

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 820/91

Transfer Application No. XXXXXX

Date of decision 8 July 93

Smt. Jainabai Shaikh Babu

Petitioner

Mr. V. N. Parlikar

Advocate for the Petitioner

Versus

U.O.I. & Ors.

Respondent

Mr. P. R. Pai

Advocate for the Respondent(s)

Coram :

The Hon'ble Shri V.D. Deshmukh, Member(J)

The Hon'ble Shri ---

1. Whether the Reporters of local papers may be allowed to yes see the Judgement ?
2. To be referred to the Reporter or not ? yes
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 ?

  
(V.D. DESHMUKH)  
M(J)

M

(P)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.820/91

Smt. Jainabai Shaikh Babu,  
R/at.937, Kasba Peth,  
Kagdipura,  
Pune - 411 011.

.. Applicant

-versus-

1. Union of India  
through  
General Manager,  
Central Railway,  
Bombay V.T.
2. Divisional Railway  
Manager (Personnel)  
Central Railway,  
Bombay V.T.

.. Respondents

Coram: Hon'ble Shri V.D. Deshmukh,  
Member (J)

Appearances:

1. Mr. V.N. Parlikar  
Advocate for the  
Applicant.
2. Mr. P.R. Pai  
Counsel for the  
Respondents.

JUDGMENT:

(Per V.D. Deshmukh, Member (J))

Date: 8 July 93

The applicant has filed this application  
praying that the impugned order dt. 10-9-90  
rejecting her claim for Family Pension be quashed  
and the respondents be directed to grant her  
the family pension. I heard the learned advocates  
for the applicant and respondents.

2. The applicant is a widow of Shaikh Babu Ibrahim  
who was an employee in the Central Railway. He  
was initially appointed in 1962 as a daily rated  
Khalasi and he became a monthly rated Khalasi  
w.e.f. 19-2-63. It is stated that he completed  
23 years of service but admittedly he remained  
as a monthly rated Khalasi for all these years.  
The said Shaikh Babu Ibrahim expired on 30-10-85.

The Provident Fund etc. were paid to the applicant. She filed an application for Family Pension which was rejected on 21-4-89 on the ground that the applicant's husband was engaged on monthly rated basis and therefore the applicant was not entitled to family pension. The applicant made a further representation dt. 17-8-90 which was rejected as per the order dt. 10-9-90 on the same basis as in 1989.

3. The learned advocate for the applicant contended that the applicant was entitled to family pension under the family pension scheme. It appears that this scheme was promulgated under the pension rules. The extracts of the scheme from the Railway Establishment Law and Practice (1986 edition) are placed before me. As per the scheme it is applicable to all regular employees on pensionable establishment - temporary or permanent - who are in service on 1-1-1964 or are recruited thereafter. Under the scheme the only requirement is that the Railway servant should have completed a minimum period of one year of service. After considering the submissions made on behalf of both the sides I find that this scheme is applicable in case of only those employees who were appointed as regular employees, irrespective of whether they became permanent or remained temporary. The widow or the other eligible person of a regular employee would be entitled to family pension provided the employee had completed

*JKP*

a minimum period of one year of service. But it is necessary that the employee must be a regular employee whether temporary or permanent. The scheme is also subject to conditions laid down in para 2403 dealing with the conditions of qualifying service for pension. The extracts are produced from the Indian Railway Establishment Code Vol. II and ~~they~~ <sup>it</sup> show that the necessary conditions are: (i) the service must be under Government; (ii) the employment must be substantive and permanent and (iii) the service must be paid by Government." It is thus obvious that the benefit of the scheme is available only in case of those Railway employees who are appointed as regular employees in substantive post whether on temporary or permanent basis.

