

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

7.4.2004

Mr. Nand Kishore, Counsel for the applicant.  
Mr. Shailesh Prakash Shama, Counsel for the respondents.

The OA is disposed of by a separate order  
for the reasons recorded therein.

(M.K. MISHRA)  
MEMBER (A)

(J.K. KAUSHIK)  
MEMBER (J)

AMR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA 233/2003

DATE OF ORDER : 7.4.2003

Smt. Santosh wife of Late Shri Ram Niwas son of Shri Sheotaj Singh, aged about 39 years, Hospital Attendant, working in Divisional Hospital of North Western Railway, Jaipur. Resident of 122 T/W Railway Loco Colony, Jaipur.

..... Applicant

VERSUS

1. Union of India through General Manager, North Western Railway, Hassanpura Road, Jaipur.
2. Chief Administrative Officer (Construction), North Western Railway, Hassanpura Road, Jaipur.
3. Divisional Rail Manager, North Western Railway, Power House Road, Jaipur.

..... Respondents

Mr. Nand Kishore, Counsel for the applicant.

Mr. Shailesh Prakash Shama, Counsel for the respondents.

CORAM:

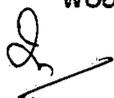
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

Hon'ble Mr. M.K. Mishra, Member (Administrative)

ORDER

PER HON'BLE MR. J.K. KAUSHIK

A very short controversy comes up for adjudication in this case and we are required to answer the question as to whether the wide of a Casual Labour in the Railways who has been granted temporary status would be entitled for the family pension or not.



2. The matter comes up for admission and the pleadings are complete. With the consent of the learned counsel for both the parties, we proposed to dispose of the same at the stage of admission. We have considered the pleadings and records of this case.

3. Shorn of superfluties, the material facts, as extracted from the pleadings of the parties, are that the applicant is the widow of one Shri Ram Niwas, who was employed on the post of Helper. Said Ram Niwas was initially engaged on 8.11.1979 as Casual Labour. He was granted temporary status w.e.f. 1.1.1983. He was contributing towards the PF Account. Unfortunately, Shri Ram Niwas expired on 29.12.1988 while on active service. In the year 1986, a list was prepared for screening the Casual Labour in order to regularise them against the Group 'D' post. The applicant i.e. the widow of Late Shri Ram Niwas has been granted appointment on compassionate grounds as a substitute but she has not been granted family pension. A representation was made in the matter vide Annexure A/4 and the same has been rejected by the respondents on the ground that as per the rules, the Casual Labour temporary status holders are not entitled for pension vide communication dated 23.4.2003. The pleadings of the applicant contain certain judgements and other communication. It has been averred in the reply that no family pension is payable in cases of Casual Labour temporary status holder employee. The sole representation of the applicant dated 5.3.2003 has been duly considered and the same has been turned down vide communication dated 23.4.2003. As per Pension Rules, the applicant is not entitled for the family pension. The OA deserves dismissal.

4. A short rejoinder has been filed controverting the facts and grounds taken in the reply. The rejoinder also contains certain judgements in support of the contention of the applicant.

5. Both the learned counsel for the parties have reiterated the pleadings. The learned counsel for the applicant has submitted that

*Dr*

the applicant's husband was granted temporary status in view of the judgement in Inder Pal's case 1985(2)SCC 648. Since the husband of the applicant was a temporary status holder, the case of the applicant is covered by judgement of the co-ordinate Bench of the Tribunal at Ahmedabad Bench in Smt. Vallam Badia vs. UOI & Others reported in 2003(2) SLJ CAT 271, which is filed at Page No. 45 of the Paper Book. He has also submitted that the applicant has fulfilled all the eligibility condition, required for the grant of family pension but it has been denied without any cogent reason.

6. Per contra, learned counsel for the respondents has vehemently opposed the contention raised by the learned counsel for the applicant. He has endeavoured to persuade us that the judgement which was delivered in Vallam Badia's case (Supra) is distinguishable on facts inasmuch as in that case, the deceased employee had worked for a longer time and that was a reason for allowing the family pension but in the instant case, the applicant has worked for a period of five years and eleven months. He has also submitted that the Apex Court in Union of India & Others vs. Rabia Bikaner & Others 1997 SCC (L&S) 1524 = 1998(1) SLJ 181 (SC) has held that family pension cannot be granted to a temporary status casual labour. We also permitted a Railway representative, Mr. K.C. Meena, CLA, who has been very anxious to help us in the matter. Mr. Meena has submitted that the benefit of the family pension cannot be given to a temporary status casual employee and even the pensionary rules are not applicable. He tried to reiterate the defence of respondents as set out in the reply. However, nothing new was brought to our notice.

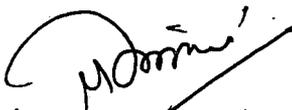
7. As regards the preliminary objection regarding limitation, it is now well settled that pensionary benefits are recurring cause of action. Therefore, objection of limitation cannot be sustained and stands repelled. We, therefore, would advert to facts and examine the case on merits.

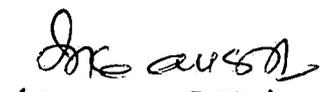


8. We have considered the rival contentions raised on behalf of both the parties. We find the controversy involved herein has been exhaustively dealt with in case of Vallam Badia (Supra) by a co-ordinate Bench of this Tribunal at Ahmedabad in which one of us, Mr. J.K. Kaushik, was party to the judgement. ~~And~~ the issue does not remain res-integra. The case of Rabia (Supra) being relied upon by the learned counsel for the respondents has also been taken into account. The relevant rules have also been extensively dealt there and the primary question involved in this case has been answered in affirmative. <sup>in Vallam Badia's case</sup> The same has been made part of the pleadings and placed at Page No. 45 of the Paper Book. We find hardly any necessity of repeating the discussions which may make this order bulky; rather we treat the same as part of this judgement. It may also be noted that the said judgement has already been affirmed by a Division Bench of Hon'ble High Court of Gujarat in Special Leave Appeal Nos. 12456/2003, 75/2003, 801/2003, 939/2003 and 622/2003; Union of India vs. Shanti Devi, Ramawat Jakri & Others decided on 21.7.2003. We also take judicial note of the fact. This very Bench of the Tribunal has already followed the case of Smt. Vallam Badia in case of Ram Kanya vs. Union of India, OA No. 315/2001 decided on 20.11.2003 in which one of us (Mr. J.K. Kaushik) was a party to the judgement. In this view, we are refraining into entering into the elaborating discussion. While we have no hesitation in following the same, we hasten to add this since the aforesaid judgement has been affirmed by a Division Bench of Hon'ble High Court of Gujarat, we are <sup>also</sup> bound to follow the same.



9. In view of what has been said and discussed above, we find ample force in the OA and the same stands allowed accordingly. The respondents are directed to grant the family pension to the applicant within a period of three months from the date of receipt of a copy of this order. In case the family pension is not paid within the specified period i.e. within the period of three months, the respondents shall be liable to pay interest @ 8% per annum after the expiry of the said specified period. In the facts and circumstances of the case, there shall be no order as to costs.

  
(M.K. MISHRA)  
MEMBER (A)

  
(J.K. KAUSHIK)  
MEMBER (J)

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