

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.605/1999.

Date of Order : 5 July, 2002.

Between :

G. Suramma, w/o Late Sitaramulu,
aged about 51 years, C/o Sri Y.
Suryanarayana, D.No.1/13/2-195,
L.B. Colony, Cantonment,
Vizianagaram- 535 003.

.. Applicant

A n d

1. Union of India, represented by
General Manager, South Eastern
Railway, Garden Reach,
Calcutta- 43.

2. Sr. D.P.O., S.E.Railway,
Waltair.

.. Respondents

Counsel for Applicant : Mr. A.Sriganesh for
Mr. P.B.Vijayakumar

Counsel for Respondents : Mr. D.F. Paul, S.C. for Railways

Coram :

The Honourable Mr. M.V. Natarajan, Member (A)

The Honourable Mrs. Bharati Ray, Member (J)

O R D E R.

(Per Hon'ble Mr. M.V. Natarajan, Member (A))

1. O.A.No.605 of 1999 has been filed by one
Smt. G. Suramma on 10.4.1999. A Bench of this
Tribunal disposed of the O.A. at the admission stage.
The applicant had carried the matter to the Hon'ble
High Court of A.P. in W.P.No.21955 of 2000. The
Hon'ble High Court on 20th September, 2001 while setting
aside the order dated 21.6.1999 remitted the matter back
to this Tribunal for consideration afresh, to determine

the status of the applicant's husband.

2. The O.A. has been filed by the applicant who is the legally wedded wife of late Sri G.Sitaramulu son of Kistamma. It is the submission of the applicant that her husband was granted temporary status in the respondent department on regular pay scale of Rs.775-1025/-. He was also admitted to the Provident Fund having been allotted PF No.559955. He was working as a Temporary Gangman with effect from 24.11.1978.

3. The applicant submits that her husband was also declared medically fit, suitable to be regularised in the post of Chaukidar, Peon, Khalasi, Waterman on Platform and attached to Permanent Way Gang, Mali etc.

4. The department did not regularise his services in any category. He expired on 29.4.1995 having put in more than 16 years of service. He had during his life time made several requests to the respondent department to regularise his services. The department did not deem it fit to regularise his services.

5. The applicant submits that she was deprived of the retiral benefits including the family pension and insurance amounts. The non-regularisation of services of her late husband for such a long period is attributable to the department. The applicant pleads that for the departmental laches, she should not be penalised by way of denial of retirement benefits to which her late husband was eligible for.

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6. The present O.A. has been filed seeking a direction to the respondent authorities to regularise the services of the applicant's husband.

7. The respondents in their reply statement filed on 22.1.2002 have submitted that the applicant's husband was a CPC Gangman. His services could not be regularised as Gangman on his own account as he was unfit for the medical category of B-I. To grant family pension to the widow of an employee, the employee must fulfil the following conditions :

- i) The employee shall be medically examined and found fit in the category for which he is to be regularised.
- ii) The employee should be regularly absorbed against a temporary or permanent sanctioned post.

As the applicant's husband had expired without fulfilling the above two conditions, the applicant is not entitled to claim family pension as it is not permissible under the rules.

8. They further submit that the applicant's husband was inducted in the railways as CPC Gangman in the year 1974 against a temporary labour requisition. It is also true that he was allotted a PF account number. His service being casual in nature, continued in the rolls with annual increase in the pay, deduction of PF amounts and other government dues as per rules. He was working as a CPC Gangman from 24.11.1973 but not 24.11.1978 as stated by the applicant. In medical examination he was found unfit to

hold the post of Gangman. The respondents submit that the applicant's contention that her husband was declared fit and suitable to be regularised as Chaukidar, Peon, Khalasi, Waterman on Platform, Malis, etc. is not correct. The husband of applicant did not make any request for regularisation of his service either. The medical certificate No. NA 702 dated 9.12.1980 issued to the applicant's husband has been produced by the respondent authorities. The submission made by the applicant that she had submitted a representation to the General Manager on 1.5.1998 is incorrect.

9. The rule position prescribes a procedure. As held by the Apex Court in the case of Union of India vs. Rabia Bikaner, no retiral benefits were available to the widow of a casual labour who has not been regularised till his death.

