancy.

3. As none has come to represent on behalf of the applicant, we have proceeded under Rule 15 of the CAT(Procedures) Rules to dispose of the matter. We have considered the respective pleadings of the parties and the material on record and also heard the Ld. Counsel of the respondents.

4. The Id. Counsel of the respondents brought to our notice the order dated 20-6-1997 in Q.A.1124/92 (Gita Rani Santra - Vs - Union of India & Ors) and O.A.524 of 1993 (Rabani Jana - Vs - Union of India & Ors.). This is a Full Bench order. The issues referred to in this matter are as follows :

- (i) Whether despite non-regularisation of a casual labour with temporary status against a regular post, who has been working continuously for a long period, shall be deemed to have been regularised on the date of death of such an employee in harness irrespective of availability of any post, for the purpose of sanction of family pension to his family or shall be deemed to have been regularised on the date of attainment of normal age of superannuation for the purpose of sanction of normal pension in his favour in the context of provision of rule 31 of the Railway Services (Pension) Rules, 1993 read with provision of para 2005 of IREM Vol.II 1990 Edn. or provisions of rulew 101, 102 and 409(ii) of Manual of Railway Pension Rules, 1950;
- (ii) If the answer to the above question is in the affirmative, what should be the minimum period of continuous service of a casual labour with temporary status prior to the death of such employee or superannuation as the case may be for the purpose of deemed regularisation ?

In all the cases mentioned in this judgement, such period of continuous service had been more than 10 years. Incidentally, a temporary employee, whose status is higher than that of casual labour with temporary status, earns right to pension after superannuation provided he has rendered minimum 10 years' qualifying service or in the case of death in harness of such temporary employee, the deceased employee's family becomes eligible for family pension provided the employee had completed at least one year's qualifying service prior to his death. These are the cases of temporary employees who had already been regularly appointed. In the case of casual labour with temporary status, who has not yet

been regularised, but is seeking the benefit of deemed regularisation, what should be the minimum qualifying period of service for deciding his deemed regularisation, since he is regularised, half the service rendered by him to his regularisation in casual capacity is counted as qualifying service for pensionary benefits under provisions of rule 31 of Railway Services (Pension) Rules, 1993 read with provisions of para 2005 of IREM, Vol. II, 1990 Edn.

- iii) In the context of the answers to be given to questions at (1) and (ii) above, "whether the present petitions viz. OA.1124/92 and O.A. 524/93 are to be allowed and if so to what extent?"

The above reference was answered as below :-

- "
- (i) Yes.
 - (ii) 20 Years.
 - (iii) The case may be remanded to the respective referring Bench for decision in the light of the principle enunciated above."

5. Ad. Counsel of the respondents submits that as the applicant's husband could not be screened and regularised, benefits like family pension and gratuity cannot accrue to her.

6. He further relied on a case reported in 1997 SCC(L&S) 1524 Bikaner & Ors. (U.O.I. & Ors. Vs- Rabia () in which it was held that provisions of Family Pension Scheme 1964 in the Railways are applicable only on absorption ^b of ~~regular men~~ against the regular temporary posts. Such absorption is after putting in six months temporary ^b service. ^b *and a further one year's minimum service on appointment to temporary post.* It was further held that widow of casual labour who dies after putting in six months service but before appointment to temporary post after screening is not entitled to family pension.

7. On consideration of the facts ^b of the present case, we find that the applicant's husband who got initial appointment as Casual Khelasi on 7-6-1980 had been granted temporary status w.e.f. 1.1.84, which is an admitted fact. On the basis of medical examination in the category of C2 respondents declared him fit for the post of

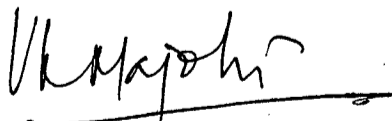
5. Watchman in the scale of pay of Rs.200-400/- and his pay was fixed at Rs.200-~~400~~^b- in the scale of Rs.200-400/-(AS). He was to be screened for the purpose of absorption against regular post on 23-8-1989~~8~~ but unfortunately he died^{on} 31-1-1989.

8. Whereas the applicant was given temporary status on 1-1-84 and was declared medically fit for the post of S.Watchman and his pay was fixed at Rs.200-~~400~~^b-(AS) in regular scale of pay as S.Watchman, he could not be screened before his death for absorption against the regular post. The applicant's husband had worked in the department as S.Watchman for more than three years in a regular scale of pay. But respondents could not hold his screening for absorption of the deceased employee against the regular post. The respondents have not explained to our satisfaction why such screening was not held for a long period of three years; though the deceased employee had been accorded temporary status for more than five years and placed in a regular scale of pay for more than three years. When the deceased employee had been working in a regular scale of pay after having been granted temporary status for more than five years, it has to be presumed that he had been working in a regular post, Although his screening had not been held and he had not been absorbed in the regular post. The respondents could not establish that there was no vacancy of regular post. If such a vacancy had been there, applicant's husband would have worked for such a long time as S.Watchman for more than three years. In our considered view it was obviously respondents' fault that they had delayed the screening of the deceased govt. employee for absorption on a regular post of S.Watchman. The facts of the case as cited by the Ld. Counsel of the respondents are distinguishable from those of the present case. In the present case if only the respondents had held the screening test between 1-1-86 and 31-1-89 then the deceased govt. employee would have certainly been absorbed against the regular vacancy. In our view it would be absolutely justified in view of the facts and circumstances of the present case

b

That the applicant is deemed to have been absorbed against the regular post of S.Watchman before the date of death (i.e. 31.1.89). With such presumption the provision of the Family Pension Scheme 1964 would certainly be applicable to the present case and widow of the deceased Govt. employee shall be held entitled for family pension under the Scheme. We rely on order dated 19.6.2001 in C.A. 827 of 2000 (Khiria Devi - Vs- Union of India & Ors.) passed by this Tribunal in which in a similar case it was held that when an applicant had been appointed to a particular post with a scale of pay on officiating or ad-hoc basis it has to be presumed that he was no longer a casual labour recruited for seasonal work. It was directed that the applicant should be granted family pension commencing from 3 (three) years prior to the date of filing of the D.A.

9. In the light of the above discussion, this D.A. succeeds and the respondents are directed to consider the claim of the applicant under the provision of Family Pension Scheme 1964 deeming that the applicant's husband had been regularised against the post of S.Watchman prior to his death i.e. 31.1.89. The respondents are further directed to release the benefit of family pension to the applicant from the date of application i.e. 15.3.1996 and the payment should be made within a period of two months of communication of this order. Accordingly, the application is disposed of awarding no costs.



(V.K. Majotra) 6.8.2001
Member(A)



(D. Purkeyastha)
Member(J)