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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Date of order : 14.07.2000.

1. O.A.NO.237/96

Sona Devi W/o Late Shri Fakir Chand Ex.Khallas, Northern Railway, Lalgarh, Caste Kumbhar aged about 53 years, R/o Near Railway Crossing Chaukhunti, Gajner Road, Bikaner.

.....Applicant.

vs.

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi
2. Railway Board, through Secretary, Railway Board, Rail Bhawan, Rafi Marg, New Delhi (Pin 110 001).
3. Divisional Railway Manager, Northern Railway, Bikaner.
4. Divisional Personnel Officer, Northern Railway, Bikaner.
5. Assistant Engineer, Northern Railway, Bikaner.

.....Respondents.

2. O.A.NO.239/96

1. Smt. Poonam Devi W/o Late Sh. Deepa Ram Ex. Gangman, Meghwal C/o Sh. Ganga Ram, Pabu Bahar, Bikaner (Raj).
2. Prem Kumar S/o Late Shri Deepa Ram aged about 12 years, through Poonam Devi, Mother, Pabu Bari Bahar, Bikaner (Raj).

.....Applicant.

vs.

1. Union of India, through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Personnel Officer (Settlement), Northern Railway, Bikaner.
3. Divisional Railway Manager, Northern Railway, Bikaner.
4. Assistant Engineer, Northern Railway, Suratgarh Junction, Distt. Sri Ganganagar.

.....Respondents.

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PRESENT :

Mr. Bharat Singh and Mr. Mahesh Kumar, Advocates, present for the applicants.

Mr. Anil Mehta, Counsel for the respondents in O.A.237/96.

Mr. V.D. Vyas, Counsel for respondents in O.A.239/96.

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CORAM :

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Per Hon'ble Mr.A.K.Misra :

The controversy involved in these applications is the same and the relief sought by the applicants is common, therefore, both these applications are being disposed of by this order.

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2. The applicant has stated in her application that the husband of the applicant was a temporary Railway servant w.e.f. 7.9.74. He was screened for regular Railway service on 24.8.87 and was found fit for regularisation. However, before the services of the husband of the applicant could be regularised, he expired on 5.4.88, while he was working as Khalasi. The applicant, being his widow, is entitled for family pension as per the Railway Board Circular No. F (E) III/85/PN-1/19 dated 19.12.86 and subsequent circulars. The applicant had prayed that the respondents be directed to pay to the applicant family pension w.e.f. 5.4.88 and order dated 12.1.94 (Annex.A/1), refusing to pay family pension, be quashed.

3. Notice of the O.A. was issued to the respondents who had filed their reply in which it is stated by the respondents that the husband of the applicant was engaged as Casual Labour and he worked as CPC Casual Labour till he died in the year 1988. Late Shri Fakir Chand, was screened for a regular post but before he could join he expired. Since Shri Fakir Chand was a daily rated Casual Labour, therefore, the applicant is not entitled to family pension and thus her claim was rightly rejected. The O.A. is hopelessly time barred and deserves to be rejected on that ground too. It is alleged by the respondents that as per the law laid down by Hon'ble the Supreme Court from time to time, the family members of casual Railway workers are not entitled to family pension, therefore, the O.A. deserves to be dismissed.

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4. In this application the applicants had stated that Shri Deepa Ram, husband of the applicant No.1 was temporary Railway servant w.e.f. 22.11.78 and had worked for 1200 days ^{with} the respondents. He was medically examined and was found fit before he was treated as

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temporary Railway servant. Shri Deepa Ram was in Railway service in pensionable establishment. However, Shri Deepa Ram died on 3.6.81 while he was in the service of the Railways. The applicant made a representation for payment of family pension but remained unsuccessful. The claim of the applicant regarding family pension was finally rejected by the Railway authorities on 12.9.95 vide Annex.A/1. The applicant is entitled to family pension as per the Railway Board's Circular No. F (E) III/85/PN-1/19 dated 19.12.86 and subsequent circulars. Hence, this O.A. In this application the applicants prayed that the respondents be directed to pay to the applicants family pension and death-cum-retirement-gratuity and the order Annex.A/1 dated 12.9.95 refusing the claim of the applicants be quashed.