10. In accordance with the Railway Board's instructions, the eligible terminal benefits to the staff who die while holding the post with temporary status have to be paid within three months of the demise of the said employee. In the instant case, the eligible terminal benefits of the applicant's husband have been paid within three months of her husband's death. The applicant's husband could not be regularised as he was found medically unfit. On humanitarian considerations, however, the services of the applicant's husband were not terminated immediately on his having been found medically unfit in order to provide livelihood to the family. They have sought for dismissal of the O.A.

11. Heard the learned counsel on both sides.

The learned counsel for the applicant was requested to

produce proof, if any, to substantiate the submissions made in the application that the applicant's husband had been declared medically fit and found suitable to be

regularised in the post of Chaukidar, Peon, Khalasi,

Waterman on Platform and attached to Permanent Way Gangs,

Malis etc. on the face of the medical certificate produced by the respondents, bearing No.NA/702 dated 9.12.1980.

The learned counsel for the applicant submitted that

the widow of late Sri G. Sitaramulu was not in possession of any such certificate. He further submitted that when the

OA No.665/99 was instituted, the respondents had not yet

filed their reply statement and the O.A. came to be disposed

of at the admission stage itself relying on the Apex Court judgment.

However, he argued that from 1980 to 29.4.1995 when he

eventually died and his services had been utilised by the

railways. Taking this period into account, he submitted

that the respondent authorities ought to have regularised

the applicant's husband's services in the capacity in which

his services were being utilised.

12. The learned counsel for the respondents

submitted that the applicant's husband not having fulfilled

the conditions prescribed for regularisation of his services,

namely, the medical examination and recorded finding that

he was fit to be regularised and also regular absorption against

a sanctioned post, family pension cannot be granted as per

the existing rules. The terminal benefits available to

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the deceased employee, however, have been sanctioned within three months of his demise. As he has not undergone the medical standard test for his fitness, the prayer to regularise his services for the period prior to his demise on 29.4.1995 cannot be done.

13. The status of the applicant's husband at the time of his demise as emerging from the facts disclosed above is that he was a temporary status gangman/ casual mazdoor who had been found unfit in B-I category. referring to the decision of the Supreme Court in Ram Kumar vs. Union of India (1988 (1) SIR 679) the learned counsel for the applicant submitted that this was a case where the Administration has to be blamed for not having regularised the services of the applicant.

14. The applicant's husband did not challenge the medical certificate when he had been declared medically unfit in B-I category in 1980. The submission made in the application that he has been declared fit to hold the posts of Chaukidar, Peon, Khalasi, Waterman on Platform and attached to Permanent Way Gangs and Malis etc. is an erroneous submission. The pre-conditions for regularisation as prescribed under the rules warrant his being found medically fit. He cannot be declared to be medically fit at this distant time. Therefore, since the husband of

the applicant died as Casual labour with temporary status, the applicant is not entitled to the relief claimed in this O.A. This is in accordance with the judgment of the Apex Court in Union of India & others vs. Rabia Bikaner etc. (1997 (4) SCR 717).

15. In the above circumstances, the O.A. is dismissed. No order as to costs.

Bharati Ray
(BHARATI RAY)
MEMBER (J)

M.V. Natarajan
(M.V. NATARAJAN)
MEMBER (A)

Dated the 5 day of July, 2002.

DJ/

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S.I. 2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH : HYDERABAD

COPY TO:

1ST AND 2ND COURT

1. VICE CHAIRMAN
2. HMVN : MEMBER (ADMN.)
3. HSKA : MEMBER (ADMN.)
4. HON : MEMBER (JUDL.)
5. DEPUTY REGISTRAR (ADMN.)
6. SPARE
7. ADVOCATE
8. STANDING COUNSEL

TYPED BY
COMPILED BY

CHECKED BY
APPROVED BY

THE HON'BLE MR. M.V. NATARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR. S.K. AGRAWAL :
MEMBER (ADMN.)

THE HON'BLE MRS. BHARATI RAY :
MEMBER (JUDL.)

DATE OF ORDER 5/7/99

MA/CA/RA No.

IN

DA No. 605/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED

C.P. CLOSED

DISPOSED OF

DISPOSED OF WITH DIRECTIONS

DISPOSED OF AS WITHDRAWN

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED ACCORDINGLY

REJECTED

DISMISSED AS INFUNCTIOUS

DISMISSED FOR DEFAULT

NO ORDER AS TO COSTS

WITH COSTS.

Records/Posting/Notice/Scrutiny

AP
23-8-02