

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 533/95

Date of Decision 8-3-96

Smt. Selvambal Radhakrishnan

Petitioner

Mr. D.V. Gangal

Advocate for the Petitioner.

Versus

U.O.I. & Ors.

Respondent

Mr. S.C. Dhavan

Advocate for the Respondents.

Coram:

The Hon'ble Mr. M.R. Kolhatkar, Member(A)

The Hon'ble Mr. --

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? X

M.R. Kolhatkar
(M.R. KOLHATKAR)

Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.533/95

Provenud this, the 8th day of Feb 1996

CCRAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Smt.Selvambal Radhakrishnan,
Temporary Status Casual Labour
residing at Jasai Railway Colony,
Taluka Uran, Dist.Raigad 410 206.

(By advocate Shri D.V.Gangal)

.. Applicant

-versus-

1. Union of India
through
General Manager,
Central Railway,
Bombay - V.T.
2. The Chief Administration
Officer(Construction)
Central Railway, Bombay V.T.
3. The Executive Engineer,
(Construction)
Central Railway, Panvel.

(By counsel Shri S.C.Dhawan)

.. Respondents

O R D E R

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

The applicant's husband late

Shri Radhakrishnan Ramaswamy was engaged as
daily rated project casual labour on 4-6-1982.

He expired on 25-5-1992. The applicant who is
the widow of the late railway employee has

admittedly been given compassionate appointment
by order dt. 20-7-1993. This letter refers to

the status of the late husband of the applicant

Am as temporary status Khalasi. Although, therefore,

the applicant has stated in her application that her husband was a temporary railway employee ~~I am~~ inclined to accept the contention of the respondents that the service put in by the late husband of the applicant ~~was~~ as below :

"1. Daily rated Project) 4-6-82 to
Casual Labour) 3-12-82

2. Monthly rated Project) 4-12-82 to
Casual Labour) 31-12-83

3. Ty. Status Project) 1-1-84 to
Casual labour) 25-5-92 "

According to the respondents he was accorded temporary status in terms of Railway Board's order dt. 11-9-1986. The respondents have produced before us a copy of this order issued interms of Supreme Court directions in the case of Inder Pal Yadav & Ors. vs. Union of India & Ors.

2. The claim of the applicant is that her husband was a temporary railway employee and that in ~~terms~~ of instructions of the Railway Board dt. 15-4-87 at Annexure A-3 on the subject "Revision of provisions regulating pension in pursuance of Government's decisions on the recommendations of the 4th Central Pay Commission and grant of pensionary benefits to the temporary Railway servants" she is entitled to grant of family pension in consideration of service put in by her late husband. The applicant in particular ^{upon} relied/para 10.1 of the circular which reads as below :

"10.1. In partial modification of the Ministry of Railways letter No.F(E)III 78/PN-1/13 dt. 21-2-1981, temporary Railway employees who retire on superannuation or

on being declared permanently incapacitated for further Railway service by the appropriate medical authority after having rendered temporary service of not less than ten years, shall be eligible for grant of superannuation/invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent employees under the relevant provisions of the Manual of Railway Pension Rules, 1950, and such other orders as may be in force."

According to applicant her husband had put in about ten years of service and he had expired after coming into force of the order dt. 15-4-87 and she is entitled to family pension in terms of rule 11 of the circular which reads as below :

"11. In the event of death in harness of temporary Railway servants, their families shall be eligible to family pension and Death Gratuity on the same scale as admissible to families of permanent Railway servants under the Manual of Railway Pension Rules, 1950."

The prayer of the applicant is therefore to pay family pension, gratuity, last pay of her husband and the provident fund of her husband and interest on the above payment.

3. Respondents have pointed out in their reply inter-alia that the applicant's ~~later husband~~ had given nomination in respect of provident fund on 23-5-92 i.e. just two days prior to the death of the employee in favour of his father and therefore the applicant is not entitled, in any case, to the accumulated provident fund. This position has been conceded at the argument stage by the counsel for the applicant who ^{has} restricted

the prayer in the O.A. only to the point of family pension, arrears thereof and interest thereon.

