

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.363/2001

Friday, this the 5th day of April, 2002.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

M.B.Sobhakumari,
(wife of late P.S.Ramanan,
Substitute Gangman, Kottayam)
working as Retiring Room Attendant,
Southern Railway,
Trivandrum Central,
residing at Madathinkal House,
Thirunakkara, Kottayam-1. - Applicant

By Advocate Mr M.P.Varkey

Vs

1. Union of India represented by
General Manager,
Southern Railway,
Chennai-600 003.
2. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014. - Respondents

By Advocate Mr P Haridas

The application having been heard on 26.2.2002 the Tribunal on
5.4.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant in this case, Smt.M.B.Sobhakumari, is the widow of late P.S.Ramanan, claimed to be a substitute Gangman, who died in a tragic accident while on duty on 16.2.84. The applicant who was given a compassionate appointment as per A-1 order dated 13.3.84, is aggrieved that the respondents have not allowed the benefit of family pension

to her so far. It would appear that she received Rs.20,600/ by way of compensation. However, her efforts to get the family pension sanctioned has not yielded any result. The applicant made A-2 representation dated 18.2.2000 but to no avail. Aggrieved by the inaction on the part of the respondents, the applicant has filed this O.A. seeking a declaration to the effect that the applicant is entitled to get pensionary benefits like DCRG, family pension etc. with interest as admissible under the rules/orders following the death of her husband on 16.2.84 while working as a substitute Gangman and direct the respondents accordingly, fixing a time frame for such payment. The applicant's case is that her late husband P.S.Ramanan was a substitute Gangman in terms of Paragraph 2315 to 2318 of Chapter XXIII of Indian Railway Establishment Manual(IREM for short), Second Edition. The A-1 memorandum would make her husband's employment status clear. In terms of para 801 of the Manual of Pension Rules and Para 2311(3)(b) of the IREM (Second Edition), the applicant would be eligible for family pension and DCRG since her husband had more than one year of continuous qualifying service as a substitute Gangman. The applicant was eligible for pensionary benefits as per relaxation ordered by the President of India with effect from 27.1.79 communicated under Railway Board's letter No.F(E)/III/78/PN.1/12 dated 27.2.79. In fact, the same benefit was extended to the families of those Railway servants who died before completion of one year's continuous service prior to 27.1.79, but who had been examined by the appropriate medical authority and declared fit by that authority for Railway service prior to their appointment as is

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manifested in A-3. The applicant's husband was medically examined and declared fit prior to empanelment/appointment as substitute Gangman which is a normal precedent to such empanelment/appointment under the Rules. The inaction in this regard on the part of the respondents was unjustified. The ratio of the Supreme Court's decision in Prabhavati Devi Vs Union of India, AIR 1996 SC 752, was applicable to the facts of the applicant's case and she was hence entitled to pensionary benefits following her husband's death, according to the applicant.

2. The respondents have filed a reply statement strongly resisting the application on the contention that late P.S.Ramanan was only a temporary status casual labourer until 9.2.84 when he was engaged as a substitute. He continued to be in a substitute status till he died in the accident on 16.2.84. Thus he had substitute service of only 8 days from 9.2.84 16.2.84 and hence the applicant's widow was not entitled to family pension. The provisions of the IREM and the pension rules cited by the applicant related to Railway servants. The applicant's husband was not a Railway servant as per the definition of Railway Servants contained in the Rules. The instructions under paragraph 1501 of IREM, Vol.I which contains a definition of the "temporary Railway servant" also does not include casual labourer including casual labourer with temporary status, a contract or a part-time employee or an apprentice. The applicant's husband was only a casual labourer and his engagement as substitute was for a meagre period of 8 days. The widow was given compensation and

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compassionate appointment and thus, the Railways have taken care of the family. The case relied on by the applicant, viz, Prabhavati Devi's case was distinguishable inasmuch as in that case, the Apex Court was concerned with eligibility of family pension in respect of a deceased temporary status attained casual labourer who had been screened for appointment/absorption in regular establishment, but appointed as substitute temporarily in regular establishment in leave vacancy. The respondents would place reliance on the Apex Court's decision in Union of India and others Vs Rabia Bikaner, AIR 1997 SC 2843, wherein the Apex Court has distinguished the facts of Prabhavati Devi's case and held that no family pension would be available to the widow of a casual labourer who had not been screened and selected to regular service. The applicant's late husband was not a Railway servant, and therefore, the letters cited by the applicant could not be relied on.

3. We have heard the learned counsel for the applicant and the respondents. Shri M.P.Varkey, learned counsel for the applicant, apart from relying on the decision of the Apex Court in Prabhavati Devi's case, AIR 1996 SC, 752, would draw our attention to this Tribunal's decision in O.A.1268/96 dated 18.8.97 reported as M.G.Remani Bai Vs Union of India & others, (1997) 36 ATC, 603, wherein this Tribunal has held on the facts of the case in question that as the deceased employee in that case had been working against a sanctioned post continuously and as there was no case for the respondents that the applicant therein had not worked for a period of more than

one year, he became entitled to all the rights and privileges of a temporary Railway servant and that being so, he was entitled to family pension in terms of Para 2311 (3)(b) of the IREM. Learned counsel for the applicant would also refer to the Office Order No.54/80/WP dated 4.11.80 (A-4) issued by the Divisional Personnel Officer, Trivandrum. He would lay great stress on the fact that the applicant's ~~husband was~~ granted temporary status in scale of Rs.196-232 with effect from 18.1.77 and engaged as a substitute on the regular pay scale of Rs.200-250 as applicable to Gangman with effect 23.2.79. The applicant's husband was medically examined and declared fit prior to his empanelment/appointment as substitute Gangman which is a normal condition precedent to such empanelment/appointment under the rules. The respondents have not been able to disprove this. The fixation of pay in the scale of Rs.200-250 from 23.2.79 also would throw light the fact that he was no longer a casual labourer, but a substitute from 23.2.79 itself, the learned counsel would urge. Shri Haridas, learned counsel for respondents, would contest the claim of the learned counsel for the applicant by stating that A-4 did not clinch the issue in favour of the applicant inasmuch as it makes a pointed reference to the applicant as casual Gangman and there is no reference to his employment status as substitute. He was a casual Gangman holding a work charged post under the PWI and since he did not have the qualifying service as substitute, his family would not be entitled to the benefit of family pension.