5. Notice of the OA was given to the respondents who have filed their reply in which it is stated by the respondents that Shri Deepa Ram, late husband of the applicant No.1 was not a temporary Railway servant but was only a CPC scale casual worker in the grade of Rs. 200-250. Late Shri Deepa Ram had gained temporary status after working for 120 days but as per rules she is not entitled to family pension because Shri Deepa Ram continued as temporary casual labour till his death. The services of Shri Deepa Ram were never regularised. The Circular of the Railway Board, as mentioned by the applicants is not applicable in the instant case. It is also stated by the respondents that as per law laid down by Hon'ble the Supreme Court family members of a casual labour are not entitled to family pension.

6. We have heard the learned counsel for the parties and have gone through the case files.

7. In both these cases, it is to be decided whether the widows of casual labourers with only temporary status in Railway establishment who died while in service before being appointed on a temporary post after screening, are entitled to family pension or not.

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8. In this respect, the learned counsel for the applicants submitted that as per the Circular dated 19.12.86 (Annex.A-6/A-9) the benefit of family pension was extended to the family members of those Railway servants who had died earlier than 27.1.79, ~~therefore~~. Previously, as per the earlier circular the family members of a Railway servant who had died after 27th of Jan, 1979 were held entitled to family pension, therefore, the applicants in both the cases are entitled to family pension. We have considered this argument. In our opinion the circular does not apply to the family members of casual labours who were in employment of the Railways. In context of this circular only permanent Railway servants or temporary Railway servants could be categorised as Railway servants and not the casual labourers, therefore, the contents of this Circular do not help the applicants.

9. It was next argued by the learned counsel for applicants that the principle propounded by Hon'ble the Supreme Court while reviewing the Ram Kumar's case, which was earlier decided, would cover the claim of the applicants for grant of family pension. In the order passed in review, it was held by Hon'ble Supreme Court that claim of the temporary employees be also considered for grant of pension. But, in our opinion, the rule propounded therein does not help the applicants. Ram Kumar's case relates to the claim of pension of temporary employees who had superannuated while remaining in service. But the facts of the present case are different than that of Ram Kumar's case. Hence, the rule propounded therein cannot be held applicable in these cases.

10. We may mention that in the latest judgment of the Hon'ble Supreme Court dated 7.7.97 reported in 1997 SCC (L&S) 524 Union of India and Ors. Vs. Rabia Bikaner and Ors., it was held that widows of casual employees with temporary status who were not appointed to a temporary post are not entitled to family pension. In this respect, the observation of Hon'ble the Supreme Court could be usefully quoted as under :-

l/m "It is true that under para 2511 of the Railway Establishment

Manual, casual labourers with temporary status are entitled to certain entitlements and privileges granted to temporary railway servants but this does not entitle them to family pension. Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merit as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of ~~one~~ year in the temporary post. If any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension. In all these cases, though some of the deceased employees had been screened, yet appointments were not given to them since temporary posts were not available or in some cases they were not even eligible for screening because the posts became available after the death. Under these circumstances, the respondent-widows are not eligible for family pension benefits. However, if any amounts have already been paid pursuant to the orders of the Administrative Tribunal, the same may not be recovered from them."

11. In the present cases the husband of both the widows who have separately filed their claims were only casual labours and by virtue of having worked for 120 days with the Railways had acquired the temporary status but none of them were regularised on temporary post before they died. Screening of a casual labour for regularisation is of no consequence if he was not appointed on a temporary post after screening, therefore, in view of the rule propounded by Hon'ble Supreme Court in Rabia Bikaner's case, the present applicants are not entitled to the relief of grant of family pension as claimed by them. In view the latest judgment of the Hon'ble Supreme Court, both the applications deserve to be dismissed.

12. Therefore, both the applications are hereby dismissed with no orders as to cost.

Gopal Singh
(GOPAL SINGH)
Adm.Member

A.K.MISRA
14/7/2000
(A.K.MISRA)
Judl.Member

Received copy
March 18/20

Recd copy
in my presence
On 18/20
8/1/20

Part II and III destroyed
in my presence on 18/20
under the supervision of
Section Officer () as per
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M. G. D. M.

Section Officer (Record)