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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH JAIPUR

O.A. No. 56/1994 : Date of order: 24.8.95

Smt. Gyan Kumari : Applicant

Vs.

Union of India through General
Manager, Western Railway, Church
Gate, Bombay- 20.

2. The Deputy C.M.E.(CSN)
Western Railway, Ajmer Division,
Ajmer.

: Respondents

Mr. S.K.Jain : For the applicant
Mr. M. Rafiq : For the respondents

CORAM:

HON'BLE MR.O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE O.P.SHARMA, MEMBER (ADMINISTRATIVE))

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Smt. Gyan Kumari has prayed that the period of working as Hot Weather Water-woman from May 1976 to May 1981 be counted for pensionary benefits by declaring her appointment as a regular one on compassionate grounds for the purpose of pension or in the alternative, the above period being a period of temporary service be counted for the purpose of pensionary benefits and for this purpose order dated 4.12.1991 (Annexure A-1) be quashed and the applicant be declared to be entitled to pensionary benefits. She has further prayed that she may be allowed arrears of pension with interest @ 18% p.a.

2. The facts of the case as stated by the applicant are that on the death of her husband Shri Chhuttan Lal, a railway servant, who died on 4.12.1973, the

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applicant was appointed on compassionate grounds as Hot Weather Water-woman on 6.5.1976. She worked for 133 days during 1976 and in the subsequent years also she worked for different periods depending upon the work being available as seen from Annexure A-2 dated 16.12.1982 which shows that she worked for a total period of 909 days between 1976 and 1981. She was given regular appointment vide order dated 7.5.1981 (Annexure A-3). When she was given appointment on compassionate grounds, the respondents were not justified in giving her a temporary job. The applicant retired from service on 31.1.1989. She was not granted pension on the ground that she had not completed 10 years qualifying service. She moved an application before the D.R.M., Western Railway Ajmer for grant of pension and the above letter was referred to the office of the Dy.C.M.E.(C&N) Ajmer for allowing the benefit. However there was further correspondence in this regard but the period of service prior to regular appointment has not been counted towards working out the qualifying period for pension. Her representation dated 21.8.1990 for grant of pensionary benefits effectively remains undisposed of still. She filed an Original Application No.501/92 on 24.8.1992 but when the matter came up for consideration before the Tribunal on 15.9.1993, the applicant withdrew the O.A. with liberty to file a fresh application (Annexure A-5). The earlier OA was withdrawn because there was no prayer for treating the period from 1976 to 1981 as qualifying for pensionary benefits which has to be so considered under the Railway Board Circular No.33/95. Since the appointment on compassionate grounds

can only be given on a regular and permanent basis, the period from 1976 to 1981 should be counted as regular service for the purpose of pension. Further since the applicant had worked for more than 120 days from 6.5.1976 to 14.9.1976, she had acquired a temporary status. The Railway Board circular dated 25.1.1985 provides that casual water-man employee in the summer season should be eligible for temporary status only on completion of 120 days continuous employment and that for the purpose of counting continuous service, the total number of days of various spells of engagement as Casual Waterman will be aggregated provided the gap between two spells has been caused by season being over etc. On the above basis, the Tribunal has already given benefit of previous service for working out the period of qualifying service for pension purposes.

3. The respondents in the reply have stated that the applicant had not completed 10 years qualifying service under respondent No.2 i.e. the Deputy CME (C&N) Western Railway, Ajmer. The applicant had never worked as Hot Weather waterwoman under respondent No.2 who had given appointment to the applicant on compassionate grounds. Because she has not completed 10 years qualifying service under respondent No.2 she is not entitled to pension as per para 102 of Manual of Railway Pension Rules, 1950. Since service from 6.5.1976 to 7.5.1981 was not rendered within the jurisdiction of respondent No.2, he is not empowered to grant pensionary benefits to the applicant. The applicant's qualifying

service of 10 ten years fallshort by 2 years, 3 months and 7 days. Since the applicant had not been granted a temporary status for the period of her working prior to her regularisation, the said period could not be counted towards the qualifying period for pensionary benefits. Also she had been appointed for the period from 1976 to 1981 'at the market rate' in Hot Weather. Orders granting regular scale of pay to those working in Hot Weather were received in 1985, hence the applicant cannot be extended that benefit. Since the applicant was not a casual labour but was engaged at the market rate, she could not have been granted temporary status. The Railway Board circular No.33/85 could not have a retrospective effect when it was issued in 1985.

