

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

CALCUTTA

O.A.No. 290 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

PRABHABATI BHOWMICK

VS

1. UNION OF INDIA THROUGH GENERAL MANAGER, S.E. RLY., GARDENREACH, CALCUTTA - 43, FOR HIMSELF AND FOR UNION OF INDIA.
2. DIVISIONAL PERSONNEL OFFICER, S.E. RLY., KHARAGPUR, KHARAGPUR-1.
3. INSPECTOR OF WORKS(I.O.W.), S.E. RLY., SANTRAGACHI, P.O. and P/S JAGACHA, DISTRICT HOWRAH.

For the applicant : Mr. M.M. Roy Chowdhury, counsel

For the respondents : Mr. P. Chatterjee, counsel

Heard on : 15.2.99

Order on : 15.2.99

O R D E R

The question of law that arises for determination in this case is as to whether the applicant being a widow of Late Gunadhar Bhowmick, who died on 3.2.77 as temporary Khalasi under the Railway Department was entitled to get family pension under the Family Pension Scheme, 1964(adopted by the Railway Deptt.) or not. The case of the applicant in short is that her husband Sri Gunadhar Bhowmick was appointed by the railway authorities on 8.4.63 and he died on 3.2.77 rendering 14 years' service in the department as temporary Khalasi. While he was in service he was allotted P.F. Account No.347758(Annexure '3') and No.34471 (Annexure '4') respectively and accordingly he subscribed to the provident fund accounts from time to time till his death. It is alleged by the applicant that after the death of her husband, all settlement benefits were granted by the respdts. but they did not sanction family pension under Family Pension Scheme of 1964 which was adopted by the Railway Board's letter dated 2.1.64. The applicant made several representations to the authorities

contd.

but they did not grant his prayer. So, the applicant filed this application for direction upon the respondents to grant family pension to him under the Family Pension Scheme, 1964 as adopted by the Railway Authority.

2. The case of the applicant is resisted by the respondents by filing written reply. According to the respondents, the husband of the applicant was a casual labour with temporary status. The Railway Administration very sympathetically dealt with the case of her husband's death, and she (applicant) was appointed on compassionate ground. Since her husband died in harness, it is stated by the respdts. that the Scheme of Family Pension, 1964 came into force w.e.f. 1964 and the said scheme is not applicable to casual labourer. It is also stated by the respdts. that the Hon'ble Apex Court in Civil Appeal No. 4373 with 4374-4378 of 1997 arising out of SLP(C) No. 4478 in the matter of Union of India and Ors. versus Rabia Bikaner held that :-

"Widow of casual labourer in Railway Establishment who died after putting in six months' service and obtaining status of temporary workman but before his appointment to a temporary post after screening is not entitled to family pension under 1964 Family Pension Scheme for Railway employees."

So, the application is devoid of merit and is liable to be dismissed.

3. Ld. counsel Mr. Roy Chowdhury on behalf of the applicant contended that in her application the applicant specifically stated that her husband was a railway servant as defined in Chapter XIII, Rule 1301. As per definition contained in Rule 1301 of the Indian Railway Establishment Code, Vol. I the applicant's husband cannot be said to be a casual labourer for the purpose of denying pensionary benefit under Family Pension Scheme and he further submits that the Railway Authority allotted provident fund accounts in favour of her husband while he was serving and that provident fund can be allotted to Railway servants only under the Provedent Fund Rules. So, from this facts it can be said that the applicant's husband was holding a post of Railway servant and therefore she (applicant) is entitled to get family pension under

the Rules. Mr. Roy Chowdhury has also drawn my attention to Rule 1304 of Provident Fund Rules of Indian Railway Establishment Code, Vol.I and submits that compulsory subscriptions against provident fund can be received only from the railway servants not from casual labourers. Thereby the contention of the respdts. that the applicant's husband was a casual labourer & having temporary status is not sustainable and she applicant) is entitled to get family pension under the rules. So, the application should be allowed.

