

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, the 28th day of February, 2005

ORIGINAL APPLICATION No.432/2003

CORAM:

HON'BLE MR. V.K.MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

Mari Muthu
w/o Muthu Swamy,
aged about 40 years,
Gangman under C.P.W.I. (South),
North Western Railway, Jaipur
residing at Hutment, Loco Colony,
Jaipur.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
Northern-Western Railway,
Hasanpura Road, Jaipur.
2. Chief Administrative Officer (Construction),
North Western Railway,
Hasanpura Road, Jaipur.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant is widow of late Shri Muthu Swamy,
who died on 12.9.1991. In this OA, she has prayed

64

that she is entitled to the family pension from the date her husband died i.e. from 12.9.91 with all consequential benefits and further prayed that the respondents be directed to pay arrears with interest at the rate of 12% from the date it was due to be paid to her. Other prayer made by the applicant in this OA is that the husband of the applicant be deemed to be regularized w.e.f. the date any junior to the deceased in the seniority list was regularized.

1.1 At the outset, it may be stated that the applicant has not laid down any foundation as to when junior to the husband of the applicant was regularized by the respondents. As such, no relief can be granted on this account. Further, the learned counsel for the applicant has also not made any submission in that behalf. As such, no finding on this point is required and the question which requires our consideration is regarding grant of family pension to the applicant.

1.2 Now let us notice the relevant facts. The case as set out by the applicant in this OA is that the husband of the applicant was initially engaged as project casual labour by the railway administration on 3.7.1983 and he was treated as temporary w.e.f. 8.7.84 in terms of Railway Board's letter dated 11.9.1986 (Ann.A6) as is clear from letter dated 3.7.1987 (Ann.A1). It is further stated that the deceased husband of the applicant worked for 8 years, two

16/

months and 17 days in Group 'D' post before his death on 12.9.91. Since husband of the applicant has worked for more than one year before his death and he was already treated temporary vide Ann.A1, as such the applicant is entitled for family pension. It is further stated that the applicant is also entitled for family pension as per provisions of para 2511 of the Indian Railway Establishment Manual (IREM) Clause (a). The applicant has also placed reliance on Rule 18 of the Railway Service (Pension) Rules, 1993 which stipulates that in the event of death in harness of a temporary railway servant, his family will be entitled for family pension and death gratuity on the same scale as admissible to the families of permanent railway servants under these rules. It is on these basis that the applicant has filed this OA thereby praying for the aforesaid reliefs.

2. The respondents have filed reply. In the reply, the respondents have taken objection of limitation, inasmuch as, death of the husband of the applicant took place on 12.9.91 whereas the present OA has been filed in the year 2003. It is further stated that the repeated representations from 1995 to 1999 are of no relevance keeping in view the statutory provisions as provided under Section 20 read with Section 21 of the Administrative Tribunals Act, 1985.

3. The applicant has filed rejoinder in which it has been stated that denial of grant/sanction of pension is continuous cause of action and as such limitation does not debar the claim of the applicant and also placed reliance on Rule 75(2) (a) and (b) of Family Pension Scheme for Railway Servants, 1964, which stipulates that railways servants who had died after completion of one year's continuous servant or before completion of one year's continuous service provided the deceased railway servant concerned immediately prior to his appointment was examined by the appropriate medical authority and declared fit by that authority for railway service shall also be entitled for family pension.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 In this case the question which requires our consideration is whether employees who were engaged as project casual labour by the railway administration and has not been absorbed on regular/ temporary/ permanent posts and died before such absorption, their family members are entitled to family pension simply because they were treated as temporary (temporary status) on completion of 360 days of continuous employment in terms of railway Board letter dated 11.9.86 (Ann.A6) and also in terms of para 2511 of the

4d

IREM on which reliance has been placed by the learned counsel for the applicant.

4.2 Before advertting to this issues, it may be relevant to notice relevant provisions of IREM/orders and instructions issued by the Railway Board in order to decide the matter in controversy.

4.2.1 In sub-para (a) of Para 2501 of the Indian Railway Establishment Manual (hereinafter referred to as 'the Manual') as it stood at the relevant time, the expression 'Casual Labour' was defined in these terms-

"Casual Labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the condition applicable to permanent and temporary staff do not apply to such labour."

4.2.2 In sub-para (b) of Para 2501 of the Manual casual labour was divided into three categories, namely, (i) staff paid from contingencies except those retained for more than six months continuously, known as open casual labour, (ii) labour on projects, irrespective of duration, known as project casual labour, and (iii) seasonal labour who are sanctioned for specific works of less than six months duration. Persons falling in category (i) who continued to do the same work or other work of the same type for more than six months without a break were to be treated as

16

temporary after the expiry of the period of six months of continuous employment. The said period of six-month was subsequently reduced to 120 days. Since the period of service of such casual labour, after their attaining temporary status on completion of 120 days of continuous service was not counted as qualifying service for pensionary benefits and there was a demand for counting of that period of service for that purpose, the Railway Board, by order dated October 14, 1980, took the following decision -

"As a result of the representations from the recognized labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e. other than casual labour employed on projects), after their attainment of temporary status on completion of 120 days continuous service, should be counted as qualifying service for pensionary benefits if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Dept. of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments, contribute to P.F. etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees before they are regularly appointed should be conceded to them as provided in the Ministry of Finance O.M.No.F.12(1)-EV/768 dated 14th May, 1968, which is in the following terms.