4. The applicant has also filed a rejoinder to the reply, which has been perused.

5. During the arguments learned counsel for the applicant drew our attention to provisions of Para 2001 of Indian Railway Establishment Manual (IREM), Volume-II 1990 Edition which states that casual labour is that labour whose employment is intermittent, sporadic or extends over short periods or is continued from one work to another. This para further states that such of those casual labours engaged on open line work, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary i.e. given temporary status on completion of 120 days of continuous employment. Since the applicant had worked for 120 days even during the year 1976 as per Annexure R-2, she was entitled to grant of temporary status by operation of rule incorporated in this paragraph. Therefore her

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services from 1976 to 1981 prior to her regularisation has to be treated as service rendered as an holder of temporary status and this period has to be counted for working out the qualifying period of service for pensionary benefits. He also drew our attention to the order passed by the Madras bench of the Tribunal in the case of C.Samaya Mutu Vs. Union of India and others, 1992(2)SLJ (CAT) 272 in which benefit of temporary services before regularisation was granted for eligibility to pension.

6. The learned counsel for the respondents stated that the Circular No.33/1985 relied upon by the applicant which provided that casual waterman employed in summer season should be eligible for temporary status on completion of 120 days of continuous employment has a prospective application and therefore cannot cover the case of the applicant who was first engaged in the year 1976. He added that the applicant was not a casual labour but she was engaged at the market rate and therefore she was not eligible for grant of temporary status. Also according to him the temporary status has to be conferred on an employee and it cannot be assumed to have been granted automatically on completion of 120 days service.

7. We have heard the learned counsel for the parties and have also gone through the records and judgment cited before us. Para 2001 of the IPFM Volume-II makes it quite clear that even a labour whose employment is intermittent, sporadic or extends over short periods has to be treated as casual labour. Further as per the provisions of this para, on completion of 120 days of continuous employment such labour has to be granted temporary status. In view

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of the fact that the applicant had completed 120 days service in 1976 she has to be considered as having become eligible for grant of temporary status. Subsequently, she worked for different spells uptill 1981 and was regularised on 7.5.1981 (Annexure A-3). Therefore, we are of the view that the applicant had become eligible for temporary status in 1976 and merely because no order was passed formally granting temporary status to her, she cannot be denied the benefit of service as temporary status holder for the purpose of determining her eligibility to pension. We have not been able to understand what is the meaning of the expression used by the respondents that the applicant was not a casual labour but had been paid at the market rate. She was granted appointment on compassionate grounds and even if she was appointed as Hot Weather Waterwoman, in our view she has to be treated at least as a casual labour. The circular of 1985 relied upon by the applicant may have a prospective effect but the provisions of Para 2001 of IREM Volume-II seem to be clearly applicable to the applicant's case.

6. Further according to the provisions of para 2005 of IREM Volume-II casual labour shall be eligible to count only half the period of service rendered after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits and this benefit will be admissible only after absorption in regular employment. The applicant had been absorbed in the regular employment in 1981 and she retired from service as a regular employee on 31.1.1989.

Therefore half of the period of service rendered by her is as one who is deemed to have been granted temporary status

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in 1976 shall be taken into account for working out her eligibility to pension. She completed 120 days service in the beginning of September 1976. Half the period of service after that till the date of her absorption in regular employment shall be considered for working out the qualifying period of service for eligibility to pension. The respondents are directed to take into account the period as aforesaid for working out the qualifying period for her eligibility to pension and to grant her pensionary benefits if admissible on that basis. If still there is any short fall in arriving at the qualifying period of 10 years for eligibility to pension, it would be for the respondents to consider relaxing the requirement to that extent but we cannot give any specific direction in this regard.

9. O.A. stands disposed of with no order as to the costs.



(RATTAN PRAKASH)
MEMBER (J)



(C.P. SHARMA)
MEMBER (A)