

48

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
HYDERABAD

O.A.No.1162 of 1997.

DATE OF DECISION: 9-2-2000

Between:

U.Kanakaratnamma. .

....Applicant

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1. The Chairman, Railway Board,
(reptd. Union of India),
New Delhi-110 007;
2. The Divisional Railway Manager,
Vijayawada Division, Vijayawada-003.
3. Station Superintendent,
Gudur Railway Station,
Gudur-524 101.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.C.Suryanarayana

COUNSEL FOR THE RESPONDENTS:: Mr.J.R.Gopal Rao

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN

: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

Heard the learned Counsel Mr.C.Suryanarayana for the
Applicant and the learned Standing Counsel Ms.Shakti
for Mr.J.R.Gopal Rao for the Respondents.

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2. The applicant has filed this OA for a direction to be issued to the respondents to grant family pension and other benefits to her from due date. Her husband late U.Suryanarayana was appointed as Extra-labourer (ELR or Casual Labourer) at Rajahmundry on 10-12-1960. Temporary status was conferred on him with effect from 10-5-1965. However, the applicant's husband had to retire on medical ground on 21-9-1977 and at his request employment was provided to the applicant on compassionate ground. The applicant's husband expired on 24-1-1980. According to the applicant, it was evident from the record of the case that her husband had rendered about 17 years of continuous service in the Railways. But inspite of the same, family pension was not granted to her. The applicant submitted representation dated 4-12-1996 (Annexure.A-V to OA) followed by reminders dated 27-1-1997 and 26-3-1997, but she did not receive any response from the respondents, and therefore, it became necessary for the applicant to file this OA for securing reliefs as stated above.

3. Answering the applicant's case, the learned Standing Counsel Ms.Shakti for the Respondents did not dispute that temporary status had been granted to the applicant's husband while in service with effect from 10-5-1965. However, he could not be absorbed on a regular post on account of the fact that he was medically found unfit in all classes on 7-4-1978. The Counsel further submitted that as per Rule 75 of Railway Service Pension Rules, 1993, a Railway servant entering service in Pensionable Establishment on

or after 1-1-1964 and Railway servant, who was in service on 31-12-1963 and came to be governed by the provisions of the Family Pension Scheme for Railway employees, 1964, were eligible for family pension in the event of the death of the Railway servant while in service. Rule.75 of the aforesaid rule is reproduced below:-

"75. Family Pension Scheme for railway servants, 1964:(1) The provisions of this rule shall apply:-

- a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and
- b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No.F(P)63 PN-1/40, dated the 2nd January, 1964 as in force immediately before the commencement of these rules."

It is stated in the note under Rule 75 that, "the provisions of the said rule had also been extended from 22nd September, 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme".

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4. The applicability of the above rule to the deceased husband of the applicant was sought to be asserted by the learned Counsel Mr.C.Suryanarayana for the Applicant by drawing my attention to the definition of Railway servant under Sub-Rule (23) that "within the meaning of the said term, a person who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control".

Mr.Suryanarayana submitted that temporary status was conferred on the deceased husband on 10-5-1965 and therefore he ceased to be the casual worker and stood covered within the meaning of Railway servant.

5. The applicant's claim is opposed on the ground that her husband was not absorbed against sanctioned post. It is also opposed on the ground that gratuity was paid to the applicant under the Gratuity Act, 1972 amounting to Rs.1,599/-. His Provident Fund Contributions were also paid. According to Railway Service Pension Rules, 1993, Rule-75, as already stated earlier, only a railway servant entering service in Pensionable Establishment on or after 1-1-1964, and a railway

servant who was in service on 31-12-1963 and came to be governed by the provisions of the Family Pension Scheme for Railway Employees, 1964, was eligible for family pension in the event of the death of the railway servant while in service.

6. The learned Standing Counsel Ms. Shakti for the Respondents referred to and relied upon the decision of this Tribunal in OA.No.1331 of 1997, dated 16-3-1998, in which it is observed in Paragraph 4 that the deceased husband of the applicant had worked for more than 10 years continuously as casual labourer but could not be absorbed in any Group 'D' posts due to non-availability of vacancies. It is further observed that the Railway Service Pension Rules, 1993- Para.75 provided that only a railway servant entering service in Pensionable Establishment on or after 1-1-1964 and a railway servant who was in service on 31-12-1963 and came to be governed by the provisions of the Family Pension Scheme for Railway employees, 1964, were eligible for family pension in the event of the death of Railway servant while in service. Hence, the widow was not eligible for family pension as the services of the husband of that applicant was not regularised. In paragraph 6 of the said Judgment it is observed that the question of granting family pension to the widow of a railway employee who was not regularised and continued as a casual labourer till the death of that employee was

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considered vividly in the Judgment dated 10-1-1997 in OA.No.1289 of 1996 and after elaborate discussions it was held in that case that a casual labourer who died in service without being regularised was not entitled for pension and hence the family pension also could not be given to the widow of the deceased casual labourer. In paragraph 7 of the said Judgment, it is observed that the aforesaid views expressed by the Bench were confirmed by the Hon'ble Supreme Court in the case of Union of India and others Vs Rabia Bikaner etc., (reported in 1997, 4 SLR 717), in which it was held that a widow of the casual labourer who died after putting six months temporary service was not eligible for family pension benefits and in that view of the matter it was held in the aforesaid O.A.No.1331 of 1997 that the applicant could not get family pension as her husband was a casual labourer on temporary status at the time of his death. However, liberty was given to the applicant to submit a detailed representation to the appropriate respondent-authorities to grant family pension on the basis of Rule 107 of Miscellaneous Chapter 12 of Railway Servants' (Pension) Rules, 1993, as a measure of social justice.

