

Central Administrative Tribunal  
Calcutta Bench

OA No.643/97

Present : Hon'ble Mr. N.D. Dayal, Member(A)  
Hon'ble Mr. K.B.S. Rajan, Member(J)

Gitabai, W/o Late Mulchand Sankar, Village Jhuly, PO Hijli,  
Dist. Midnapur 731 306

-Vs-

- 1) Union of India, through the Chairman, Railway Board,  
Rail Bhavan, New Delhi.
- 2) General Manager, South Eastern Railway, Garden Reach,  
Calcutta 700043
- 3) Chief Personnel Officer, South Eastern Railway, Garden  
Reach, Calcutta 700 043
- 4) Divisional Personnel Officer, South Eastern Railway,  
Kharagpur, District Midnapore
- 5) Divisional Railway Manager, South Eastern Railway,  
Kharagpur, District Midnapore.

For Applicant : Ms. K. Banerjee, Counsel  
For Respondent : Mr. P Mukherjee, Counsel

Date of Order

20.6.79

O R D E R

Mr.K.B.S. Rajan, JM

1. Brief facts of the case with terse sufficiency: One Shri Mulchand is the deceased husband of the applicant and he was employed in the Railways. The admitted position relating to the said Mulchand is that he was appointed as a casual Mason on 24-05-1970 and he died on 24-10-1979. According to the applicant the said Mulchand was "screened and found suitable for absorption in Class IV category as a regular measure"

vide order dated 16-11-1978 and in this regard the applicant had annexed a provisional panel of directly recruited casual Artisan Staff of Engineering Branch, purportedly issued by the Sr. Divisional Personal Officer S.E. Railway, Kharagpur (Annexure A). The applicant was, in the wake of the death of the said Mulchand, given compassionate appointment and when he approached the authorities for family pension and other terminal benefits, the respondents had outrightly refused to pay any family pension or other terminal benefits. Hence the applicant has filed this O.A. interalia praying for the following relief(s):-

- (a) An order directing the respondents to forthwith release the commencement of Family Pension to her and continue payment thereof to her month by month.
  - (b) An order directing the respondents to forthwith release the payment of death-cum-retirement Gratuity payable to the applicant on account of the death in harness of her husband.
  - (c) An order directing the respondents to forthwith release of any other benefits, pecuniary or otherwise to the applicant arising out of the death in harness of her husband.
2. The respondents have contested the O.A. They disputed the veracity of the provisional panel referred to above as the same, according to them does not appear to be authenticated document. Their case is
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that the said Mulchand was never regularized and "due to non regularization of services of Late Mulchand, the wife of the deceased employee is not entitled to get family pension under 101(2) of (4) read rule (1) (11) of the MRPR 1950. And as per Estt. Sr. No. 5/64 a casual labour is not entitled for family pension and this position, contend the respondents has been clarified in Estt. Sr. No. 326/65. It has also been stated by the respondents that the applicant was offered the "service gratuity" which became due in the wake of the demise of Mulchand, but the applicant had not come forward to receive the same. They have, therefore, prayed for the dismissal of the O.A.

3. Arguments were advanced at length. The learned Counsel for the applicant submitted that when under the Rules, any casual labourer engaged for a period of 120 days in a year was entitled to Temporary status, it is inconceivable that the husband of the applicant would not have been granted temporary status as he had put in more than 8 years service prior to his demise. Again, the provisional panel contained in Annexure A to the OA reflecting the factum of screening of the applicant's husband and consequential decision to absorb him also confirms that the applicant's husband became a regular employee and the immediate consequence of such regularization is that the individual becomes entitled to pension/his family becomes eligible to receive family pension. The fact that the applicant has been given the compassionate appointment in the wake of the demise of her husband confirms that the

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applicant was a regular Railway employee and as such on his death, the applicant is entitled to the Family Pension in accordance with the provisions of the relevant Pension Rules. It has also been argued by the counsel that assuming without accepting that there were no formal orders passed for either grant of temporary status or regularization, yet, contends the learned counsel for the applicant, the applicant's husband is deemed to have been regularized in the Railway service as had been held in similar cases by some of the other Benches of the Tribunal, and thus, his wife i.e. the applicant, is entitled to family pension and other attendant terminal benefits. To substantiate her case, the counsel for the applicant has referred to the following decisions:-

- (a) 1996(36) ATC 572 (Jodhpur) - Rekhs Chouhan vs UOI & Ors
- (b) 1995(1) ATJ 471 (P.B.) - Mukesh Saini vs UOI & Ors
- (c) 1993(1) ATJ 429 (Cal) - Smt Bhagvati Neyek vs UOI & Ors
- (d) 1992(1) ATJ 543 (Cal) - Smt Malati Kar & Ors vs UOI & Ors
- (e) 1999 (2) ATJ 635 - Smt Somawati vs UOI & Ors
- (f) (1996) SCC (L&S) 464 - Yashwant Hari Katakkar vs UOI & Ors
- (g) 2004(3) ATJ 42 (Jodhpur) Smt. Santosh
- (g) Order dated 01-12-2004 in OA 1434/94 (Cal)