4. Ld. counsel Mr. Chatterjee appearing on behalf of the respdts. has drawn my attention to the Rule 2005 of Indian Railway Establishment Manual, Vol.II of 1990 corresponding to Chapter 23 of the old Manual and submitted that a casual labourer having temporary status is entitled to get all benefits including Provident Fund(except family pension) after rendering 120 days service in the department but not entitled to pension until he is appointed to a post on regular basis after proper screening. So, mere allotment of provident fund accounts in favour of the applicant's husband does not raise any reasonable presumption that applicant's husband was regular railway servant and was entitled to family pension. So, the contention of ld. counsel Mr. Roy Chowdhury is not sustainable and the application is liable to be dismissed in view of the settled & position of law decided by the Hon'ble Apex Court in a judgment stated above. Referring to the said judgment, the ld. counsel for the respdts. submits that the applicant's husband rendered only 14 years service as casual labourer having a temporary status in the department and he was not regularised as per rule. Since the deceased husband of the x applicant was not appointed on regular basis, the applicant is not entitled & to get family pension. Mr. Chatterjee further submits that the applicant's cause of action arose in the year of 1977 and this application has been filed in the year of 1997 i.e. after lapse of 20 years and thereby the application is hopelessly barred by limitation. But Mr. Roy Chowdhury contended that the law of limitation does not

apply to the pension cases. So, the applicant is entitled to get family pension as per rules.

5. In view of the divergent arguments advanced by the ld. counsels of both the parties, I have carefully considered the facts and circumstances of this case. Admittedly her(applicant's) husband was appointed as casual labour initially. There is no evidence in record that he was absorbed in the service on regular basis. So, in order to resolve the controversy, I find that the Railway servant has been defined in Rule 102(subrule-13) in Chapter I of Indian Railway Establishment Code, Vol.I which runs as follows :-

"Railway servant means a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. This term excludes casual labour for whom special orders have been framed."

Rule 1304 of Provident Fund Rules in Indian Railway Establishment Code, Vol.I runs as follows:-

"Compulsory subscribers-All railway servants except:-

- (i) those who are re-employed after final retirement from Govt. service; and
- (ii) those whose services were pensionable even before 16th November, 1957, the date of Pension ~~the~~ Scheme on the Railway; shall subscribe to the fund, in accordance with these rules either from the 1st of the month following that in which they complete one years continuous service, or from the date of confirmation, whichever is earlier."

Rule 2005 of the Indian Railway Establishment Manual, Vol.II corresponding to Chapter 23 of the old Manual runs as follows:-

"Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions

or otherwise the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count ~~as~~ only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are ~~as~~ selected through regular selection Board for Group D posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time."

With reference to the said provisions, as referred to, by the ld. counsel for both the parties it is to be decided by me as to whether the applicant's husband can be said to be a Railway servant on regular basis on the face of the records ~~as~~ available to me. It is found that the expression of the word 'Railway Servant' does not include casual labour. It is admitted fact that respdts. could not produce any record as called for by this Tribunal. The ld. counsel Mr. Chatterjee relies on the records available with the file and submits that the allotment of Provident Fund A/C to a casual labour does not mean that her husband can be said a regular railway servant for the purpose of family pension. It is found that the respdts. did not deny the matter of allotment of Provident Fund accounts in favour of the applicant's husband as mentioned in Annexure-3 and Annexure-4 to the application. The matter of granting family pension to the casual labour who is not appointed to the service on regular basis has been well settled by the Hon'ble Apex Court in a series of judgments. Since the applicant fails to produce any record to show that her husband was appointed to the post on regular basis in the department, she is not entitled to get benefit of family pension under the rules.

6. In view of the settled decisions of the Hon'ble Apex Court I am of the view that merely on the documents relating to P.F. accounts allotted to the applicant's deceased husband, a presumption

cannot be drawn ~~to~~ that her husband was regularly appointed as Khalasi. It is not shown by the applicant from any other document that her husband was appointed on regular basis after proper screening in the department. In absence of regular ~~a~~ appointment of her husband, she is not entitled to get family pension. Thereby the application is devoid of merit and is liable to be dismissed. With these observations, the application is disposed of awarding no costs.

11/28/19
(D. PURKAYASTHA)
MEMBER (J)

SM