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**CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH: JODHPUR**

**ORIGINAL APPLICATION NO. 23/2004  
And Misc. Appn. No. 17/2004.**

**Date of decision: 18.08.2005**

**Smt. Bhiki** ...Applicant  
**Mr.Y. K.Sharma** ...Advocate for  
the applicant.

**V E R S U S**

**Union of India & ors** ...Respondents.  
**Mr. Manoj Bhandari** Counsel for the respondents.

**CORAM:**

**Hon'ble Mr. J.K. Kaushik, Judicial Member.**



1. Whether Reporters of local papers may be allowed to see the judgement? *No*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *seen*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

*J K Kaushik*  
(J K Kaushik)

**Judicial Member**

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E/S

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**JODHPUR BENCH**

**Original Application No.23/2004** *adj. w MA. NO. 17/01*

Date of decision: 18.8.2005

**CORAM**

**Hon'ble Mr. J.K. Kaushik, Judicial Member.**

Smt. Bhiki, w/o late Shri Naseer Ji, aged about 51 years by caste Musalman, resident of Duji Road, Bikaner (Rajasthan)

: Applicant.

Rep. By: Mr. Y K Sharma: Counsel for the applicant.

**Versus**

1. Union of India through the General Manager, North West Railway, Jaipur.
2. Divisional Personnel Officer, North West Railway, Bikaner Division, Bikaner (Rajasthan)
3. Assistant Engineer, North West Railway, Bikaner (Rajasthan)

: Respondents.

Rep by: Mr. Manoj Bhandari: Counsel for the respondents.

**O R D E R**

**Per J.K. Kaushik, Judicial Member**

Smt Bhiki has filed this Original Application under section 19 of the Administrative Act 1985 and sought for a mandate to the respondents to grant her Family Pension from the date his husband Naseer expired while in service on 22.9.1989. She has also prayed for treating her husband as regularised w.e.f. the date any of his junior was regularised etc.

2. With the consent of learned counsel for both the parties, the case was taken up for final disposal at the stage of admission; the pleadings being complete and controversy is short. I have

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accordingly heard the arguments advanced at the bar and perused the pleadings and the records including the additional records produced by the respondents in pursuance with the direction of this court.

3. The material facts, considered necessary for resolving the controversy involved in this case as borne out from the pleadings of the parties, are that the applicant is the widow of one Shri Naseer. Shri Naseer was engaged as Casual Labour on 3.11.1975 in the office of IOW Bikaner. He completed 120 days continuous service on 18.11.77 and became due for grant of temporary status and CPC scale of pay with effect from 19.11.79 as khallasi. He was granted the due benefits from 19.11.77 but on dated 16.3.79 with payment of arrears thereof. He was also subjected to screening test in which he passed and his name was included in the panel of screened casual labour under decasualisation scheme dated 17.8.89, vide letter dated 12.2.90. By that time applicant's husband had expired while on service on dated 22.9.89. The applicant made numerous representations but no reply was the result. The OA has been filed on diverse grounds citing some decisions of coordinate benches of the Tribunal said to be covering up the controversy.



4. As regards the variances of facts, the respondents have taken preliminary objection of limitation since the case of applicant came to be turned down vide letter dated 8.12.96



which cannot be challenged in the year 2005, therefore the very OA is not maintainable. Casual Labour with TS is not entitled for family pension as per rules. There is no entry in the records regarding the passing of medical test by the deceased government servant. There is a difference between the casual labour with temporary status and a temporary employee. As per definition of Temporary employee, this term does not include the casual labour including the casual labour with temporary status. Reliance has been placed on judgement of apex court in case of **Union of India V. Rabia 1997 (6) SCC 580**. The grounds mentioned in OA have been refuted.

