

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 118 OF 2006

[Patna, this Friday, the 7th Day of December, 2007]

.....
C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

.....
Balkesiya Devi,
W/o Late Guhari.

Vs.

Union of India through General Manager, East
Central Railway, Hazipur-844 101 & Ors.

.....
Counsel for the applicant. :- Shri R.K.Choubey.

Counsel for the respondents.:- Shri B.B.Kumar, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- Heard Learned counsels for both the sides.

2. The applicant is widow of Late Guhari who was working in Railway and has come up for terminal benefits including family pension. Admittedly, her husband who was employed as Gangman [PWI] died in harness on 17.03.1997. These facts would be borne out from the order of this Tribunal in previous OA preferred by the same applicant [OA 621 of 2002, disposed of on 21.05.2004 at Annexure-A/2]. This Tribunal by the aforesaid order directed the respondents to examine the case of the applicant keeping in view the decision of the Tribunal in OA 328 of 1997 and to dispose of that by a speaking order. The speaking order was thereafter recorded which is at Annexure-A/3 in which though it was admitted that the applicant's husband had acquired temporary status but it was pointed out that his services could not be regularised till his death, hence he was not entitled for family pension under the Rules.

3. This Tribunal in similar other cases had held that dependents of a casual labourer with temporary status are entitled for family pension. Similar decisions have been taken by different Benches of the Tribunal. Those were mainly based upon the Division Bench decision of the Gujarat High Court in the case of Rukhi Ben Rupa Bhai Vs. Union of India & Ors.; 2006[2] SLR



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218 in which it was held that such employees were also entitled to pension and other consequential benefits on their superannuation or on their demise in harness. It was held in that case that the widow would be entitled for family pension. Against that judgment the Railway administration preferred CCP No. 114 of 2005 before the Apex Court which has been admitted for hearing and leave has been granted, and the aforesaid judgment of Gujarat High Court has been stayed. Therefore, it is clear that the judgment of the Gujarat High Court on the same point has come under cloud. The same matter is presently pending before the Supreme Court.

4. From order dated 26.10.2007 it would appear that Shri R.K.Choubey, the learned counsel for the applicant had submitted that the aforesaid matter had been disposed of by the Apex Court. The learned counsel was directed to produce the judgment of the Apex Court in that case. However, today learned counsel submits that he has further enquired into the matter and has come to know that the aforesaid matter is still pending before the Apex Court and has not been disposed of.

Since that matter is pending, then other pending matters before Courts/Tribunal on similar lines have to follow the decision of the Apex Court on the point.

5. If the Apex Court upholds the judgment of the Gujarat High Court then the application as the present one has to be allowed and the respondents have to be directed to grant family pension and other benefits in terms of the judgment of the Gujarat High Court so upheld by the Hon'ble Supreme Court. But if that judgment is set-aside, then the widow or the dependents would not be entitled to family pension and other pensionary benefits in case of demise of casual worker working under temporary status, and all such pending cases will have to be dismissed in terms of that order.

6. In view of above, since learned counsels for both the sides agreed for disposal of this case, the same is disposed of with direction to the respondents that in case the Apex Court upholds the order of the Gujarat High Court in the case of Rukhi Ben Rupa Bhai [supra] then to pass order granting same benefit to the applicant also granting her arrears of family pension with effect from the date which is exactly one year prior to the filing of this case [in terms of Section 21 of the A.T.Act]. If the Apex Court sets-aside the judgment

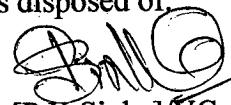
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of the Gujarat High Court in the aforesaid case, then this application will be deemed to have been dismissed, but without cost.

The respondents would record such an order in case the order of the Gujarat High Court is upheld by the Apex Court if that order of the Apex Court comes to their knowledge on their own or is brought to their notice by the applicant of this case or her counsel. They would pass the order, in such a case, within three months of receipt of intimation about the judgment of the Apex Court.

With the aforesaid directions, this application is disposed of.



[P.K.Sinha]/VC

skj.