

Date of order : 08.10.1997

1. O.A. No. 228/1995

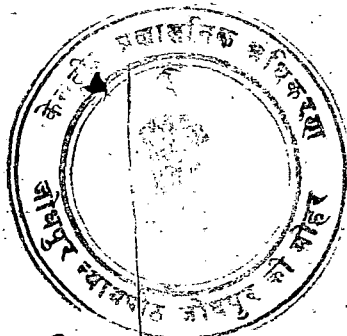
Smt. Parwati w/o. late Shri Kumbha Ram presently employed as Mali Khallasi under Inspector of Works, Northern Railway, Bikaner, r/o. Village & Post Office Kanasar, District Bikaner.

... Applicant.

versus

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
4. Divisional Accounts Officer, Northern Railway, Bikaner Division, Bikaner.
5. Assistant Engineer, Northern Railway, Bikaner Division, Bikaner.

... Respondents.



✓ 2. O.A. No. 8/1997

Smt. Sugan Kanwar w/o late Devi Singh aged about 36 years, resident of village and P.O. Samdari, Distt. Barmer (Her husband was last employed on the post of substitute Khallasi in the office of Carriage and Wagon, Samdari Distt. Barmer, Northern Railway.

... Applicant.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur

Division, Jodhpur.

3. Divisional Mechanical Engineer (Carriage & Wagon),
Northern Railway, Jodhpur Division, Jodhpur.

... Respondents.

3. O.A. No. 179/1997

Smt. Chandrakala w/o. late Prem Prakash aged about 30 years
r/o. Danta Bheru Chowk, Joshiji-ka-Rawla, Udaipur, her
husband was last employed on the post of Gangman under PWI,
Udaipur.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western
Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway. Ajmer.

... Respondents.

4. O.A. No. 289/1997

Smt. Meera w/o. late Poosa Ram aged about 44 years resident
of village & P.O. Madpura-Barwala, via. Kavas, Distt.
Barmer - 344 036, her husband was last employed on the post
of Khallasi (T.S) graded scale under Inspector of Works,
Samdari, Northern Railway.

... Applicant.

v e r s u s

1. Union of India through General Manager, Baroda House,
Northern Railway, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Jodhpur Division, Jodhpur.

... Respondents.

Mr. Y.K. Sharma, Counsel for the applicant in OA No. 228/95.

Mr. J.K. Kaushik, Counsel for applicants in OA Nos. 8/97, 179/97
and 289/1997.

Mr. S.S. Vyas Counsel for the respondents in OA Nos. 228/1995 and
8/1997.



Mr. R.K. Soni, Counsel for the respondents in OA Nos. 179/1997 and 289/1997.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

BY THE COURT:

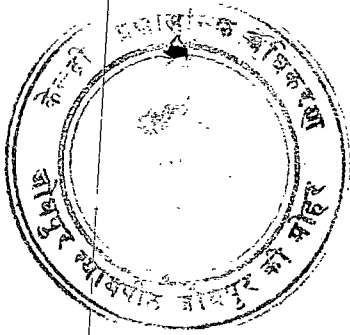
The controversy involved in all these applications is the same and the relief sought is also the same, all these Original Applications are being disposed of by this single order.

2. In these applications under Section 19 of the Administrative Tribunals Act, 1985, it has been prayed that the respondents be directed to pay the family pension to the widows of the temporary status casual labourers, who died while in service.

3. Applicants' cases, in brief, are as under :-

(i) O.A. No. 228/95

Applicant, Smt. Parwati, is the widow of late Shri Kumbha Ram who was initially appointed with the respondent-department on 2.5.1974 as casual labourer, granted temporary status in 1974 and expired on 8.7.1982. The applicant was sanctioned family pension in November, 1982. However, the respondents vide their order dated 31.3.87 stopped the family pension to the applicant. The applicant had earlier filed an O.A. No. 379/89 before this Bench of the Tribunal, which was disposed on 5.11.92, wherein the respondents were directed that in case the applicant makes a representation before them for reviving the family pension then they should reconsider the same in view of the amendments made from time to time for receiving the family pension and also in view of the rulings of this Tribunal and Hon'ble Supreme Court and decide the



representation on merits by a speaking order within three months from the date such a representation is received. When the representation was not decided by the respondents as per the directions of the Tribunal the applicant had filed a Contempt Petition No. 6/94. Immediately thereafter, the respondents issued the impugned order dated 23.2.94 /- 8.3.94 (Annexure A/1) under which it was stated that the applicant was not entitled to family pension as her late husband was not regularised after due selection.