Yours

The concession of counting half of the above service as qualifying for pensionary benefits, as per the O.M. of 14th May, 1968, would be made applicable to casual labour on the railways who have attained temporary status. The weightage for the past service would be limited from 1.1.1961 in terms of condition of the O.M. ibid. Past cases will not be re-opened.

2. Daily rated casual labour or labour employed on projects will not however, be brought under the purview of the aforesaid orders."

4.2.3 Project Casual Labour were left out from the ambit of this order because there was no provision for grant of temporary status to Project Casual Labour. Project Casual Labour had a grievance that though very large in number, they had no security of service and no protection whatsoever. The said grievance of the Project Casual Labour was raised before the Apex Court in Writ Petitions Nos. 147, 320-69, 459, 4335 of 1985 etc. filed under Article 32 of the Constitution (Inderpal Yadav vs. UOI). During the pendency of the said writ petitions before the Apex Court, the Railway Ministry framed a scheme making provision for grant of temporary status to Project Casual Labour on completion of 360 days of continuous service. The said scheme provided as follows:-

"5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as project casual labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:-

462

(a) These will cover:

- (i) Casual Labour on project who are in service as on 1.1.84; and
- (ii) Casual labour on projects who, though not in service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future (A detailed letter regarding this group follows).

(b) The decision should be implemented in phases according to the schedule given below:-

Length of service (i.e. continuous Employment)	Date from which may be treated as temporary	Date by which decision should be implemented
i) Those who have completed five years of service as on 1.1.84	1.1.1984	31.12.1984
ii) Those who have completed three years but less than five years of service as on 1.1.1984	1.1.1985	31.12.1985
iii) Those who have completed 360 days but less than three years of service on 1.1.1984	1.1.1986	31.12.1986
iv) Those who completed 360 days after 1.1.1984	1.1.1987 or the date which 360 days are completed whichever is later.	3.3.1987

4.2.4 By the judgment dated April 18, 1985 in Inder Pal Yadav vs. Union of India (1985) 3 SCR 837, the

Apex Court approved the said scheme but modified the date 1.1.1984 in para 5.1(a)(i) to 1.1.1981 and as a result there was consequent re-scheduling in absorption from that date onwards. The Apex Court, while accepting the scheme with the modification gave a direction that it must be implemented by re-casting the stage consistent with the change in the date as directed. As per the aforesaid scheme temporary status was conferred on Project casual Labour with effect from the dates specified therein and on the basis of such temporary status they were also extended the benefit of the order dated October 14, 1980 and the temporary service after attaining the temporary status was counted for pension and other retrieval benefits.

4.3 At this stage, it will be useful to quota para 3 of the letter of the Railway Board dated 11.9.1986 which was issued keeping in view the directions given by the Hon'ble Supreme Court in the case of Inder Pal yadav, whereby earlier para 5.1 of the scheme was substituted by the following:

"3.....

"5.1 As a result of such deliberation, The Ministry of Railways have now decided in principle that casual labour employed on projects (also know as 'project casual labour) may be treated as temporary (temporary status) on completion of 360 days of continuous employment. The ministry have decided further as under:

(a) These orders will cover:

44

(i) Casual labour on projects who were in service as on 1.1.1981; and

(ii) Casual labour on projects, who though not in service on 1.1.81, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

(b) The decision should be implemented in a phased manner according to schedule given below:

Length of service (I,e, continuous employ- ment)	Date from which may treated as temporary (temporary status)
--	---

(i) Those who have completed Five years of service As on 1.1.1981	1.1.1981
(ii) Those who have completed three years but less than five years of service as on 1.1.1981	1.1.1982
(iii) Those who have completed 360 days but less than three years of service as on 1.1.1981	1.1.1983
(iv) Those who complete 360 days after 1.1.1981	1.1.1984 or the date on which 360 days are completed whichever is later"

4.4 The applicant has also relied on this letter which has been annexed by her as Ann.A6 with the OA. The husband of the applicant was also treated as temporary w.e.f. 8.7.1984 in terms of the aforesaid letter as can be seen from order dated 19.6.1987/

43

3.7.1987 (Ann.A1). On the basis of this Railway board circular the learned counsel for the applicant argued that though the husband of the applicant was initially engaged as Project Casual Labour by the railway administration but vide letter dated 8.7.1984 issued on the basis of the Railway Board letter dated 11.9.86 (Ann.A6) he was treated as temporary and thus, the family is entitled to the family pension and there was no necessity to pass separate order absorbing the applicant on regular temporary/permanent post.