5. A separate Misc Application has been filed for condonation of delay in filing of the OA. A reply to the same has also been filed refuting the facts and grounds taken in the MA. Admittedly, the subject matter of this OA relates to grant/payment of family pension and the same gives rise to recurring cause of action and therefore, the law of limitation is not attracted. The case can be adjudicated upon, on merits. *MA stands accepted.*

6. The learned counsel for the applicant has submitted that the issue involved in the instant case has been settled by this Tribunal in number of cases. He has submitted that the decisions in case of **Smt. Vallam Badia V. Union of India & Ors 2003 (2) SLJ CAT 271** and **Smt Jotsana Bala Manna Vs. Union of India & Ors 2005 (2) ATJ CAT 458** are instructive.

In the later case, it has also been held that even passing the



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medical examination by the government servant is not necessary for grant of family pension. He has also submitted that the pensionary matter gives rise to recurring cause of action and the law of limitation is not attracted. Otherwise also the pension is not a bounty but the property of the widow and the same cannot be withheld; rather the respondents should pay interest on the delayed payments which the applicant has rightly claimed in the relief clause.

7. Per contra, the learned counsel for the respondents has vociferously submitted that the issue has been settled by the apex court in case of **Rabia** (supra) and does not remain res integra. He has reiterated the grounds of defence as set out in the reply as noticed above relating to variances of facts. He has laid heavy emphasis on the term casual labour with TS and Temporary Railway Servant and the distinction thereof. The benefits in question can after all be granted only in accordance with the rules and not on the basis of misplaced sympathy towards a widow.

8. I have considered the rival submissions put forth on behalf both the parties. As far as the factual aspect of the case is concerned, it is true that applicant's husband was a T S Casual Labour and had rendered about 13 years of service. He did pass the screening test but he could not be given posting against a regular establishment since there was long delay in



declaring his result. It is not borne out from the records as to whether he passed the medical test or not.

9. The various provisions relating to the rights and privileges admissible to the Casual labour with TS have been codified and a detailed discussion of the same has been held in a decision of coordinate bench of this Tribunal at Jaipur in case of **Smt Nehni Bai V. Union of India & Ors** 1994 (3) SLJ CAT 523. The extract of the following paras would unfold the legal aspect of the matter:

"2, Mr. Manish Bhandari appearing on behalf of the respondents had vehemently opposed the petition filed by the applicant relying on the Judgement of the Hon'ble Supreme Court in the case of Ram Kumar and others vs. Union of India and others, reported in AIR 1988 SC 390. He has invited our attention to paras 10 and 11 of the Judgement and submitted that the Hon'ble Supreme Court has held that the retiral benefit of pension is not admissible to temporary employees. Mr Kaushik, appearing on behalf of the petitioner, submitted that the Judgement of Ram Kumar's has been reviewed by the Hon'ble Supreme Court has directed as under: -

"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 or 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."

Mr. Kaushik, has also argued that pensionary benefits and family pension are two different things and do not fall in one category and they will have to be classified differently for all purposes.

3. We have considered the rival submissions made by the parties. In the case of **Ram Kumar and Ors. V. Union of India and Ors.** (Supra). Hon'ble Supreme Court has considered only about the provisions of retiral pensionary benefits which are to be extended to the employee who has retired. It was not a case of a family pension at all. However, we will have to consider Paragraph 2511 of Indian Railway Establishment Manual, clause (a) which reads as under-

(a) "Casual Labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servant as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to each labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion

of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regulation service."

The word "all" as used in clause (a) is very important for the purpose of interpreting the various provisions regarding the family pension. The word "all" should be given a wider interpretation and it should be comprehensive to include all benefits extended under Chapter XXIII specifically or by implication. If there is no specific prohibition and if it can be interpreted for the benefit of an employee, the beneficial interpretation should be given to the legislation in this Welfare State. In part IV of the Constitution, Article 37 directs that "the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Article 38 of the Constitution directs the state to secure a social order for the promotion of welfare of the people. It further directs that the State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 41 directs that the State shall, within the limits of its economic capacity and development, make effective provision for security the right to work to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

4. Mr. Kaushik has pointed out that Article 37 read with other provisions of Part IV, particularly, Articles 38, 41 and 42, directs the State to see that inequalities are removed and persons get the minimum requirements of the life. It will not be out of place here to mention, (sic) according to Mr. Kaushik, that Article 21 can also be invoked which provides about the freedom of life. Freedom of life includes a reasonably good life and it is the duty, according to Mr. Kaushik, of the State to see that employees enjoy their lives with reasonable security, reasonable standard of life, etc., and after the death in accident or otherwise, the person who are dependent on them should get the minimum benefit which is permissible under the law for their maintenance.