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7. The learned Counsel for the Applicant Mr.C.Surya-narayana on the otherhand drew my attention to the decision of the Supreme Court in the case of PRABHAVATI DEVI Vs UNION OF INDIA (reported in 1996(1) SLR p.28), in which the Supreme Court was concerned with a case that the appellant/widow of late Bipin Kumar Rai, who was a temporary railway servant, was initially taken in the Railway Establishment as a casual worker and with effect from 27-4-1983, he acquired the status of a substitute. The Supreme Court observed that according to the definition given in Rule 2315 of the terms and conditions applicable to 'substitutes' in temporary service, they were persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they were employed. These posts may fall vacant on account of railway servant being on leave or due to non-availability of permanent or temporary railway servants and which could not be kept vacant. The deceased husband worked as substitute till 5-1-1987 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 the temporary railway servant from time to time on completion of six months continuous service. The Supreme Court observed that, indubitably, the deceased had worked beyond six 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 was provided that the widow/minor children of a temporary railway servant, who dies while in service after a service of not less than one year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. It is further observed by the Supreme Court that the Railways have paid to the appellant gratuity under this Sub-Rule, but have denied to her the family pension. Her claim before the CAT, Patna Bench was dismissed which culminated into the appeal before the Supreme Court. In para 5 of the said Judgment, the Supreme Court observed that, on the acquisition of temporary status derived in the manner stated above, it was difficult to sustain the orders of the Tribunal and to deny family pension to the widow and children of the deceased.

8. The Calcutta Bench of this Tribunal in JAMINI BALA BERA Vs UNION OF INDIA & OTHERS (reported in 1993(25) Administrative Tribunals Cases 254) held that, widow was entitled to family pension even if the deceased employee had not been conferred regular status and that the Railway could not be allowed to take advantage of their failure of not regularising the deceased employee in time.

9. In yet another case referred to and relied upon by the learned Counsel Mr.C.Suryanarayana in MEENA SUBRAMANIAN & OTHERS Vs UNION OF INDIA (reported in

1992(20) ATC 584), the Madras Bench of this Tribunal held that, pension was a kind of compensation for the service rendered. The idea behind was that a person who had toiled for a number of years for the Government should not be left all of a sudden without resources on superannuation. Pension could be considered as a portion of the wages which had been deferred to be paid when the Government servant became unable to work on account of old age or invalidity.

10. From the above discussion, a ratio clearly emerges in favour of the proposition that the benefit of pension/ family pension could not be denied to a railway servant merely on the ground that he continued to be an employee with temporary status and not regularised till the date of his retirement.

11. We have already considered the effect of sub-rule(1) of Rule-75 of the Family Pension Scheme for Railway Servants, 1964. Under Sub-rule (2)(a) of Rule 75 of the Family Pension Scheme for Railway Servants, 1964, it is provided that, where a Railway servant dies after completion of one year of continuous service; or (b) before completion of one year of continuous service provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service, and under sub-clause (c) of Sub-rule (2), it is provided that, after

retirement from service and was on the date of death in receipt of pension, or compassionate allowance, referred to in Chapter-V, other than the pension referred to in rule 53; family of the deceased shall be entitled to pension, the amount of which shall be determined in accordance with the table given in the said rule.

12. With the above situation in view, the applicant's case can certainly be not disregarded and I am of the opinion that the respondent-authorities should take a constructive view of the Supreme Court decision in the case of PRABHAVATI DEVI Vs UNION OF INDIA, (reported in 1996(1) SLR p.28), and Calcutta and Madras Benches of this Tribunal and decide whether there could be any constraint on allowing the benefit of the said decisions to the applicant.

13. This OA is therefore disposed of with a direction to the Respondent No.2 viz., Divisional Railway Manager, Vijayawada Division, Vijayawada, to re-consider the applicant's case on the basis of the representation already submitted by the applicant as well as on the basis of the pleadings and contentions raised by the applicant in the present OA.No.1162 of 1997 and dispose of the same by a Speaking Order within two months from the date of receipt of a copy of this Order.

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The Registry is directed to forward the copy of the OA along with its accompaniments to the 2nd respondent to enable him to take into consideration the pleas and contentions raised by the applicant therein.

14. The OA is disposed of accordingly, however, with no order as to costs.

D.H. Nasir
(D.H.NASIR)
VICE CHAIRMAN

DATED: this the 4th day of February, 2000

DSN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD.

1ST AND 2ND COURT

COPY TO:

1. HDHJ
2. HRRN M (ADMN.)
3. HBSJP M (JUDL.)
4. D.R. A (DMN.)
5. SPARE
6. ADVOCATE
7. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN
MEMBER (ADMN.)

THE HON'BLE MR. B.S. SAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 9/2/00

MA/RA/CP.NO.

IN

CA. NO. 1162/97

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDER/REJECTED

NO ORDER AS TO COSTS

8 copies

A/w O.A.

