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

O.A. No.1274/99

DATE OF ORDER : 07-7-2000

Between :

Smt. Ayyamma w/o Late Adam. .. Applicant

A n d

1. General Manager,
(Representing UOI) S.C.Railway,
Rail Nilayam, Secunderabad-500 071.
2. Divisional Railway Manager,
South Central Railway,
Guntakal Division, Guntakal.
3. Senior Divisional Personnel Officer,
South Central Railway, Guntakal
Division, Guntakal. .. Respondents.

Counsel for Applicant : Mr. S. Ramakrishna Rao

Counsel for Respondents : Mr. C.V. Malla Reddy,
S.C. for Railways.

Coram :

The Honourable Mr. Justice D.H. Nasir, Vice-Chairman.

O R D E R.

Justice D.H. Nasir, VC :

1. The respondents are sought to be directed in this O.A. to grant family pension to the applicant consequent ^{upon} on the death of her husband who died on 1.8.1991 while he was working as APS Gangman.
2. The applicant's case in short is that her husband who was initially engaged as Casual labourer was granted temporary status and monthly scale of pay in the grade of Gangman with effect from 21.7.1969 and he was working under PWI/BG/Guntakal.

When permanent vacancies of Gangmen arose as on 31.12.1980, the name of the applicant's husband was included in the list of APS Gangmen eligible for empanelment and absorption against those vacancies. As per the rules, the persons included in the list for empanelment and absorption for any post are required to appear before the Screening Committee for assessment of suitability and it was incumbent on the part of the respondents to call for such candidates for the Screening test within a reasonable time. Further according to the applicant, the assessment of vacancies had been worked out as on 31.12.1980 and that any prudent man could visualise that the screening test would have been done within a reasonable time thereafter. But for the reasons best known to the respondents, the applicant's husband was called for the screening test after 2 years. But at that point of time the applicant's husband could not attend the screening test due to health reasons. Further according to the applicant, in a similar situation when one C. Narayana who was working as APS/ELR under the Traffic Inspector, Dharmavaram, was called for the screening test against the assessed vacancy as on 31.12.1987, was given the benefit of empanelment and was treated as deemed to have been absorbed with effect from 1.2.1989 and the benefit of compassionate appointment to his ward and family pension to his wife were granted on the basis of the deemed empanelment of the said C.Narayana. Further according to the applicant, the said C.Narayana who expired on 21.12.1989 was also not screened by the Screening Committee. In fact, according to the applicant, the said C.Narayana had only reported to the office and never appeared before the Screening Committee which was evident from the Memo No.G/P.564/I/Emp./APS/ELR/87 dated 16.5.1991. The deemed empanelment in his case was done posthumously when the widow of the deceased represented to various higher authorities for grant of family pension and compassionate appointment. On similar situation the applicant also made several representations but



they were not considered. The third respondent issued a Memo No.G/P.407/IV/PWI(BG)/GTL dated 20.8.1992 rejecting the case of the applicant on the ground that the husband of the applicant did not appear before the Screening Committee.

3. It is further urged by the applicant that her husband was undergoing treatment for his ill-health which prevented him from appearing before the Screening Committee on 22.12.1982 and 1.2.1983. However, further opportunity was not given to him to appear before the Screening Committee even though the procedure was in vogue to prepare empanelment every year.

4. According to the respondents, the ~~applicant's~~ husband late Sri Adam was initially engaged as a casual labourer on daily wages under Permanent Way Inspector (BG), Guntakal. Subsequently he was granted temporary status on completion of 180 days of service. He was irregular in performing his duties and was frequently absenting himself from duties. Further according to the respondents, the procedure in vogue in filling up Group "D" posts was that the casual labourer with temporary status who had put in more number of working days without absence shall be called for the screening test. The conduct of the screening test depended on the vacancies available in that Unit. Accordingly the applicant's husband was called for screening test on 22.12.1982, but he did not attend the screening test on that day. He was given one more opportunity to appear for the screening test on 1.2.1983, but this time also, the applicant did not appear for the screening test. He was in ~~fact~~, according to the respondents, absent from duties continuously. He also did not produce any medical certificate that he was sick during the relevant period and due to his continuous unauthorised absence his qualifying working days were reduced and ^{falling within the} therefore he was not/ zone of consideration for screening test and as such he was not



