

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(14)

O.A. NO: 559/90

199

T.A. NO:

DATE OF DECISION 2.7.92.

Smt. Krishnadevi Harishankar Panday Petitioner

Shri G.D. Samant

Advocate for the Petitioners

Versus

Union of India

Respondent

Shri S.C. Dhavan.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mx. Ms. Usha Savara, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Usha Savara
(USHA SAVARA) 2.7.92
MEMBER (A)

mbm*

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 559/90

Smt. Krishnadevi Harishankar Panday

... Applicant.

V/s.

Union of India through
Secretary, Railway Board,
Rail Bhavan, New Delhi
and two others.

.. Respondents.

CORAM: Hon'ble Ms. Usha Savara, Member(A)

Appearance:

Shri G.D. Samant for
the applicant.

Mr. S.C. Dhavan for the
respondents.

JUDGEMENT

Dated: 2-7-92

¶ Per Ms. Usha Savara, Member(A) ¶

The applicant is the widow of Shri Harishankar Onkarnath Pandey, who expired on 20.5.1989 in the Central Railway Hospital, Byculla while in service. She has filed this O.A., praying for a direction to the respondents to grant family pension to the applicant, and also to consider giving her a compassionate appointment.

The deceased was employed as a casual Khalasi with effect from 2.6.'80, and thereafter, he was made temporary from 19.7.'82. He was on a regular pay scale of Rs. 196 - 232, which was replaced by the scale of Rs. 750 - 940 from 1.1.'86. He drew increments, and at the time of his death, he was drawing Rs. 834/- as basic pay. He had passed medical examination in class B I, and therefore, was entitled to receive family pension, gratuity, insurance payment etc. So far, the applicant has not been paid final settlement dues, and she is living on the verge of starvation with her 4 children.

(W)

Shri G.D. Samant, learned counsel for the applicant, submitted that the applicant had been regularly absorbed, as he was being given a fixed scale, with due increments. Though, he had not completed 10 years, he was entitled to counting half the period of service rendered by him after attaining temporary status on completion of 120 days continuous employment. He relied upon amendment to para 2511 (9) of the I.R.E.M. circulated under C.P.O's letter dated 20.5.1983. He also placed reliance upon the judgement of the Bombay High Court in the case of Smt. Chandramukhia Devi Vs. Union OF India and others decided on 9.1.'87. It was held that the Exclusionary clause 18 in the Chapter VIII of the Manual of Railway Pension Rules, 1980, was not applicable to the deceased employee, because he was not a casual/daily rated employee or a casual employee treated as temporary staff. It was argued by Shri Samant that as the deceased Harishankar was a monthly rater, on a fixed pay scale, getting increments on the scale of 196 - 232(PR) he was a temporary employee eligible to pensionary benefits.

Shri S.C. Dhawan, learned counsel for the respondents, vehemently resisted the claim of the applicant. The deceased was a casual Khalasi, when he joined in 1980, and was brought on monthly rated basis with effect from 19.7.'82. He was not a regular employee, and was not eligible for any pension or pensionary benefits. He denied that the applicant had not been paid final settlement dues. All settlement dues were settled on 19.3.'90, and no other amount was due. The total service ~~as~~ monthly rated casual employee was only 7 years, and he was not entitled to any pension, Group Insurance Scheme or gratuity. He referred to the Railway Pension Rules, 1950, Under chapter VIII, Section (18) (sub-section (d)) - Casual labour is not entitled to

family pension. He submitted that the judgement cited by the learned counsel for the applicant was not applicable to the facts of this case. The deceased Jamindaram was the holder of a post borne on the cadre, and the fact that he had not been made permanent would not reduce him to the level of a casual or daily rated employee. On the other hand, it is not the case of the applicant that Shri Harishankar was the holder of a post borne on the cadre. Their entire case is based on the fact that he was on a fixed pay scale, and had also been given increments, and therefore, he was a temporary employee. That being the case, the decision of the Bombay High Court, does not help the applicant, and the application has to be dismissed.

We have heard the learned counsel for the opposite parties, and perused the annexures and the judgement cited by Shri Samant. No evidence has been led to substantiate the claim of the applicant, that Shri Harishankar had been regularly absorbed. It is mentioned, *en passant*, that he had undergone a medical examination, but it is not even suggested that he had ever been screened for regular absorption. At best, he was a casual employee treated as temporary staff, and was covered by subsection (d) of Section 18 of Chapter VIII of Railway Pension Rules, Section 18 is the exclusionary section and runs as below:

18. This section is not applicable to -
 - a.
 - b.
 - c.
 - d. Casual/daily rated employees and casual employees treated as temporary staff until they are absorbed — against regular permanent/temporary posts.

Clearly, the deceased was covered by this section, and he was not entitled to pension/family pension.

The judgement cited by Shri Samant is also not of any help, as the facts cited therein are quite different from the facts of this case. The deceased in that case was the holder of the post of Pointsman, though, as a substitute, which is a post, which cannot be kept vacant. Substitutes have to be drawn from a panel of suitable candidates, and they are paid exactly the same scale of pay and allowances as are admissible to regular employees. On the other hand, it is nowhere pleaded that the deceased Harishankar was on any such post. In the circumstances, the ratio of this judgement cannot be applied to the facts of the case before us. The deceased was a casual monthly rated Khalasi, who was treated as temporary staff, and who is covered by sub-section (d) Section 18 of Chapter VIII of Railway Pension Rules. Such employees are not entitled to pension

Shri Samant did not press the relief regarding compassionate appointment, as this relief was not consequential to the main relief. However, the respondents have stated in their counter that if the applicant make an application in proper proforma, her case for compassionate appointment would be considered sympathetically.

In the result, the application fails, and is disposed of as dismissed with no order as to costs.

Usha Savara
2.7.42.
(USHA SAVARA)
MEMBER (A)