4. The learned advocate for the applicant contended that the various provisions of Chapter XX of the Indian Railway Establishment Manual showed that the casual labour who continues to do the work for which he is engaged for more than 120 days without a break will be treated as temporary ~~i.e.~~ shall be given the "temporary status" on completion of 120 days of continuous employment. The Chapter thereafter proceeds to lay down the various benefits to which the casual labour becomes entitled after he has ~~been~~ <sup>been</sup> given the temporary status. It was rightly contended by the learned advocate for the respondents that the Chapter itself dealt with the casual labour engaged either on daily rated basis or on monthly rated basis and it did not deal with the regular employees either temporary

or permanent. The question that arises is whether the temporary status which is given to casual labour under Chapter XX of the Indian Railway Establishment Manual also entitles him to the benefit of pension or in case of his death the benefit of family pension. The learned advocate for the applicant relied upon the judgment of the Madras Bench of this Tribunal in O. Somayamuthu vs. U.O.I. (O.A.82 of 1990 decided on 28-6-1991) In this case the casual labour was given the temporary status in 1976 and he retired in 1988. He was not given the pension as regular service ~~for~~ as 50% of the temporary service was less than 10 years. The Tribunal found that full temporary service had to be counted and the applicant was entitled to pension. The applicant however cannot get any benefit of this judgment as it has been declared to be per incurium by the same Bench in O.A.16/1990 S. Parthasarathy and Others vs. U.O.I. & Ors. decided on 25-10-91

The question in this case was precisely the same which is presently before me in the present case. The applicants who were appointed as casual labourers were granted temporary status after completion of the requisite service. They contended that they would be entitled to count their service as casual labour after attainment of temporary status, for the purpose of post retirement benefits. They claimed that the entire period of their service after they were granted temporary status to the date of regular absorption had to be counted for retirement and pensionary benefits. The judgment in the case of O. Somayamuthu vs.



U.O.I.(O.A.82/90) was relied upon. The Hon'ble Members, however, ~~held~~ <sup>held</sup> that the judgment in O.A.82/90 had been rendered without noticing the decision of the Supreme Court in AIR 1988 SC 390, Ram Kumar and others vs. Union of India and Ors. and without noticing the relevant provisions of the Manual and the decision had to be treated as a decision per incurium. It was found that the Supreme Court had held in the above cited case that even though certain benefits were given to casual labourers on acquisition of temporary status, pensionary benefits would not be admissible to them. The Hon'ble Members, also referred to the decision of this Tribunal in B.S.Bhaskar and others vs. Union of India & Ors. 1988(7)ATC 351 in which it was held that there was a difference between confirmment of temporary status on a casual employee and a temporary employee of the Railways. It was held that the grant of temporary status and the appointment as a temporary railway servant were distinguished and the temporary status is granted to a casual labour for the purpose <sup>s</sup> of extending ~~and~~ certain benefits only, <sup>if</sup> he does not become a temporary railway servant. The Division Bench after considering all these authorities and relevant provisions found in the case of S.Parthasarathy and Ors. ~~and~~ <sup>held</sup> that temporary status and temporary service in the Railways are not one and the same and declared that the decision in the case of O.Somayamuthu vs. U.O.I.(O.A.82/90) was per incurium. There cannot be any dispute about the principles laid down by the relevant rules and the decision of the Hon'ble Supreme Court.

... 6/-

(S)

It is obvious that the temporary status which is given to a casual labour under Chapter XX is only for the purpose of the benefits which are given to him under the same Chapter. If the temporary status is given after completion of a certain period of service the employee cannot be taken as a temporary employee in a regular or substantive post. In this view of the matter the respondents rightly held that the applicant was not entitled to family pension. No doubt it was unfortunate that the husband of the applicant remained as a monthly rated Khalasi for a long period of more than 20 years but that position cannot now be altered. Although he was entitled to the temporary status under Chapter XX of the Manual his service could not be taken as a qualifying service for pensionary benefits either to himself or to the applicant.

5. In view of the reasons discussed above the application is liable to be dismissed. The learned advocate for the applicant pointed out that the President has the power to declare that any specified kind of service shall count for pension and the Tribunal may give the suitable directions. However, I do not think that it would be just and proper to give such directions. The applicant shall, however, be at liberty to make such a representation if she is advised to do so.

6. <sup>The</sup> In result the application is dismissed with no order as to costs.

  
(V.D. DESHMUKH)  
Member (J)