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4. On going through the records and after considering the arguments put forward by the rival counsel, I am of the view that the respondents' contention that the applicant's husband was a substitute Gangman just for 8 days with effect from 9.2.84 is not borne out by any incontrovertible evidence. In the first place A-1 memorandum by which the applicant was given compassionate appointment as a substitute would show that her late husband P.S.Ramanan was a substitute Gangman. A-4 order by which the pay of the applicant's husband was refixed in the grade of Rs.200-250 with effect 23.2.79 from would reveal the following facts: The applicant's husband was a temporary status attained casual labourer in grade Rs.196-232 and his pay was refixed in the grade Rs.200-250 with effect from 23.2.79. The importance of 23.2.79 is only on account of the conferment of temporary status on the applicant from that date. If he was only a Gangman without temporary status, he would have been placed in the same grade on 18.1.77 itself. In this view of the matter, from 23.2.79 onwards the applicant's husband was a temporary status casual labourer. There is no break in his service. He had continuous regular service till he expired in the tragic accident while on duty on 16.2.84. Obviously, he had already 5 years service to his credit as temporary status attained casual Gangman. The above factual deductions have not been disproved and hence we find that the case of the applicant is closer to the factual matrix discussed by this Tribunal in M.G.Ramani Vs Union of India in O.A.1268/96 dated 18.8.97. Consequently the ratio of the Apex Court in Prabhavati Devi's case is applicable to this case. In O.A.1268/96 dated 18.8.97

(1997) 36 ATC, 603, this Tribunal has considered the case of a temporary status casual labourer since April 1975 who was missing from February 1984. The question was whether his wife was entitled to family pension. After considering the entire gamut of available case law on the point including Prabhavati Devi, Rabia Bikaner, etc. and after examining the various provisions of the IREM and other relevant instructions and orders, this Bench of the Tribunal held as under:

"10. Coming to the next question whether the applicant is entitled to the grant of family pension, the learned counsel of the respondents placing reliance on the decisions of the Supreme Court in Union of India V. Rabia Bikaner and Union of India V. Sukanti, argued that it has now been very clearly laid down by the Supreme Court that no family pension would be available to the widow of a casual labourer who had not been regularised till his death. I have, in the foregoing paragraph, held that the applicant's husband was a substitute and that his services had not been validly terminated. As it is not in dispute that the whereabouts of Shri K. Sugathan from February 1984 onwards are unknown, a presumption of death has to be drawn in his case. If the widow of a substitute not absorbed on regular post is entitled to get family pension, the applicant in this case is entitled to that."

Accordingly, it was declared that the applicant in that case was entitled to be granted the benefit of family pension as provided under Paragraph 801 of the Manual of Railway Pension Rules, 1950 and the respondents were directed to make available to the applicant the family pension and the resultant arrears. It is pertinent in this connection to quote the observation of the Supreme Court in Prabhavati Devi's case, which incidentally has been quoted and discussed in greater detail in the Tribunal's order cited above.

"On the acquisition of temporary status derived in the manner stated above, it is difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support L. Robert D'douza Vs Ex. Engineer, Southern Railway, (1982) 1 SCC 645: (AIR 1982 SC 854) and U.O.I Vs. Basant Lal, (1992) 2JT(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."

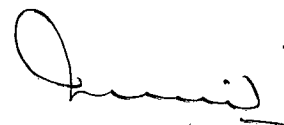
From the case law discussed above and from the facts of the case, it is clear that the applicant's husband had acquired temporary status with effect from 23.2.79 and as mentioned earlier from that date onwards he had been continuing against a sanctioned post under the PWI under specific pay scale as is evidenced by A-4. The mere absence of mentioning the word "substitute" is irrelevant and the mention of the expression 'Casual Gangman' is not decisive of the actual employment status of the deceased employee. Going by the facts, the applicant's husband was definitely a "substitute" since 23.2.79. The applicant, therefore, would be entitled to family pension in accordance with the provisions of the IREM and the various instructions and orders on the subject.

5. In the light of the facts discussed above, the Original Application is disposed of with the following orders/directions:

The applicant is entitled to pensionary benefits like DCRG, family pension etc. as admissible under the rules and orders following the death of her husband on

16.2.84. The respondents are directed to grant all the monetary benefits flowing therefrom within a period of three months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 5th April, 2002.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of Memorandum No.V/P.407/11/CL/Vol/11 dt. 13.3.84 issued by Assistant Personnel Officer, Southern Railway, Trivandrum Division.
2. A-2 : True copy of applicant's representation dt.18.2.2000 to the 2nd respondent.
3. A-3 : True copy of Railway Board's Letter No.F(E) III/85/PN-1/19 of 19.12.86.
4. A-4 : True extract of office order No.54/80/WP (V/P.407/1) dt.4.11.80 issued by the 2nd respondent.

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