

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1039/97

Date of Decision: 13/8/98

Smt. Sushila Ravi

.. Applicant

Shri D.V. Gangal

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri V.S. Masurkar

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(1) To be referred to the Reporter or not ? *no*

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *no*

abp.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GULESTAN BLDG.NO.6, 4th FLR, PRESCOT RD.,
FORT, MUMBAI-400 001.

ORIGINAL APPLICATION No.1039/97.

DATED THE 13TH DAY OF AUGUST, 1998.

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

Smt.Sushila Ravi,
working as Khalashi
under Section Engineer(W),
Sub-Central Railway,
Ghorpadi,

... Applicant.

By Advocate Shri D.V.Gangal.

V/s.

1. The Union of India through
General Manager, South Central Railway,
Secunderabad,
Andhra Pradesh.

2. The Divisional Railway Manager,
South Central Railway,
Hubli, Karnataka.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R

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

This is an application filed by applicant praying for family pension. Respondents have filed reply. I have heard the learned counsel appearing on both sides.

2. The applicant is a widow of one Shri Ravi Lakkappa who was stated to working as a Khalasi in the South Central Railway. Ravi Lakkappa was appointed on 22/1/1980 and he acquired temporary status on 22/5/1980. He was working against a regular post in a substitute capacity in accordance with the rules of appointment of substitute employees. He was getting regular salary. He was not regularised. He died on 17/9/1990 as a temporary status "substitute khalasi". It is stated that when a temporary status employee dies, then his widow is entitled to family pension as per rules. The applicant being the wife of the deceased employee is entitled to family pension as per Railway Pension Rules, 1993. She has therefore approached



this Tribunal praying for a direction to respondents to pay her family pension from the date of her husband's death.

3. The respondents have opposed the claim of the applicant on the ground that the applicant's husband was not a 'substitute' that he was only a 'casual labourer'. The date of appointment of applicant's husband, or the date of his acquiring the temporary status is not disputed by the respondents. Since the applicant's husband was only a casual labourer, she is not entitled to family pension according to respondents.

4. It is not disputed before me that the family of a casual labourer who has acquired temporary status or not is not entitled to family pension. The question is also covered by latest judgement of Supreme Court in JT 1997(6) S.C.95 (Union of India & Ors v/s. Rabia Bikaner etc) where the Supreme Court has clearly ruled

"that the widow of a casual labourer is not entitled to Pensionary benefits."

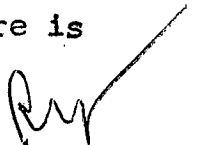
Even the learned counsel for applicant fairly did not dispute this proposition of law. He maintains that the applicant's husband was appointed as substitute and therefore the applicant being a widow of the substitute is entitled to family pension. He strongly places reliance on judgement of Supreme Court in Prabhavati Devi v/s. Union of India & Ors. reported at (1996)32 ATC 515. In that judgement, the Supreme Court has clearly held that

"family of a substitute is entitled to family pension."

Even the learned counsel for respondents did not dispute this position of law.

5. Now therefore, the only point for consideration is whether the applicant's husband was working as a Substitute in the Railways or not.


6. The applicant has not placed any documents on record ^{to show} that he was working as a substitute. After hearing the arguments for some time on the last occasion and since there is



serious dispute between the parties on this question namely whether the applicant's husband was appointed as a substitute or not, I gave direction to the respondents to produce the necessary records. The Learned counsel for respondents has placed before me the service record of the applicant's husband, casual labour card and other papers. The Learned Counsel for Applicant inspected the documents and submitted his arguments.

Even after the service record is produced today, there is no document to show that the applicant's husband was appointed as a substitute. Thereafter, the Learned Counsel for applicant pointed out how the applicant's husband ^{was} as a substitute ^{can be gathered} ~~came about~~. He contended that since applicant's husband was given temporary status after 4 months and not after 6 months and since applicant's husband was given regular scale of pay and not daily rated wages, it must be presumed that he was appointed as a substitute.

7. In my view the question of whether the applicant ^{husband was} is a substitute is not clear from the service ^{then} record. But ^{casual labour} the entries in the service record and card are unequivocal, and we cannot fall back on circumstantial evidence or to draw inference from circumstances. In the service register, the entry does not show either he is a casual labour or a substitute. Therefore, it is not helpful to either party. But to draw inference from the scale of pay or from the date of acquiring temporary status is like taking secondary evidence and this can be done only if there is no primary evidence. But if primary evidence is available, ^{then} going into drawing an inference from circumstance is not necessary. The ^{Service record} ~~sur-rejoinder~~ produced before me ^{has a} as casual labour service card of the applicant's husband. It is an old casual labour service record of 1980. It is titled as a casual labour service record and in the first page, the applicant's husband's age is shown as on the date of initial appointment as casual employment.

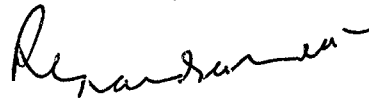


Therefore, when there is a primary evidence that the applicant's husband was appointed as a casual labourer and he obtained a casual labour card and therefore the question of drawing inference from circumstance of either ^{scale 7 pay} service record or ^{date of} acquiring temporary status ^{does not arise.} The employee's card is conclusive ^{to show} that the applicant's husband was appointed as a casual labourer on 22/1/80. Even according to applicant, her husband was appointed on 22/1/1980. Therefore, it is not a card pertaining to some previous period. It refers to the same period and same date of appointment which applicant has mentioned in the OA. If the applicant's husband was appointed as a casual labourer, then we need not go into other inferences addressed by counsel for applicant. In the absence of any entry in the service register, and in view of the documentary evidence in the form of Casual labour service record, there is no escape from the conclusion that the applicant's husband was appointed as a casual labourer. There is no dispute that he did not become a regular railway servant and he died as a casual labourer after acquiring temporary status. The ^{legal} law position is already ^{stated namely} clear, that in case of casual labour/ ^{er,} the family does not get family pension.

8. In my view the material on record are insufficient to show that the applicant's husband was appointed as a substitute.

9. In the result, the application fails and is dismissed. In the circumstances of the case, there will be no orders as to costs.

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN