

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

C.P. 66/94 in
Original Application No. 807/92

Smt. Pushpajata Narhari and
four others.

... Applicants.

V/s.

Union of India through
The General Manager
Central Railway Bombay VT

The Divisional Railway Manager
Central Railway, Bombay VT.

The Chief Engineer(Construction)
South Central Railway,
Bombay VT.

The Deputy Chief Engineer
(Construction) Central Railway
Dadar, Bombay.

The Permanent Way Inspector
Central Railway, Vashi.

... Respondents.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)
Hon'ble Shri M.R. Kolhatkar, Member (A).

Appearance:

Shri D.V. Gangal, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

Tribunal's order

Dated: 18.7.94

{ Per Shri B.S. Hegde, Member (J) }

Applicant has filed C.P. 66/94 persuant
to the order passed by the Tribunal, which reads
as follows:

" Though we cannot grant early hearing
immediately we will request the respondents
to consider whether the interim relief
prayed for could be granted to the applicant.
Adjourned to 7.2.94."

....2...

: 2 :

In accordance with
~~Against~~ the order dated 13.12.93 the
respondents has sent reply to the applicant ^{with reference} ~~to his~~
representation dated 29.3.94 indicating that his
family is not entitled for family pension as per
the extant rules. I

In the light of the above C.P. 66/94
is dismissed.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)



(B.S. Hegde)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 807/92

Date of Decision: 17/2/98

Pushpalata Narhari & 40rs. Applicant.

Shri D.V.Gangal Advocate for
Applicant.

Versus

The Union of India & 4 Ors. Respondent(s)

Shri S.C.Dhawan Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri, P.P.Srivastava, Member(A)

- (1) To be referred to the Reporter or not? *W*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *W*

abp.

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO. 6, PRESCOT RD, 4TH FLR,

FORT, MUMBAI BENCH, MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 807/92.

DATED THE 17TH DAY OF FEBRUARY, 1998.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri P.P. Srivastava, Member (A).

1. Smt. Pushpalata Narhari, wife of late Shri Arjun Ghashiram working as Reja Khalasi under the Permanent Way Inspector, Central Railway Vashi and residing at Pawane, Thane-Belapur Road, New Bombay.
2. Kumari Kumar Arjun Ghashiram 9 years, daughter.
3. Kumari Mangalbai Arju Ghashiram 5 years, daughter.
4. Kumar Rajkumar Arjun Ghashiram 4 years, son.
5. Kumari Laxmi Arjun Ghashiram 1 year. daughter ... Applicants.

By Advocate Shri D.V. Gangal.

v/s.

1. The Union of India, through The General Manager, Central Railway Bombay V.T., 400 001.
2. The Divisional Railway Manager, Central Railway, Bombay V.T. - 400 001.
3. The Chief Engineer (Construction), South Central Railway, Bombay V.T. 400 001.
4. The Deputy Chief Engineer, (Construction), Central Railway, Dadar, Bombay - 400 014.
5. The Permanent Way Inspector, Central Railway, Vashi. ... Respondents.

By Advocate Shri S.C. Dhawan.



I O R D E R I

[Per Shri R.G. Vaidyanatha, V.C.]

This is an application filed under section

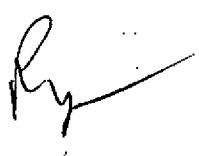
19 of Administrative Tribunals Act. The respondents have filed reply. We have heard the learned counsels on both the sides. The applicants are relatives of deceased casual labour. Shri Arjun Ghashiram was appointed in Railways as Casual Labour on 20/5/1982 (on daily rated basis) and was granted temporary status on 1/1/1984. He died on 19/8/91 leaving behind his widow and children who are the applicants before us. The applicants have therefore filed present application claiming Family from Pension/Railways.

2. The respondents have filed reply stating that the deceased was only a casual labourer and was not in regular employment and he is not entitled to any pension and therefore his family is not entitled to Family Pension. The short point for consideration in this OA is whether the applicants are entitled to Family Pension or not.

3. The Learned Counsel for applicant referred to the Indian Railway Establishment Manual and relevant rules and contended that the deceased had acquired the status of Temporary Railway Servant and therefore he had become entitled to get Pension and the family is therefore entitled to Family Pension. On the other hand, the learned counsel for respondents maintained since the deceased was only a casual labourer ~~and~~ he has not been regularised, is not entitled to Pension and Family is not entitled to Family Pension though he might have some rights of a Temporary Railway Servant, after having acquired the status of a Temporary Railway Servant.