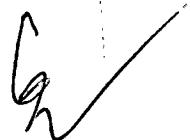
4. On the other hand the learned counsel for the respondents emphasized that the law on the subject is very clear. There is no question of family pension when the deceased railway employee had not been afforded temporary status, much less regularized. **Union of India v. Rabia Bikaner, (1997) 6 SCC 580**, and another judgment of the Apex Court in the case of **Union of India vs Baldev Sharma (C.A. No.**



**15365/1996 decided on 05-04-2000) and judgment dated 09-02-1998 of this Tribunal in OA 948/1996.**

5. We have heard the counsel, perused the documents and given our anxious consideration. Written submissions furnished by the party have also been scanned through. The question that arises for our consideration is as to what is the status of the deceased Mulchand and for that status whether on his death his wife became entitled to any family pension and/other terminal benefits.

6. The admitted position, as mentioned above, is that the applicant's husband has put in nine years of service. Law requires 120 days of engagement in a year for affording temporary status. In the case of 1993(1) ATJ 429 the Tribunal has held that when the individual had completed the requisite period of service and became eligible for getting the said temporary status but the department had not acted upon to afford him the said status, the individual could at best be deemed to have been granted temporary status. In the instant case the applicant's husband did not approach the Tribunal for such a temporary status at the appropriate time. He was as late as in 1978 (even if the order dated 16-11-1978 though the applicant's husband was stated to have "been screened and found to have been suitable for absorption in Class IV Category as a regular measure", no specific scale of pay had been given to him. Be it regular or even substitute, regular scale of pay would be

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given and it is only when such a regular scale of pay is afforded to the individual, subject to completion of minimum period if any, in the event of demise of the Railway servant, the family would be entitled to the Family pension.

7. The respondents have disputed the veracity of the order relating to screening and suitability of the applicant's husband for absorption. Whether the continuous service for more than eight years could make the applicant's eligible for absorption is the next question. Even if the said panel for absorption is treated to be true, the absorption has to take only prospective effect, as the same depends upon the availability of a post. Again, even after so regularized, a minimum of one year service in a post is required if family pension is to be granted. In the instant case, the panel is undated but there is a reference of 16-11-1978 when approval for age relaxation was given by the concerned authority. Hence, the panel should be treated as having been issued on or after 16-11-1978. Even if absorption has taken place immediately, as the applicant's husband had expired on 24-10-1979, he would not have completed one year of service in the post in which he would have been regularized. In that event, the case of *Union of India v. Rabia Bikaner, (1997) 6 SCC 580*, at page 582 applies wherein the Apex Court has held as under :-

*"2. The question of law that arises for determination is whether the widow of a casual labourer in the Railway Establishment, who died after putting in six months' service and obtaining the status of a temporary workman*



but before his appointment to a temporary post after screening is entitled to family pension under the 1964 Family Pension Scheme? This question was considered by a Bench of this Court in *Ram Kumar v. Union of India*<sup>1</sup> (SCR at p. 144). This Court had held thus: (SCC pp. 310-11, para 12)

"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 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."

3. The Railway Board in its letter bearing S. No. 3214-Circular No. 720-E/ 0-IX (Pension) dated 26-10-1965 after examining the question, had stated that "the Family Pension Scheme, 1964 for railway employees is applicable in the case of regular employees on pensionable establishment. Since the casual labourers will be brought on to the pensionable establishment only on their absorption against regular temporary posts, it follows that they will come under the purview of the scheme from the date of their absorption against the regular temporary posts. In other words, the benefits of the Family Pension Scheme, 1964 for railway employees will be admissible in the case of death of such an employee while in service, only if he had completed a minimum period of one year's continuous service from the date he was absorbed against a regular temporary post".

4. It is contended by the learned counsel for the respondent-widows that under para 2511 — "Rights and Privileges admissible to the casual labourers who are treated as temporary after completion of six months' continuous service" — of the Railway Establishment Manual, they are entitled to family pension. We find it difficult to give acceptance to the contention. It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of

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*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 to pension under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits." (Emphasis supplied)*

8. The Apex Court has also considered the earlier decision of the Apex Court in the case of *Prabhavati Devi vs UOI & Ors* and the Apex Court has held as under:-

*"5. The learned counsel strongly relied upon the judgment in *Prabhavati Devi v. Union of India*<sup>2</sup>. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the Railway Establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that the widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore."*

8. The above decision was followed in the case of *Union of India vs Baldev Sharma (C.A. No. 15365/ 1996 decided on 05-04-2000)*

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9. In view of the above position, when the Apex Court has in no uncertain terms has held that when a person has not been appointed in a temporary post and was only having a temporary status without any specific scale of pay, no family pension is available to the legal heir of the employee on his death, there is little scope for us to allow the O.A. filed by the applicant. The issue of order conveying the factum of "screening and having found suitable for absorption in class IV category as a regular measure" is also not admitted by the respondents. Hence, the applicant is not entitled to the family pension as claimed for by her. However, the service gratuity which the applicant was entitled to as conceded by the respondent vide para 5 of their counter may be paid to her.

10. In view of the above, the OA being devoid of merits, is dismissed.

Under the circumstances, no order as to cost.

  
Member(J)

  
Member(A)