4. Respondents have contended that there is a distinction between temporary status casual labour and a temporary railway servant ^{and that} the rule relating to eligibility for pension after ten years of service applies only to temporary railway servants and not to temporary status casual labourers as the applicant was. According to the respondents it is only after regular absorption that a casual labour can count half of the service rendered after attaining temporary status as qualifying service for any pensionary benefits. The applicant's husband was not absorbed in regular category till 25-5-92 and therefore he is not entitled to count any portion of his service for any pensionary benefits and therefore the applicant is not entitled to family pension because the claim to family pension arises on the footing that the applicant's husband was a temporary railway employee at the time of his death.

5. The applicant has contended that there is no distinction between temporary status railway employee and temporary railway employee, and denial of family pension is unjust. In this connection the applicant relies on the ratio of ^{decision of} Calcutta Bench of C.A.T. in the case of Bhagabati Nayak (Smt) vs. U.O.I. and Ors. decided on 3-2-1993 and reported at (1993) 25 ATC 139. In that case the applicant had rendered more than 14 years of service under South Eastern Railway as casual labour. The Tribunal also referred to

para 2511 of the Indian Railway Establishment Manual clause (a) which provides that "casual labourers treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants..." The Tribunal noted that under Rule 101(2) of the Railway Pension Rules ~~family~~ pension is payable if at the time of death, the employee had completed one year's continuous qualifying service and the Tribunal therefore had concluded that if a temporary railway servant dies and if he had completed one year's continuous qualifying service, his family would be entitled to pension. The Tribunal observed that the husband of the applicant passed suitability test for appointment before his death. The Tribunal ~~relied on~~ ^{Calcutta Bench} observation in the earlier case of Malati Kar v. U.O.I.(1992)21 ATC 583 wherein it was stated that when a casual labourer was tested for suitability and medical fitness, if the administration did not regularise him, no fault could be found with the casual labourer, it was the fault of the administration not to ~~have acted~~ properly. The Tribunal, therefore, held that the applicant's husband would be deemed to have been regularised and hence half of the service of the applicant should be taken as qualifying service.

6. It appears to me that the ratio of Bhagabati Nayak's case does not apply to the instant case because the facts are different. In that case the applicant's husband had put in 14 years of service whereas in the instant case the applicant's husband had put in less than ten years of service. Secondly,

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in that case the applicant's husband had undergone a suitability test whereas there is no averment that, that was the situation in the instant case. So far as the interpretation in IREM 2511 and Pension Rule 101(2) are concerned the same would be dealt with separately.

7. learned counsel for the The applicant then relies on the Supreme Court judgment in the case of Prabhavati Devi vs. U.O.I. reported at 1996(1)ATJ 284 which according to him completely covers his case irrespective of any judgment of the Tribunal to the contrary. I therefore reproduce the relevant portion of the judgment :

"3. The appellant herein is the widow of Late Bipin Kumar Rai who was a temporary Railway servant in this manner: He, initially, was taken in the Railway Establishment as a casual worker; and w.e.f. 27-4-83 he acquired the status of a 'substitute' According to the definition given in Rule 2315 of the terms and conditions applicable to 'substitutes' in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

4. The deceased kept working as a 'substitute' till 5-1-87 when he died. But, before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway

Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of 6 months 'continuous service'. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311; whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's two months' pay on which the death gratuity is determined. The Railways have paid to the appellant gratuity under this sub-rule, but have denied to her the family pension. Her claim before the C.A.T. Patna Bench, Patna, was dismissed which has culminated into this appeal.