4. The Learned Counsel for Applicant places reliance on rule 2511 of the IREM which only says that a Casual





Labourer who has acquired temporary status is entitled to rights and privileges of a Temporary Railway Servant as mentioned in Chapter-23, which does not make a mention about Pension or Family Pension. Therefore, Rule 2511 itself will not help the applicant in any way. Then reliance was placed on Railway circular dated 15/4/1987 under which Temporary Railway Servants are granted pension.

5. The Learned Counsel for respondents pointed out that this circular does not refer to casual labourers or casual labourer who had acquired temporary status. In our view we ^{were} do not consider the question on ~~such~~ ^{any} principles since the question is no longer res-integra and is covered by number of authorities of Supreme Court. There are number of earlier decisions of Apex Court reported in AIR 1988 SC 390 (Ramkumar and Others v/s. Union of Others) and 1997(5) Scale-494 (Union of India v/s. Sukanti & Another) where the Supreme Court has held that Casual labourer is not entitled to Pension.

6. The matter was again considered in a recent judgement of Apex Court in the case of Union of India and ~~Obs~~ v/s. Rabia Bikaner reported at 1997(2)SC SLJ - 263, an identical question arose before the Supreme Court whether the widow of casual labourer who had obtained the status of Temporary Employee and screened for the purpose of regularisation but died before his actual regularisation is entitled to family pension or not.

7. The Supreme Court considered the relevant provisions and earlier decisions and in particular considered the Family Pension Scheme of 1964 and held that regularisation in service is a must for claiming pension. Therefore, in that case the Supreme Court

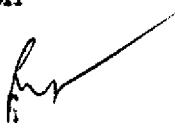


held that the widow who had filed the applicant was not entitled to Family Pension since the husband had died as a casual labour though he had acquired the status of Temporary Servant.

8. In our view when the law has been declared in so clear terms by Apex Court, we cannot again go into same issues as contended by Learned Counsel for Applicant.

9. The Learned Counsel for Applicant places reliance on 1994(1) AJ - 603 (Smt. N. Atchamma v/s. The General Manager and Others) where the single Member of the Hyderabad Bench of this Tribunal held that the casual labourer in that case was entitled to pensionary benefits since it was found that he had acquired Temporary Status on completion of 120 days.. and further his services had been regularised. Therefore, it is a case where the casual labourer had been regularised. But in the present case, we are concerned with the case of casual labourer whose services have not been regularised and hence the decision of Hyderabad Bench has no bearing on the facts of the present case.

10. The Learned Counsel for applicant also relied on the decision of Apex Court in the case of Prabhavati Devi v/s. Union of India and Others reported in (1996) 32 ATC-515. That was a case where the question was about the family of a substitute being entitled to Family Pension or not. The Supreme Court observed that a substitute who acquired temporary status, his family is entitled to Family Pension. In our view, since this was a case of a substitute, it has no bearing on the question with which we are now concerned, the family of a casual labourer. Identical decision was settled by Supreme Court ⁱⁿ ~~and~~ in the subsequent decision



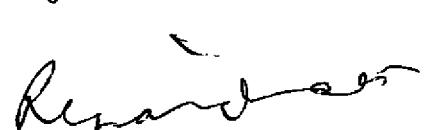
namely, in 1997(2) SC SLJ - 263, the Apex Court distinguished the decision in Prabhavati's case and the grounds on which it was allowed as the applicant was a substitute and therefore, it cannot be ^{applied} paid to the family of a casual labour. Therefore, in our view, the decision in Prabhavati's case is not applicable to the facts of the present case since we are concerned with the Family Pension to the family of a deceased casual labourer. In fact, even in the said case an identical argument was observed that in view of rule 2511 of Railway Establishment Manual, the family of casual labourer who died is entitled to family pension but the said argument was rejected by the Apex Court.

11. In our view when the matter has been settled by number of decisions of Apex Court, the applicant's case that they being ^{family} members of the deceased Casual Labourer are entitled to family pension cannot be accepted.

12. In the OA, the applicant has asked one more relief namely compensation under the Workmen's Compensation Act 1923. By order dated 23/10/96, this Tribunal has observed that this Tribunal has no jurisdiction to consider the prayer with liberty to the applicant to approach the appropriate forum to get the relief under Workmen's Compensation Act.

13. ^{In} ~~With~~ the result, the ^{applicant} fails and the OA is dismissed; In the circumstances OA is dismissed with no orders as to costs. Since we are disposing of the main OA itself, MP-202/95 does not survive.


(P.P. SRIVASTAVA)
MEMBER(A)
abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN