

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A.No. 309 of 2006

CORAM

The Hon'ble Mrs. Justice Rekha Kumari, Member (J)

Patna, This the 14 day of March, 2011

Urmila Devi, wife of Late Moti Ram, R/o Village-Lakardiha Chandwara,
PO & PS-Muzaffarpur. District-Muzaffarpur.

Applicant

By Advocate: Shri A.N. Jha

versus

1. The Union of India through the Chief General manager, Postal Services, Bihar Circle, Patna.
2. The Director (Head Quarter), Postal Services, Bihar, Patna.
3. The Postmaster General, Norther Region, Muzaffarpur.
4. The Sr. Superintendent, Post office, (H.O.), Muzaffarpur.
5. The Sr. Postmaster(H.O.), Muzaffarpur.
6. The APM (Mails), Muzaffarpur.
7. The APM (A/C), Muzaffarpur.

Respondents

By Advocate: Shri S.K. Tiwari

ORDER

JUSTICE REKHA KUMARI, M (J):- The applicant has filed this OA for quashing Memo(Order) dated 22.10.2005 (Annexure-8) whereunder her prayer for family pension, gratuity and compassionate appointment of son has been rejected. Her further prayer is to direct the respondents for fixing family pension and payment of the same along with other death-cum-retirement settlement dues including Provident Fund amount, Group Insurance, Gratuity, etc.

2. The case of the applicant is that her husband, namely, Late Moti

Ram was employed as Sweeper in the office of Senior Postmaster,

Muzaffarpur on daily wage on 01.01.1991. On 10.10.1991, he was given temporary status and was made T.S. Group 'D' Sweeper. On 17.02.2001, the deceased employee was given regular appointment as Sweeper with effect from 01.01.2001. He died on 09.08.2003 while working as Sweeper in the Sadar Hospital, Muzaffarpur.

3. After the death of husband, the applicant filed representations. As her representations dated 13.09.2003 and 16.03.2005 were not disposed of by the respondents, the applicant filed OA No.503 of 2005 which was disposed of by this Tribunal directing the respondents to decide her representations by passing speaking and reasoned order. The respondents in pursuance of the order of the Tribunal dated 08.08.2005 passed the impugned order (Annexure-8) which is under challenge before this Tribunal.

4. The respondents have contested the case by filing a written statement admitting the fact that Late Moti Ram was a daily wages Mazdoor working as Sweeper at Muzaffarpur with effect from 20.07.1985 and he was granted T.S. in casual labour on 01.01.1990. The case of the respondents, however, is that though Late Moti Ram worked as Sweeper on regular basis with effect from 01.01.2001 but the said regular appointment was later on declared as irregular vide memo dated 12.10.2008 issued under the signature of Senior Postmaster, Muzaffarpur (Annexure-R/1) and the said Sweeper was directed to continue to function as T/S casual labour, as he was functioning earlier prior to

issuance of the order of regular appointment, which later on was declared to be irregular one. The case of the respondents is hence that as the deceased was casual labour and did not get regular appointment, the applicant was not entitled to family pension, gratuity, etc.

5. Heard learned counsel for both the sides.

6. The contention of the learned counsel for the applicant is that as the husband of the applicant was working in the Department since 1985 and had also attained temporary status, he was entitled to pension and as he died during service, the applicant is entitled to family pension and other death-cum-retiral benefits. In support of his contention, he has relied on the case of **Prabhawati Devi vs. UOI & Others (AIR 1996 SC 752)**.

7. Counsel for the respondents supported the impugned order and reiterated the stand taken by the respondents in the written statement. He also submitted that the applicant cannot take the benefit of the appointment of Moti Ram on regular basis as the said appointment was cancelled within few months thereafter as the appointment was made without holding test on the vacant post of Group 'D' as per rule. He also submitted that the said order dated 12.10.2001 regarding cancellation of regular appointment of the deceased was never challenged by him anywhere. Therefore, the position remains ^{on} the same that Late Moti Ram was serving as a T.S. casual labour, and as per rule, he was not entitled to pension, gratuity..

8. In the case of Prabhawati Devi (supra), the deceased employee initially was taken in the railway establishment as casual labour, and thereafter, he had acquired the status of a substitute and died as substitute. But as before his death, he had acquired certain rights and privileges under Rule 2318, which afforded all rights and privileges as may be admissible to temporary railway servants on completion of six months continuous service as substitute, it was held that having become a temporary servant, in that manner, the widow became entitled to family pension.

9. In this case the applicant's husband^{he} was not a substitute but a casual labourer.

10. In the case of **Union of India vs. Rabia Bikaner** (AIR 1997 SC 2483), the question was whether the widow of a casual labour in railway establishment, who died after putting in six months service after obtaining the status of temporary workman but before his appointment to a temporary post after screening, is entitled to family pension.

In that case, the Hon'ble Supreme Court held that:-

"It is seen that every casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of the above position, if any of those employees who had put in the required minimum service of one year,

that too after the appointment to the temporary post, died while in service, his widow would be eligible to pension under the Family pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible to the family pension benefits."

11. In that case, the respondents had also placed reliance on the decision of the Hon'ble Supreme Court in the case of Prabhawati Devi. The Hon'ble Court, however, distinguished both the cases and observed that:-

"Therein, the facts were that from the year 1981 to April 27, 1993, the husband of the appellant had worked as casual worker and obtained the status of substitutes who were working, as defined under rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the railway establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates were on leave. Under these circumstances, the court had held that widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgment of this court in Union of India vs. Sukanti and another [SLP (C) No. 3341/93 etc. decided on July 30, 1991 wherein relying on the ratio in Ram Kumar's case (AIR 1988 SC 390), this Court held that no retirement benefit was available to the widow of the casual labour who had not been regularized till his death. Thus, we hold that the view taken by the Tribunal in granting the pensionary

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benefit to the respondents is clearly illegal."

12. Thus, it is clear from the decision of the Hon'ble Apex Court in the case of Rabia Bikaner that as in the case of Prabhawati Devi, the deceased had acquired the status of substitute, the widow was entitled to family pension and that the casual labourers who are not the substitutes even though have acquired temporary status, are not entitled to pension and their widows will not get family pension.

13. In the present case also the husband of the applicant was neither a substitute nor was appointed against any regular vacancy nor became temporary employee. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Rabia Bikaner (supra), the applicant is not entitled to family pension or gratuity. As regards Provident Fund and other dues, the impugned order shows that they have already been settled and so no order in this regard need be passed. As regards the compassionate appointment of her son, in the impugned order it has been correctly stated that as Late Moti Ram was not a regular employee, the son is not entitled to compassionate appointment.

14. In the result, the OA is dismissed. No order as to costs.



(REKHA KUMARI)
MEMBER (J)