

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 415 of 1997
OA 934 of 2002
MA 517 of 2002

Date of order : 10.11.06

Present: Hon'ble Mr. B.N. Som, Vice-Chairman
Hon'ble Mr. B.V. Rao, Judicial Member

GOLENUR BIBI

VS

UNION OF INDIA & ORS.

For the applicant : None

For the respondents : Mr. B.P. Roy, counsel

O R D E R

B.N. Som, VC

Both these matters have been listed today as part heard at the request of the Id. counsel for the applicant and with the consent of the Id. counsel for the respondents. It is surprising that when the matters are called, the Id. counsel for the applicant is conspicuous by his absence nor any prayer for adjournment is made on his behalf. The Id. counsel for the respondents is, however, present. In the said premises, we have heard the matter with the aid and assistance of the Id. counsel for the respondents.

2. Both the OAs have been filed by the same applicant i.e. Smt. Golenur Bibi, wife of Late Mafiz Khan, virtually claiming the same relief i.e. for a declaration that her late husband, who was working under PWI, Uluberia, S.E.Rly. should be deemed to have been regularized in service w.e.f. the date of his death and the applicant be paid all admissible retiral benefits including family pension. Accordingly both the OAs are being considered by this common order

3. The husband of the applicant was initially appointed as Welder under the PWI Jhargram on 21.2.74. He was thereafter transferred to Gidhni and again to Uluberia. In 1975 his service was terminated. The said termination order was challenged before the Hon'ble High Court and as per order of the Hon'ble High Court he was reinstated. However, no copy of the order of the Hon'ble High Court has been annexed nor the date

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when he was reinstated has been indicated. It is stated that the husband of the applicant was working continuously till he died on 29.5.96 while he was in service. Before his death he acquired temporary status and was also declared medically fit. But unfortunately he was not regularized in service before his death. The applicant has claimed that since her husband had continuously worked for more than 3 years he was entitled to be regularized against PCR post in terms of Railway Board's circular. She made representations and thereafter filed OA 415/97 for the aforesaid relief. In OA 934/02 similar facts have been averred and additionally, it has been stated that some juniors of the applicants were regularized and, therefore, her husband should also be deemed to have been regularized in Railway service and consequently she should be granted family pension and other retiral benefits.

4. Both the applications have been contested by the respondents by filing separate replies. It is stated that the late husband of the applicant was engaged as casual labour though in the post of Welder, a Group 'C' post in the Construction Wing of S.E.Rly on 21.2.74. He died on 29.5.96 while in service. However, his services were not regularized. It is stated that the casual labours are not automatically absorbed in Group 'D' post but their absorption is subject to availability of vacancies and after assessment of their suitability and eligibility and according to their turn. It is denied that any junior of applicant's husband was regularized in preference to them. It is further stated that 13 persons as named in para 4.3 of the OA including one Suryanarayan, were engaged as casual labour and were regularised against Group 'D' posts whereas the applicant's husband was working in a Group 'C' post and, therefore, he was not similarly circumstanced as those persons named in the application. It is also stated that regularisation in Group 'C' post is to be done against a clear vacancy and by a positive act of selection as per recruitment rules.

5. It is further stated that after the death of the applicant's husband, the settlement dues payable to the family of the deceased was assessed as Rs.45,642/- on account of gratuity and a sum of Rs.15,925/- on account of PF contribution. The present applicant was intimated accordingly and she was asked to produce necessary documents as per

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letter dated 10.9.97 (Annexure R/3). In sum, the respondents have stated that since the husband of the applicant was in a Group 'C' post of Welder on casual basis and since he could not be screened nor his suitability and eligibility could be assessed prior to his death, he was not regularized against a clear vacancy and as he was ^{not} regularized, the applicant is not entitled to family pension except DCRG and Provident Fund as indicated above.

6. We have considered the matter carefully and perused the records placed before us.

7. In this case the applicant's main prayer is for grant of family pension and other retiral benefits on the death of her husband during his service, after declaring him to be deemed regular, in view of his service for more than 20 years as casual Welder with temporary status. The claim of the applicant is resisted by the respondents mainly on the ground that the applicant's husband was in a Group 'C' post and not a casual labour to be regularised against Group 'D' post. It is contended that for regularisation of an employee against Group 'C' post, a vacancy is needed and the person concerned is to be assessed on the basis of positive acts of selection. Since during the lifetime of the applicant's husband, no regular vacancy could be available nor he was screened for assessment of his suitability, he could not be regularised. So far as the point of discrimination raised by the applicant is concerned, it is stated that the persons whose names have been cited by the applicant, were all regularised against Group 'D' posts and not against Group 'C' post.

8. The applicant has placed reliance on the decision of the Hon'ble Supreme Court in the case of Prabhavati Devi -vs- Union of India & Ors. decided by the Hon'ble Supreme Court on 16.11.95 in CA No. 10492 of 1991, 1996(1) SCSLJ 89. That was a case of substitute and not a casual Group 'C' post holder.

9. The ld.counsel for the respondents, on the other hand, has placed reliance on a decision of this Tribunal in OA 948/96 (Smt. Sibarani Chatterjee -vs- UOI & Ors.) decided on 9.2.98. In that case, after discussing various rules including the Railway Board's order dated 14.10.80 and 28.11.86 in respect of project casual labours, (the applicant's husband was also working in a project) as also various legal pronouncements including that of Ram Kumar & Ors. -vs- Union of India & Ors., AIR 1988 SC 390 as

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also the case of Prabhavati Devi (supra) relied on by the applicant, this Bench of the Tribunal held that family of casual labours who could not be regularised before their death, were not entitled to family pension. In this context the decision of the Mumbai Bench of this Tribunal in the case of Radhabai Krishna Mistry -vs- UOI & Ors., 1996 (33) ATC 48 rendered in OA 812/94 on 16.11.95, may also be referred to. In that case also, it was held that unless a casual worker is regularised against a vacancy after appropriate screening, his family would not be entitled to family pension after his premature death.

10. The grounds taken by the respondents to resist the claim of the applicant, have not been repudiated by the applicant by filing any rejoinder. In such circumstances we have to conclude that the applicant is not entitled to any family pension except DCRG and Provident Fund which was already assessed and sanctioned subject to production of necessary documents, as sought for in the letter dated 10.9.97 as stated earlier.

11. In view of the above, we are unable to grant any relief to the applicant and accordingly both the OAs including MA 517/02 are hereby dismissed. No order as to costs.

MEMBER(J)

VICE-CHAIRMAN

(a) Sl No of the "Appln
(b) Name of the applicant
(c) Dt. of presentation or application for copy
(d) No. of pages
(e) Copying fee charged/ urgent or ordinary
(f) Dt. of preparation of copy	06/12/2006
(g) Dt. of delivery of the copy to the applicant