5. Pension and family pension are two different matters independent of each other. A person who renders service of 10 years or more than that can ordinarily claim pension. However, in the case of family pension, the family members of a person who has rendered even one year service can get the family pension {sic pension}. Apart from that, family pension is payable to the employee who has rendered service for a particular period. Pension is paid to an employee in lieu of his services under a statutory provision on account of rendering the services so that in the old age he could lead a reasonably good and happy life, and he could maintain his dependents. In the case of family pension, it is only for the maintenance of the dependents of the deceased and it comes to an end in some cases after the efflux of time or happening of a particular event. For illustration, in case of minor children, if they attain the majority and they start earning, the family pension is not available. Similarly, in the case of an unmarried daughter, after she is married, the family pension is not available.

6. So, legislators in their wisdom have enacted different sets of rules for family pension as well as pension. For this very reason, Paragraph 2511, Indian Railway Establishment Manual, relating to pension provides that "casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual, Chapter XXIII, Paragraph 2311, Sub-clause 3(b) reads as under:



"The widow/widower/minor children of a temporary railway servant, referred to in the preceding sub-para, who dies while in service after a service of not less than one year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules, In their case, the amount of death gratuity admissible will be reduced by an amount equal to the employee's two months pay on which the death gratuity is determined."

Thus, under, the Rule 2311 (3) (b), the widow of a temporary railway servant is entitled for pension if her husband has rendered qualifying service exceeding one year. Thus, the benefit of family pension has been extended under Sub-clause (b), clause (3) of paragraph 2311 of the widow of the temporary railway Employees, 1964, clause (i) reads as under:-

"The Family Pension will be admissible in case of death while in service, the railway servant should have completed a minimum period of one year of service."

Here the word "railway servant" has been used and it has not been mentioned that the railway servant must be confirmed railway servant in regular service but it includes in its purview the railway servant who is temporary status holder also. If this Scheme is read with the provisions of Paragraph 2311 (3)(b), then it will be clear that the family of the person who has died while in service is entitled for family pension and the government has no right to take an objection that he was a temporary status holder.

7. For the reasons mentioned above, we are of the view that the case of Ram Kumar and Ors., v. Union of India and Ors. (supra), which has already been reviewed by this Hon'ble Supreme Court, does not apply in the case of family pensioners. Family pensioners stand on a different footing than pensioners.

11. The O.A is decided accordingly, with no order as to costs."

We have also been informed that an SLP was filed against the aforesaid judgment and the same was dismissed and the judgment has already been implemented."

10. I have also waded the various judgments cited on behalf of both the parties as cited above. As regards the Rabia's case supra is concerned, I find that subsequently the similar issue was examined in depth and exhaustively by a co-ordinate bench of this Tribunal at Ahmedabad in case of Smt. Vallam Badia vs. Union of India and others [2003 (2) SLJ CAT 271], to which I



was a party. The widow of the deceased employee who was granted temporary status in railways has been held fully entitled to grant of family pension if any of the three conditions as envisaged in following rules of The Family pension scheme 1964 provided as under for eligibility of family pension ( only relevant portion) are fulfilled:

"(2) Without prejudices to the provisions contained in sub-rule (3) where a Government servant dies-

(a) after completion of one year of continuous service, or

(aa) before completion of one year of continuous service provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service, or

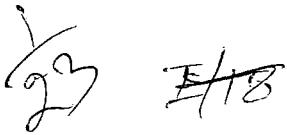
(b). after retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to rule 37."