5. On the acquisition of temporary status derived in the manner stated above, it is difficulty to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased. See in this connection for support L. Robert D. Souza v. Ex. Engineer, Southern Railway and Anr., (1982 1 SCC 645 and U.O.I. and Ors. v. Bansant Lal and Ors. (JT 1992(2) SC 459)). We have put the proposition to the learned counsel appearing for the Railways but he is unable to support the orders of the Tribunal, overlooking as it does the chain in consequence, making the deceased acquire a

temporary status and on his demise his widow and children acquiring the right to claim family pension. "

8. I observe that facts and circumstances in Prabhavati Devi's case are different. There, the applicant's husband was working as substitute for the period 27-4-83 to 5-1-87 and by operation of rule 2318 of the Indian Railway Establishment Code read with Rule 2311(3)(b) thereof, the apex court allowed the claim to family pension. It may be noted that the counsel for the railways also did not point out any contrary rules to the apex court.

9. The present case, however, is different inasmuch as the applicant's husband was not a substitute employee but he was a temporary status casual labour. On this point learned counsel for the applicant has relied on the following two judgments of this Tribunal viz.: Smt. Jainabai Shaikh Babu vs. U.O.I. & Ors., O.A. 820/91, decided on 8-7-93 and reported at 1993(2)ATJ 394 and Radhabai Krishna Mistry(Smt.) vs. Union of India, O.A.812/94 decided on 16-11-1995 and reported at 1995 II CAT MAT 541. These decisions in their turn have referred to the Supreme Court judgment in Ram Kumar v. U.O.I. AIR 1988 SC 390. This judgment specifically refers to para 2511 on which applicant relies and on which reliance has been placed in Bhagabati Nayak's case. We may refer to that judgment.

"7. With the acquisition of temporary status the casual labourers are entitled to:

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947)
- (2) Scales of pay
- (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.
- (6) Provident Fund and terminal gratuity.
- (7) Allotment of railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorised by the Ministry of Railways.

It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits.

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10. What exactly are the benefits admissible to temporary railway servants have however, been seriously debated.

11. Paragraph 2511, Indian Railway Establishment Manual, provides :-

(a) "Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not,

however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave and their credit to the new post on absorption in regulation service.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected through regular Selection Boards for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as casual labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for Class IV posts to the extent of their total service which may be either continuous or in broken periods.

(c) It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scales of pay, increments etc. Service prior to the absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for pensionary benefits."

12. It is the stand of the learned Additional Solicitor General that no pensionary benefits are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees."

In ^{my} ~~our~~ view the above paragraphs completely clarify the position as to the entitlement of the applicant for family pension. It is clear that temporary status casual labour is different from temporary railway servant. Temporary railway servant has been defined in ^{para} 2301 of the Indian Railway Establishment Code as below:

"A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", a "contract" or "part-time" employee or an "apprentice."

Thus a temporary status casual labour is a term of the art which should not be confused with a temporary railway servant. It has been pointed out to us by the counsel for the respondents that in terms of Railway Board's letter No.E(NG)II/78/CL/12 dt. 14-10-80 the Ministry of Railway decided that before regular appointment, concession of counting half of the temporary ~~temporary~~ status casual service other than non project casual service as qualifying service for pension should be extended to casual labour. This concession was extended to project casual labour by letter No.E(NG)II/85/CL/6 dt. 28-11-86. Therefore, the question of counting any service of project casual labour before his absorption does not arise. It is not disputed in this case that the applicant's husband was a project casual labour and he was not even screened

for absorption much less ~~absorbed~~ He was, therefore, not entitled to pension nor is the applicant entitled to family pension in terms of the instructionsdt. 15-4-87. It is evident that para 10-1 does not help the applicant because the applicant's husband had not rendered temporary service of not less than 10 years nor does para 11 apply^{to} to the applicant because although her husband died in harness, he was not a temporary railway servant but he was a temporary status casual labour.

10. In my view, therefore, the applicant has not made out a case for grant of family pension.

O.A. has no merit and accordingly it is dismissed.

There will be no order as to costs.

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M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

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: 2/-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)

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21/5/96
Order/Judgment attached
to application filed at (a)
on 12/6/96
13/6/96