called for the screening test. His absent days were more than his working days. The respondents deny that the applicant's husband was intentionally omitted for empanelment. It was emphatically submitted by the learned Standing Counsel Mr. Malla Reddy for the respondents that the applicant had not been granted family pension as her husband expired while working as a casual labourer with temporary status only. It is further submitted by the respondents that the applicant has been appointed as a casual labourer on compassionate grounds and after completion ^{of} ~~120~~ days of continuous service, temporary status was granted to ~~him~~ and she was given monthly pay as per scales.

5. The learned Standing Counsel Mr. Malla Reddy ~~also~~ denied the allegation made by the applicant that late C.Narayana did not attend the screening test. He had attended the screening test, according to the learned Standing Counsel, on 13.6.1988; but the applicant's husband did not attend the screening test at any time and he was continuously remaining absent from duty.

6. On the question of eligibility of the husband of the applicant to be treated as a railway servant, the learned Standing Counsel Mr. Malla Reddy drew my attention to the definition of "railway servant" as provided in Clause (23) ~~of~~ of Section 3 of the Railway ~~Service~~ (Pension) Rules, 1993 which reads as under :

"(23) "railway servant" means 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;"

It was evident from the above definition of "railway servant" as submitted by the learned Standing Counsel for the respondents, ^{that} the term "railway servant" did not include "casual labourer".

7. The Madras Bench of this Tribunal in O.A.No.82/90 decided on 28.6.1999 reported in 1992 (2) SLJ (CAT) 272 (O.)

Samayamuthu v. Union of India and others) took into consideration in paragraph 6 of its judgment the decision of Kerala Bench in P. Narayana v. Union of India and others (1989(9) ATC 95) in which the Kerala Bench had taken a view that temporary service without interruption till confirmation, would count for qualifying service. In that case also the applicant was a casual labourer and later on was absorbed as a Gangman only. The relevant extract reads as follows :

" We have considered carefully the contentions advanced by the counsel for the parties. True, a railway servant does not qualify for pension unless he holds a substantive office on a permanent establishment on the date of his retirement, but Rule 4 of the Pension Rules makes it clear that temporary or officiating service rendered by the Govt. servant without interruption by confirmation in the same or another post shall count in full as qualifying service. From the service register of the ~~Applicant~~, produced during the hearing it is noticed that the applicant, joined as Lascar on 1.8.1952 and was rendering service uninterruptedly up to 1.11.1959 when he was absorbed in the post of Gangman. There is no entry to justify the inference that the service of the applicant was not continuous during the aforesaid period. We are, therefore, satisfied that the pensionary benefits due to the applicant should be reckoned by the respondents from 1.8.1952 when he joined service as Lascar and not from 1.1.1959 when he was absorbed in the permanent post of Gangman."

8. The Madras Bench after taking note of the above observations made by the Kerala Bench expressed ^a view in paragraph-7 of the decision observed that the above decision of Kerala Bench applied on all counts to that case and held that the claim of the applicant was in order and the application was allowed and the respondents were directed to count the entire period of absence of the applicant from 26.7.1976 to 13.12.1988 as qualifying service for granting pensionary benefits and grant pension and arrears due to the ~~Applicant~~ on that basis. ^{to} therefore,

9. The Madras Bench ~~had~~ held that the claim of the applicant was in order which could be gathered from the facts narrated in the first paragraph of that judgment which ~~is reproduced~~ below :

(A)

".... The applicant was empanelled for the post of Gangman on 31.12.1983. He joined as Gangman on 27.1.1984 and he was confirmed in the said post after a period of one year, i.e. on 27.1.1985. The applicant retired from service on attaining the age of superannuation on 31.12.1988. Since the respondents did not grant any Pensionary Benefit to the applicant, the applicant has come before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 and prays for a direction to be given to the respondents to count the entire service from 26.7.1976, when he was given temporary status till 31.12.1988, the date of his retirement as qualifying service for the grant of pension on that basis. ..."

