

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 527/96 and O.A. No. 590/96.

Tuesday this the 23rd day of July, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 527/96

Thresiakutty Lonappan,
Aged 47 years,
W/o Late M.C. Lonappan,
Ex.Temporary Khalasi,
(Under Inspector of Works,
Southern Railway, Sherthalai,)
residing at:
Mavungal House,
Pallippuram Post,
Sherthalai, Alleppey.

.. Applicant

(By Advocate Shri T.C. Govindaswamy)

Vs.

1. Union of India through the
General Manager, Southern Railway,
Park Town P.O., Madras-3.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
3. Executive Engineer (Construction),
Southern Railway, Ernakulam.
4. Deputy Chief Engineer (Construction)
Southern Railway, Ernakulam.
5. Chief Engineer (Construction),
Southern Railway,
Egmore, Madras-8.

.. Respondents

(By Advocate Shri K. Karthikeya Panicker)

O.A. 590/96

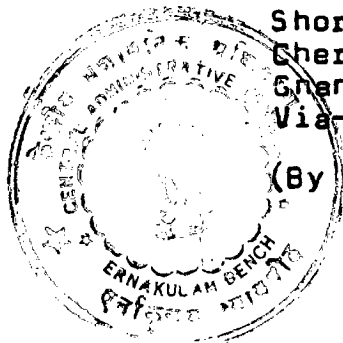
C. Devaki,
W/o Late Kunhikrishnan,
Yard Peon/Station Superintendent's
Office,

Shoranur, residing at:
Sheruvathu Veedu,
Chengattiri Post,
Via-Pettambi.

.. Applicant

(By Advocate Shri TC Govindaswamy)

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Vs.

1. Union of India through
The General Manager,
Southern Railway,
Madras-3.
 2. The Chief Personnel Officer,
Southern Railway,
Madras-3.
 3. The Divisional Personnel Officer,
Southern Railway, Palghat.
 4. The Divisional Railway Manager,
Southern Railway, Palghat. .. Respondents
- (By Advocate Shri P.A. Mohamed)

The applications having been heard on 23rd July 1996,
the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Widows of two casual employees who died on
7.7.66 and 28.10.81 are before us, claiming family
pension on the strength of the decision of the Supreme
Court in Prabhavati Devi Vs. Union of India and others
(1996 SC 752). According to them, casual employees
with temporary status must be deemed to be temporary
Railway Servants, for purposes of family pension.
They refer to paragraphs 2315 and 2311 (3)(b) of the
Indian Railway Establishment Manual to support their cases.
Paragraph 2511 is to the effect that certain benefits
admissible to temporary servants, under Chapter XXIII
will be available to casual labourers with temporary
status. Para 2311 (3)(b) dealing with family pension
postulates that the widow of a temporary railway servant,
shall be eligible for family pension. Applicants would

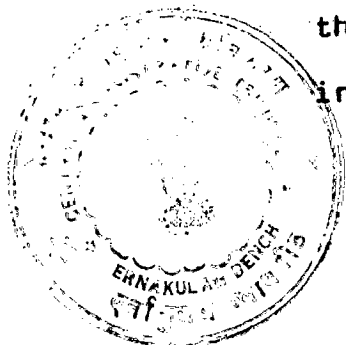
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further submit that the Apex Court has deemed casual labourers with temporary status, as temporary Railway servants, for limited purposes of family pension. The Supreme Court was dealing with 'substitute employees' in the contemplation of paragraph 2318. Para 2511, for material purposes uses the same phraseology. The Apex Court referred to its earlier decision in L. Robert D'Souza Vs. The Executive Engineer, Southern Railway and another (AIR 1982 SC 854) to hold that casual labourers with temporary status, can be treated as temporary Railway servants, for purposes of family pension.

2. Shri Karthikeya Panicker and Shri P.A. Mohamed - who appeared for the Railways referred to various provisions in the Manual and Rules and submitted that regularisation is a sine qua non for grant of pension. Counsel are fully justified in their submission to the effect that regularisation is a prerequisite for grant of pension.

3. However, as pointed out by learned counsel for applicant a distinction exists between the concept of 'pension' and 'family pension'. Pension signifies deferred wages and it is earned in lieu of services put in by an employee. But family pension signifies a compassionate grant, not related to service rendered, not a quid pro quo for service, but related to the event of the demise of an employee. Bearing this basic and significant distinction in mind, we will examine the decision in Prabhavati'Devi's case. The Apex Court in its wisdom, referred to modalities by which the

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requisite status is acquired and observed:

" It is difficult to sustain the orders of the Tribunal and deny family pension to the widow and children of the deceased. See in this connection for support L. Robert D'Souza Vs. The Executive Engineer, Southern Railway (AIR 1982) 1 SCC 645: (AIR 1982 SC 854) and U.O.I. Vs. Basant Lal, (1992 2 JT (SC) 459; (1992 AIR SCW 3124). We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal; overlooking as it does the 'chain' in consequence, making the deceased acquire a temporary status and on his 'demise' his widow and children acquiring the right to claim family pension."

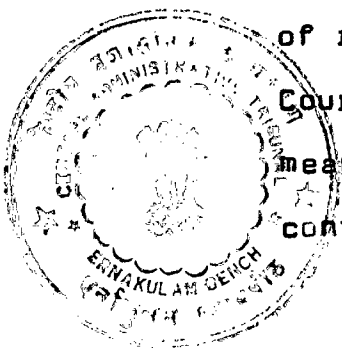
(Emphasis supplied)

Two things are significant in this connection: the process by which the benefit due to a temporary employee is acquired, namely attaining temporary status; and the event upon which family pension is attracted namely demise of the employee.

4. In the cases on hand, following the reasoning of the Supreme Court, we hold that (a) the deceased casual employees who attained temporary status must be deemed to be temporary Railway servants, for purposes of family pension; and that (b) their death attracts family pension notwithstanding the other limitations or conditions of eligibility in paragraphs 2311 and 2511.

5. An argument advanced by Shri Karthikeya Panicker requires notice. Shri Panicker submitted that res judicata stands in the way of applicant in O.A. 527/96. No question of res judicata arises because, there is no decision by a Court or Tribunal adverse to applicants. What he probably means is an adverse decision by the Railway Administration, contained in A5, issued in 1993. With A5 matters did not

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become final. A5 was appealed against by A6 and Railways have no case that A6 has not been received, or that it has been disposed of. It does not lie in the mouth of respondents to speak of delay in the circumstances.

6. In these circumstances, we allow the applications and direct respondents to pay the amounts due to applicants including arrears, within three months from today failing which the amount will carry an interest at 18% (Eighteen percent) till the date of payment which in no event shall be beyond six months from today. No costs.

Tuesday this the 23rd day of July 1996.

Sdr
P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Sdr
CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

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CERTIFIED TRUE COPY

Date 26.7.96

Mmm
Deputy Registrar



26/7
A 26/7/96

List of Annexures

(DA-527/96)

Annexure A5: A true copy of the letter No.P.363/I/
CN/MS/Law/485 dated 26.11.93 issued by
the fifth respondent.

Annexure A6: A true copy of the appeal dated 10.12.94
submitted by the applicant to the first
respondent.

