

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 68/96 in
Original Application No. 533/95

Smt. S.Radhakrishnan
V/s.

... Applicant.

Union of India and others.

CORAM: Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's order on Review Petition by Circulation

Dated: 21-5-1996

In this Review Petition, the applicant has sought review of the judgement of the Tribunal delivered on 8.2.96, firstly on the ground that there has been discovery of new and important matter and evidence which was not within the knowledge of the applicant but which was within the knowledge of the respondents. It is further alleged that the respondents wilfully and deliberately suppressed the fact from the Tribunal. The new material is the memorandum dated 9.12.91 on the subject of " Panel of Casual Labour/Substitutes monthly rated for absorption against Gangman/Khalasi Grade Rs. 775- 1025 (RPS) /Rs. 750 -940(RPS) on Bombay Division AEN PNVL Sub-Division," in which the applicant is at serial No. 453 in a list covering 592 employees. The applicant contends that if this is taken into consideration, the applicant is entitled to family pension in the light of Ratio of the Calcutta Bench judgement reported in 1993(25)ATC 139 Bhagabai Nayak.

2. Secondly the applicant contends that there are illegalities in the judgement because the Tribunal has chosen to rely on earlier judgement of the Supreme Court in the case of Ramkumar V/s. Union of India

reported in AIR 1988 SC 390 in preference to the later judgement in Prabhavati Devi. According to the applicant, the ratio of Prabhavati Devi's case is that her husband was a substitute and then he acquired temporary status and was entitled for pension under the relevant Railway Rules and on his death, the wife is entitled to family pension. According to the applicant, the reason why Ramkumar's judgement does not apply is that the subsequent orders of the Railway Board R.B.E. No. 9087 dated 15.4.87 regarding pensionary benefit to temporary Railway servants was not before the Supreme Court.

3. The applicant has also filed M.P. 374/96 for condonation of delay in filing the Review Petition on the ground that the applicant received the judgement on 18.3.96 and ought to have filed the Review Petition within a month thereafter, but the applicant could not contact her advocate till 23.4.96 because she was away on duty at Ajni from 3.2.96 to 22.4.96. Considering the submissions made in the M.P. 394/96, M.P. is allowed and the Review Petition is considered on merit.

4. On merits, the first contention of the applicant relating to not being able to get the evidence regarding the empanelment of her husband with due diligence is difficult to accept. It is contended that she received the copy of panel from National Railway Majdoor Union whom she approached after the judgement. It is not clear why the applicant could not approach the National Railway Majdoor Union or otherwise obtain a copy of the Panel earlier. It is therefore, difficult to accept that she could not produce the said panel inspite

of exercise of due diligence.

5. Secondly, the document is only in the nature of a provisional panel and orders regarding regularisation of the applicant prior to his death namely on 25.5.92 are not produced. It is true that the Railway Board instructions dated 15.4.87 were not before the Supreme Court when the judgement in Ramkumar was pronounced, but para 10.1 states that the temporary Railway employees are eligible for grant of pension only if they have put in not less than 10. years of service. The applicant's husband, even if he had been regularised prior to his death would have rendered a little less than 5 years of service, namely 50% service as temporary status project Casual labour. Therefore, the applicant's husband would not have been entitled to pension after taking into account the circular dated 15.4.87.

6. So far as family pension is concerned the same is governed by Railway Pension Rules. According to these Rules which are quoted in Bhagabati Nayak's case as Rule 101(2) of the Railway Pension Rules, the family pension is payable if at the time of death, the employee had one year's continuous qualifying service. The same is the gist of the latest Railway(Pension) Rules 1993, Rule 75. In this case, however, the applicant's husband had not completed any qualifying service because he had not been absorbed. According to Rule 48 of Railway Pension Rules 1973, any deficiency in qualifying service of a Railway servant shall not be condoned.

7. In view of the discussion, even after taking into account the document filed by the applicant with the Review Petition and even after reading the ratio of Ramkumar in the light of the Railway Board circular dated 15.4.87, the applicant's husband was not entitled to pension and the applicant is not entitled to family pension. I do not therefore see any ground for review of the judgement of this Tribunal.

8. The Review Petition is therefore dismissed by circulation as provided under the Rules.

M.R. Kolhatkar
(M.R. Kolhatkar)
Member (A)

NS

8/21/96
Order/Judgement despatched
to applicant
on 12/6/96 via Lmt (s)

13/1/96