10. The above decision of the Madras Bench makes it abundantly clear that the deceased husband of the applicant was entitled to receive pensionary benefits by treating the entire service from the date of his joining as qualifying service under the Pension Rules.

11. The learned Standing Counsel for the respondents also invited my attention to paragraph 1501 of the Indian Railway Establishment Manual, Volume-I in support of his contention that the applicant was not covered within the definition of "railway servant". The said paragraph 1501 is reproduced below :

" 1501 (i) Temporary Railway Servants
Definition - 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 RailwayBoard. The term does not include "casual labour" including 'casual labour with temporary status', a "contract" or "part-time"employee or an"apprentice"."

11. On closely examining the status of the applicant's husband it is found that the respondents have raised a contention in the concluding part of para 5 of the reply affidavit that the applicant had not been granted family pension as her husband expired as a casual labourer with temporary status only. In para 7 of the reply affidavit it is stated that the casual labour with temporary status who have put in more number of working days were required to be called to attend the screening test. It is therefore evident from this statement made by the respondents in their reply affidavit that the applicant was not a mere casual labourer. He was a casual labourer with temporary status. If that

is so, the restricted scope of "railway servant" in Clause (23) of Rule 3 of the Railway Service (Pension) Rules, 1993 cannot be applied to the case of the applicant's husband. A casual labourer with "temporary status" is not excluded from the purview of the definition of "railway servant" as given in Clause (23) of Rule 3 of the Pension Rules. In paragraph 1501 of the REM, Volume-I it is provided that the term does not include a casual labourer including the casual labourer with temporary status. However, since no deviation could be made from the substantive provision of law being Clause (23) of Rule 3 of the Railway Service (Pension) Rules, 1993, that a casual labourer with "temporary status" is not excluded, and keeping in view the observations made in the cases before the Kerala Bench and Madras Bench referred to above, I believe that it would not be in the interest of justice to exclude the applicant's husband from the purview of the Railway Service (Pension) Rules, 1993. I am firmly of the opinion that the applicant's husband could not lawfully be excluded from the benefit of pension. He stood included within the meaning of "railway servant" as given in the Pension Rules and his full length of service from the date when temporary status was conferred on him is eligible for being treated as qualifying service for pension.

13. The next point urged by the respondents in denying the pensionary benefits to the deceased employee and family pension to the applicant is to the effect that the applicant had not successfully gone through the screening test and he was not competent to be granted any Group "D" post because, according to the respondents, casual labourers with temporary status who had put in more number of working days without absence were eligible to be called for the screening test and that the conduct of the screening test depended on the vacancies available in the

concerned Unit. This ground, however, does not create any disability on the applicant's right to be awarded the family pension. As already observed earlier, by virtue of the fact that the applicant's ^{husband} was treated as casual labourer with temporary status, he was not excluded from being considered as a railway servant and therefore, as already held above, pensionary benefits could not have been denied to him. Not having successfully gone through the screening test is not a disqualification for pension. It can at best come in the way of regularisation and/or subsequent promotion but not in the right of earning pension. Indeed, if the deceased employee was not regular in attendance and used to frequently remain absent from duty unauthorisedly, such period of his unauthorised absence could indeed be lawfully deducted from the qualifying service for pension. But the mere fact that he had not appeared for the screening test or that he was not granted any Group "D" post does not disqualify him from claiming pensionary benefits, keeping in view the views expressed in the decisions of Kerala and Madras Benches as discussed above.

14. This O.A. therefore deserves to be allowed and it is hereby allowed. The respondents are directed to work out the pensionary benefits which the applicant's husband would have received by virtue of this order with effect from the date on which temporary status was conferred on him, and the consequent family pension to which the applicant becomes entitled to, be worked out and paid within three months from the date of receipt of a copy of this order. The respondents, however, shall not be precluded from excluding the period of unauthorised absence, if any, ^{from} of the applicant's husband from qualifying service and the consequent pensionary benefits.

The O.A. is accordingly allowed. No costs.

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

Dated the 07th day of July, 2000.