(ii) O.A. No. 8/1997

Applicant, Smt. Suman Kanwar, is the widow of late Shri Devi Singh who was initially appointed as casual labourer with the respondent-department on 1.11.1974, granted temporary status in 1975. He was also granted graded scale with effect from 20.11.81. He was empanelled for a Group 'D' post vide respondents' order dated 24.11.84. However, he expressed his unwillingness to join as Gangman and, therefore, continued as graded scale Khallasi. He expired on 15.7.87. The applicant submitted a representation for grant of family pension on 2.5.90, but the family pension has not been granted to her so far.

(iii) O.A. No. 179/1997

Applicant, Smt. Chandrakala, is the widow of late Shri Prem Prakash, who was initially appointed with the respondent-department as casual labourer on 22.6.1983, granted temporary status in 1983 and was drawing the salary in graded scale. He died in an accident on 19.7.90. The applicant had received the accident claim of Rs. 75,332/-. However, applicant's representation for grant of family pension was turned down by the respondents on 25.9.93 and 12.7.96.

(iv) O.A. No. 289/1997

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Applicant, Smt. Meera, is the widow of late Shri Poosa Ram, who was initially appointed as casual labourer with the respondent-department on 23.6.1969, granted temporary status on 16.5.73 alongwith the graded scale. He expired on 1.4.86. The pension papers/forms were duly got filled from the applicant by the Welfare Inspector on 11.2.89. However, the family pension has not been sanctioned so far.

4. Notices were issued to the respondents and they have filed their reply.

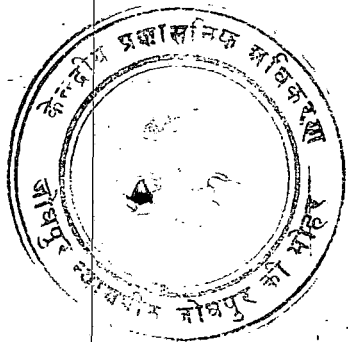
5. I have heard the learned counsel for the parties and perused the records of the case.

6. The controversy involved in all these applications is whether the widow of a casual labourer with temporary status in Railway establishment who died while in service before his appointment to a temporary post after screening is entitled to family pension. This controversy had come up before Hon'ble the Supreme Court earlier in many cases and these are discussed in the subsequent paragraphs.

7. In Ram Kumar and Others vs. Union of India and Others, AIR 1988 SC 390, while denying the benefit of pension to a casual labourer with temporary status in Railway establishment, Hon'ble the Supreme Court vide para 12 of that judgement had observed as under:-

"12. It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and the directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees."

8. In Civil Miscellaneous Petition No. 31378 of 1998 in Writ Petition (Civil) Nos. 15863-15906 of 1984, Ram Kumar & Others vs. Union of India & Ors., 1996 (1) S.L.J. 116, while allowing the pensionary benefits to the casual labourers with temporary



status, Hon'ble the Supreme Court had observed as under:-

"The only other question to be seen is with regard to entitlement to pension. It appears that the Board on the basis of the Fourth Pay Commission report has provided for pension at the time of superannuation even to those who are temporary employees. In paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We direct the Railway Board to consider the claim of temporary employees who are before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission of Mr. Ramaswamy for Railway administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented."



9. In the latest judgement dated 7.7.1997, Union of India and Others vs. Rabia Bikaner & Ors., 1997 SCC (L&S) 1524, it has been held that widows of casual employees with temporary status, but not yet appointed to a temporary post are not entitled to family pension. While delivering the above judgement, Hon'ble the Supreme Court had observed as under:-

"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."

10. In the present cases, it is seen that none of the deceased employees was appointed to a post after due screening and as

such they are not entitled to any pension/family pension in terms of the judgement in Union of India and Others vs. Rabi Bikaner and Others (supra).

11. In the light of the latest judgement of Hon'ble the Supreme Court on the subject, I do not find any merit in these Original Applications and they deserve to be dismissed.

12. All the 4 applications are accordingly dismissed with no order as to costs. However, the family pension already paid to the applicant, Smt. Parwati, in OA No. 228/95 may not be recovered from her.

13. Parties are left to bear their own costs.

SD/-
(A.K.MISRA)
JUDL.MEMBER

प्रमाणित सही प्रतीत

20/10/99

अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण

नोडलर

Cvr.

