

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1136/98

20/04/2000

DATE OF DECISION: 14/2000

Smt.Sulabai Wd/o Shri Raghunath Applicant.
Marathe

Shri K.B.Talreja
-----Advocate for
Applicant.

Versus

Union of India & Anr.

-----Respondents.

Shri Ravi Shetty
-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)

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

} No

B.N.B
(B.N. BAHADUR) 20/4/00
MEMBER(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

Original Application No.1136/98

Dated this Thursday the 20th (Twenty) Day of APRIL, 2000.

Coram : Hon'ble Shri B.N. Bahadur, Member (A)

Smt.Sulabai Wd/o Shri Raghunath
Marathe, Bhushi, Taluka Maval,
Lonavala, Dist.Pune.

... Applicant

By Advocate Shri K.B.Talreja

V/s.

The Union of India
Through the General Manager,
Central Railway, Mumbai CSTM,
Mumbai-1.

The Divisional Railway Manager,
Central Railway, Mumbai CSTM,
Mumbai-1.

... Respondents

By Advocate Shri R.R.Shetty

(ORDER)

Per Shri B.N.Bahadur, Member(A).

This is an application made by Smt.Sulabai, widow of Shri Ragunath Marathe, seeking the relief from this Tribunal, in substance, for a direction to respondents to grant family pension, or whatever type of pension is entitled, to the applicant. Relief is also sought for grant of 18% interest on arrears.



...2.

2. The facts of this case, as put forth by the applicant and substantially relevant are that the late husband of the applicant named Raghunath Marathe was working as Gangman in the Indian Railways from 1953 to 3.3.1970 when he died on duty between Talegaon and Bhivpuri. Applicant states that she got only Rs.7000/- under Workmens Compensation Act (Annexure 1) and even the claim of ex-gratia Pension was turned down by Respondent No.2 on the ground that her husband was working in monthly rated category and not confirmed in permanent cadre (Annexure 3).

3. The applicant has a grievance that non payment of Family Pension to her as the widow of a deceased employee, who had attained temporary status, and who was run over while performing his duties, is in violation of rule 54-2-(b)-(i) of CCS Pension Rules as also a violation of the provisions of Railway Services (Pension) Rules 1993. The applicant claims that she is entitled not only for ex-gratia Pension/extraordinary Pension but also to Family Pension. It is contended that applicant's husband was a temporary railway servant in terms of para 2301 of the Indian Railway Establishment Manual (IREM). A special point is sought to be made that the applicant's husband died while performing duty on site and relevant certificates are attached.

4. A written statement has been filed by the Respondents where it is stated that applicant was working as a Monthly Rated Casual Worker / Gangman in Central Railway from 19.10.1961 till his death in March, 1970, and since he had put in less than 10


...3.

years service, Respondents aver that applicant is thus not eligible for any retiral benefits / gratuity / family pension as per Rule 18 (explanation 3 of Railway Service Pension Rules 1993), "at the same scale as in admissible to permanent Railway Servants". However, the Respondents further explains the position regarding death in harness as contained in the Explanation 3 by which it is concluded that 10 years service is an essential pre-requisite for entitlement to Pension/Family Pension and even if it is admitted that temporary status was granted to the husband of applicant, the requirement of 10 years service is not fulfilled. Hence the OA devoid of merits.

5. The Respondents aver that the application is hit by the law of limitation as the prayer relates to a cause of action of March, 1970 i.e. at the death of the applicant's husband. I have heard Learned Counsel on both sides and have perused the papers in the case and the rules and judgments cited.

6. Learned Counsel for the applicant sought the support of Rule 18(3) and Rule 75 of the Railway Services (Pension) Rules to contend that after 120 days service, temporary status automatically devolves on an employee and in fact states that the applicant's husband had put in 15 years of service. He argued that since PF deduction were been made in the case of Raghunath Marathe it has to be concluded that his status was that of a temporary employee and not of a casual labour.



...4.

7. Counsel for the applicant sought support from Judgment in the case of Basant Lal reported at 1992 SCC L&S 611. Besides he has submitted a list of a number of other cases decided by various Benches of this Tribunal which he contends support his case. Learned Counsel for applicant also drew attention to para 2005 of IREM and made the pointed assertion that the case was specially covered for the benefits asked for, in view of the fact that the applicant's husband had died while actually performing his duty.

8. Arguing the case on behalf of the Respondents, their Learned Counsel Shri Shetty asserted that the applicant's husband had not been granted temporary status. He further argued that even if it was true that he had acquired temporary status, his case suffered from the infirmity that he had not put in the minimum period of 10 years of service required for an official to become eligible for pensionary benefits.

9. Shri Shetty cited the case of Choukikar (1998 (2) ATJ 27) and that of "Union of India vs. Rabia Bikaner" (1997 SCSLJ 263), in support of his defence.

10. I have carefully considered all the documents in the case and the arguments made before me by Learned Counsels on both sides.

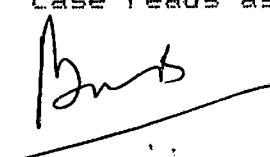
bnd

...5.

11. Now, the facts relating to the death on duty of applicant's husband are not disputed. One point of dispute however, is that the applicant asserts that her husband had put in 15 years of service, whereas Respondents states giving actual dates that the service was less than 10 years. In the absence of any proof or documents etc. the mere contention of applicant that he has completed 15 years of service as against the assertion of the Respondent (Department) to the contrary will not prevail over the latter's statement, hence we will have to proceed with the assumption that 10 years service has not been completed by applicant's husband.

12. Since the issue in this case has been considered by the Hon'ble Apex Court I shall first examine the applicability of the cases of the Apex Court cited. The learned Counsel for the Applicant has sought the support of Basantlal's Case (1992 SCC 611). The ratio settled here is to the extent that Casual Labourer employed by Railway and working over 120 days cannot be denied temporary status. Now the arguments of the Learned Counsel for Respondents was that even if we presume that Temporary status was granted the applicant was not entitled to Family Pension, since the requirement of 10 years service by her husband was not met.

13. The case of Rabia Bikaner [(1997) 2 SCSLJ 263] can be referred to straightaway for guidance. The Head Note of the case reads as under:



...6.

"Casual Labour--Family Pension--Whether the widow of a casual labourer in Railwa Administration who had put six months service and obtained the status of a temporary employee and screened but died before his actual appointment/regularisation is entitled to family pension-- Held no--Regularisation in service is must for claiming pension.". This point, therefore, has been settled. In a case decided by this Bench of the Tribunal in OA No.1081/96 (decided on 19.2.1998) and cited at(1998 (2) ATJ 27) it has been held that the widow of a Casual Labourer, who had been working for nearly 12 years, is not entitled to Family Pension, since her husband had not been absorbed in a regular post. In this judgement the case of Rabia Bikaner as well as the case of Prabhavati Devi 1996 1 SCSLJ 89 have also been discussed. It is also mentioned that the Apex court had observed in the case of Ramkumar vs. UOI (AIR 1988 SC 390) that Casual Labourers acquiring temporary status are not entitled to pension.

14. Thus, the issue involved in this case has been settled by the Apex Court in clear terms, and in more than one judgement. In view of this position, it has to be concluded that the Applicant in the present case is also not entitled to family pension or any of the reliefs that applicant seeks. In consequence, the Application is therefore dismissed. No orders as to costs.

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp

20/02/2000