

11-10-2006

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application No. 53/2006 and
Misc Application No. 34/2006

Date of decision: 11-10-2006

HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.

Smt. Jubeda, w/o late Shri Mangtuddin, aged about 42 years, resident of
- Near Dudi Petrol Pump, Dharamkata, Gajner Road, Bikaner (Rajasthan)
applicant's husband lastly employed on the post of Mason under
Inspector of Works, North Western Railway, Bikaner.

: Applicant.

Rep. by Mr. Y K Sharma, Counsel for the applicant.

Versus

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

: Respondents.

Rep. by Mr. Vinay Jain: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Smt Jubeda ~~Sharma~~ has filed this Original Application for seeking a
declaration that she is entitled for family pension from the date of death
of her husband and to pay her due arrears along with interest @ 12 %
pa, amongst other reliefs.

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 the controversy involved is short. I have

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accordingly heard the arguments advanced at the bar and have bestowed my earnest consideration to the pleadings and the records of this case.

3. The abridged facts are that that the applicant is the legally wedded wife of Late Mangutuddin. Said Mangutuddin was initially engaged as casual labour Meson on dated 01.11.1977. He was granted temporary status on rendering continuous requisite number of days service as indicated in casual labour card at Annex A/3. He also passed the medical test in Bee one category. He also passed the screening test and joined duty of permanent post. He was allowed to enjoy all rights and privileges as admissible to TS casual Labour as per para 2511 of IREM 1964 Edn. He expired while in service on dated 20.3.88. The applicant has been appointed on group D post on compassionate ground on dated 19.4.89, in accordance with the policy in vogue. The applicant has not been granted the family pension despite her multiple efforts. The OA has been preferred on diverse grounds mentioned in para 5 and its sub-paras.



4. The respondents have contested the case and have filed an exhaustive reply to the OA. It has been averred in the reply that the applicant's husband was not granted any temporary status as such and even a temporary status casual labour are not entitled for grant of pension. He was appointed as Khallasi on 16.12.81 in the pay scale of Rs. 196-232 and working as casual labour in TLA (CPC) scale. The applicant has been engaged as casual labour on compassionate grounds. Her husband was an irregular casual employee and was not granted temporary status. As per para 2511 of IREM a TS casual labour is entitled for gratuity, leave salary PF but not for other pensionary benefits like pension/family pension. Certain authorities have been quoted in support of the same. Therefore, the applicant cannot be granted any family

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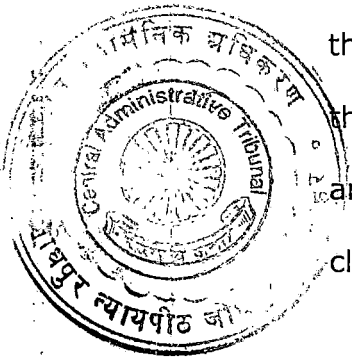
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pension and the OA deserves to be dismissed. The grounds raised in OA have been generally denied.

5. Both the learned counsel representing the contesting parties, have reiterated the facts and grounds mentioned in their respective pleadings as noticed above. The learned counsel for the applicant has tried to demonstrate that the controversy involved in the instant case has been resolved in catena of decisions by various benches, including this very bench of this Tribunal and the same does not remain res integra. He has submitted that the applicant's husband attained the TS casual Meson in the year 1979 on completion of 120 days of continuous service as indicated in Annex A/3. Even the CPC or graded scale is granted on attaining the TS. The applicant is very much entitled for the reliefs claimed in this OA. The applicants in those cases have already been granted the due benefits of family pension, in compliance of orders in their favour. But the respondents are not granting the due benefits to those who did not go into litigation and obtain an order in their favour and thereby giving discriminatory treatment on the unreasonable classification, having no nexus with the object sought to be achieved.

6. Per contra the learned counsel for the respondents has submitted that the OA is highly belated and there is no plausible explanation for the inordinate delay. The applicant's husband was not a regular railway servant and no family pension is admissible to the widow of TS casual labour. He has next submitted that in similar matter the Hon'ble High Court of Rajasthan at Jodhpur vide order dated 10.3.2006 passed in DBWP No. 1421/2006 **Union of India and Ors Vs. Smt Bhiki**, has been pleased to stay the operation of the decision of this bench of the tribunal in Smt Bhiki's case, where family pension claim came to be



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allowed. Therefore, this case should be kept pending awaiting the judgement of the Hon'ble High Court in the aforesaid case.

7. I have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the matter is concerned, the deceased railway servant was admittedly completed 120 days continuous service in the year 1979 and granted temporary status on by operation of law as per verdict of Apex court in case **L. Robert Souza V/s The executive Engineer Southern Rly & Anr** 1982 (1) SLR 864. Annexure A/3 is undisputed and has to be therefore taken as true. However, the version of the respondents on the same is self-contradictory as well as not supported by any evidence. Otherwise also, the applicant's husband was granted graded scale of pay which is granted only after one is granted temporary status. Applicant has admittedly been paid the gratuity, PF, leave salary etc which is said to be admissible only to TS casual labour as per para 2511 of IREM as stated by the respondents themselves. The applicant has also been granted appointment of compassionate grounds on casual basis, which is also granted to the ward/widow of TS casual labour as per para XI (b) of Master circular No. 16, which empowers the General Manager to grant employment as casual labour or substitute in special circumstances. Thus I have no hesitation in holding that the applicant's husband was a temporary status holder casual labour Meson in open line.

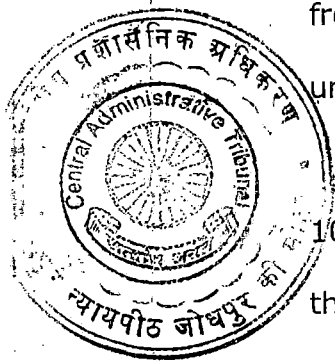
8. Before advertng to the crux of the matter, I would deal with the objection of the limitation. At the outset, regarding limitation the Apex Court in **S.K. Mastan Bee v. General Manager, Southern Railways & others**, 2003 (1) SCSLJ 136 held in a matter where there was a delay of about 23 years for staking the claim of family pension, not to be barred by latches. I am of the considered view as per the decision of the Apex



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Court in S.K. Mastan Bee's case (supra) that in the matter of grant of family pension till it is disbursed to the rightful claimant, it constitutes a recurring cause of action. The formal Misc Application No. 34/2006, filed for seeking condonation of delay stands disposed of accordingly.

9. Recently, this bench of the tribunal has examined in detail the controversy as to whether the widow of a temporary status holder casual labour fulfilling the other requisite conditions would be entitled for grant of family pension, in case of **Smt Prem Lata Sharma Vs. Union of India & Ors** OA No. 362/2005 and settled vide order dated 11.7.2006. The issue stands settled and does not remain res integra. The same also gives complete answer to the other contentions raised on behalf of the respondents. A copy of the same is being placed on records of this case and may be read as part of this order. There is no necessity for any fresh discussion. I have no reason to take a different view and unhesitatingly decide this case on similar lines.



10. In the premises, there is ample merits and substance in this OA and the same stands allowed accordingly. The applicant is fully entitled for grant of family pension by treating the deceased government servant as a temporary railway servant. The respondents are hereby directed to grant the family pension to the applicant from the date of death of her husband and make payment of the arrears thereof within a period of three months from the date of receipt of this order. In case this order is not implemented within the specified time, an interest @ of 8 % p.a. shall be payable on the due amount for the period after expiry of the said period of three months. No costs.

J K Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

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