The said Rabia's case was held as per incuriam and benefits of family pension were allowed. The relevant paras 11-13 from **Smt. Vallam Badia's case** are reproduced as under:



11 The contention of the learned counsel for the applicant is that unfortunately the above three judges judgement of the Hon'ble Supreme Court was not brought to the notice of the Hon'ble Supreme Court while, adjudicating upon the matter in **Rabia's** case. Similarly the judgement in **Nehni Bai's** case (supra) was also not brought to the notice of Apex Court. Thus the **Rabia's** case could at the most be considered as judgement per incuriam and not a judgement in rem

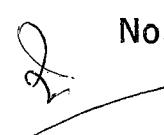
12. It has also been submitted that as per the rule of precedent in case there are different views of the different Benches of the Hon'ble Supreme Court it is the judgement of the Larger Bench that will be followed as a precedent. In this view of the matter the judgement in review case of **Ram Kumar's** case [1996 (1) SLJ 116(SC)] is of three Judges judgement whereas earlier judgement in **Ram Kumar** case reported in AIR 1988 SC page 390 which has been relied upon in **Rabia's** case in as much as



the very **Rabia's case** the judgements are of the two judges Bench of the Hon'ble Supreme Court. In the said three judges Bench judgement, it has been provided that a casual labour who has been granted temporary status is entitled for pensionary benefits as mentioned above.

13. Now examining from the other angel of the judgement of the Hon'ble Supreme Court in Misc. application of **Ram Kumar vs. Union of India** [1996 (1) SLJ 116 (SC) by three Judges, it has been said that the correct law was not brought to the notice of the Supreme Court while deciding the earlier case of **Ram Kumar** i.e. AIR 1988 Sc 390. In that view of the matter earlier judgement in **Ram Kumar** itself become per incuriam and in addition to that it is stood superceded and the judgement in **Rabia's** case it has been passed solely relying on the earlier **Ram Kumar's** case which could be considered as per incuriam since the correct position of law and the rule itself has not made available to the Hon'ble Supreme Court. A judgement is law only on the points raised and decided and once the correct material rule itself is not made available to the particular Court the judgement could only be considered as per incuriam and could not be said to be a judgement in rem so the same would not be made available to other cases.'

11. I also notice that the Hon'ble High Court of Gujarat has also upheld **Smt. Vallam Badia** (supra) in Special Leave Appeal Nos. 12456/2003, 75/2003, 801/2003, 939/2003 and 622/2003; **Union of India vs. Shanti Devi, Ramawat Kajri & ors.** decided on 21.07.2003 and I am also otherwise bound by the same. Therefore the respondents cannot get any support from any of the judgements cited and relied upon by them. In another case of **Smt Santosh Vs, Union of India & ors** OA No. 233/2003 decided on 7.4.2004 by Jaipur Bench of the Tribunal, similar view has been taken and the same has been upheld by the Hon'ble High Court of Rajasthan at Jaipur Bench in DBCWP No. 5316/2004 decided on 25.4.2005 and imposing a cost of Rs.



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20000/- on the department concerned while dismissing the writ petition. The decision in **Smt Jotsana Bala Manna Vs. Union of India & Ors 2005 (2) ATJ CAT 458** is also a species of the aforesaid decisions and supports the case of applicant. I have absolutely no hesitation in applying the same to this case and deciding it on similar lines.

13. In view of what has been said and discussed above, I find ample force in this OA and the same stands allowed accordingly. The impugned order dated 8.12.96 (A/1) is hereby quashed and it is declared that the applicant is entitled to grant of the family pension. The respondents are directed to grant family pension to the applicant from the due date and she shall be entitled to all consequential benefits including arrears thereof. However, the interest @ of 8% on the amount of arrears shall be payable for the period from the date of filing of this OA i.e. 19.1.2004 till the date of actual payment. This order shall be complied with within a period of three months from the date of receipt of a copy of the same. No costs.



J K KAUSHIK

**JUDICIAL MEMBER**

Jsv

Decided  
to stay  
over  
29/9/05

R. Plant  
12/09/05