4.5 According to us, the submission made by the learned counsel for the applicant cannot be accepted in view of what has been stated above. As can be seen from para 5.1 of the circular dated 11.9.86 on the basis of which the applicant was also treated temporary, it is clear that the casual labour employed on projects has to be treated as temporary (temporary status) on completion of 360 days of continuous employment from the date mentioned in the said circular in a phased manner in terms of para 5 1(b)(iv) on or after 1.1.84 or the date on which 360 days were completed whichever is later and thus the husband of the applicant was conferred temporary status w.e.f. 8.7.84. It was in that context that the word 'temporary' was mentioned in Ann.A1 but in fact the husband of the applicant was conferred temporary status w.e.f. 8.7.84 as can be seen from Para 5.1 of the modified scheme issued pursuant to Inder Pal

44

Yadav's case. Such project casual labourers who have been conferred temporary status were also extended the benefit of order dated October 14, 1980 and temporary service after attaining the temporary status was counted for pension and other retiral benefits if the same is followed by absorption . Thus, we are of the view that grant of temporary status to the husband of the applicant in terms of para 5.1 of the Railway Board Circular ,dated 11.9.86 (Ann.A6) cannot be treated that the husband of the applicant has been appointed on temporary basis against temporary/regular post and thus has acquired the status of railway servant and was a member of the railway service and held a post under the administrative control of the Railway Board. As already stated above, it may be stated that in Railways a distinction has to be made between 'temporary status' and 'temporary employment'. Open line casual labours who were treated as temporary after expiry of six months of continuous employment under para 2501(b) (i) of the Manual were only entitled to the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Manual. But such temporary status did not entitle the casual labour to the benefit of the period of service rendered after attaining temporary status being treated as qualifying service for the purpose of retiral benefits. The service after absorption on a regular/temporary/permanent post after requisite

46

selection only could be taken into consideration.

Provision in this regard was contained in Para 2511 of the Manual which provided as follows:-

"(a) Casual Labour treated as temporary are entitled to all the rights and privileges admissible to temporary railways servants as laid down in chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service prior to the date of completion of six months continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. such casual labourers will also be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

(b) Such of casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected to the selection through regular Selection Boards for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchange. Such of them who join as Casual Labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for Class IV post to the extent of their total service which may be either continuous or in broken period.

(c) It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scale of pay, increments etc. Service prior to absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for pensionary benefits."

4.6 The period of service rendered after attainment of temporary status but before absorption on regular temporary/permanent post was taken into account for the purpose of pensionary benefits for the first time

100

by order dated October 14, 1980 whereby half of the period of service after attaining of temporary status was to be counted for the purpose of qualifying service for pensionary benefits. As already stated above, the benefit of the order dated October 14, 1980 which has been reproduced in earlier part of the order, specifically states that benefit of service rendered as daily rated casual labour or labour employed on projects will not, however, be brought under the purview of aforesaid order (para 2). However, benefit of said order was made applicable to casual labourers or labour employed on project pursuant to order passed in Inderpal Yadav's case if the same is followed by their absorption in service as regular railway employee. As such, according to us, mere treating the husband of the applicant as temporary in terms of Railway Board Circular dated 11.9.1986 will not ip-so-facto entitle the employee to count the said period for the purpose of pensionary benefits so long as the same is not followed by his absorption in service as regular railway employee in terms of Railway Board order dated October 14, 1980. The right and privileges which are applicable to the Government servant who are treated as temporary are limited one as enumerated in para 2511 (a) of the Manual which has been reproduced in the earlier part of the judgment. From clause (b) of the said para, it is clear that such casual labours who acquired

46

temporary status will not, however, be brought on the temporary establishments unless they are selected through the regular selection board for class IV post. In terms of Clause (c) of the said para it is further stipulated that it is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scale of pay, increments etc. Service prior to absorption against a regular temporary/permanent post after requisite selection will, however, nor constitute as qualifying service for pensionary benefits though subsequently in terms of Railway Board order dated October 14, 1980 (which was also made applicable to labourers employed on projects) the Ministry of Railways has decided with the approval of the President that the benefit of half of the period of such service rendered by them as temporary employees, if the same is followed by regular absorption in service as regular railway employee, should be counted as qualifying service for the purpose of qualifying service for the purpose of pensionary benefits. Thus, we are of the firm view that conferment of temporary (temporary status) to the husband of the applicant in terms of Railway Board circular dated 11.9.86 cannot be construed that the husband of the applicant has been given temporary employment in the railways and he has been absorbed on regular temporary/permanent post. In fact, husband of

the applicant was a casual labour treated as temporary with the added rights and privileges as mentioned in para 2511 of the IREM whereby such employees were conferred the benefit like regular scale of pay, increments, carry forward of leave on their credit to the new post on absorption in regular service, but admittedly such temporary appointment cannot be treated as regular appointment against regular temporary/permanent post as is clear from clause (b) and (c) of the said para whereby it has been stipulated that such employees cannot be brought to the permanent establishment unless they are selected through regular Selection Board in class IV staff and also that conferment of attendant benefits like regular scale of pay, increments etc. can be given without creating a temporary post. In the instant case, the husband of the applicant was not absorbed against any temporary/permanent post before his death, and therefore, the applicant is not entitled to family pension. In this behalf, it will also be useful to quote decision of the Division Bench of the Rajasthan High Court in D.B..Civil Writ Petition No.2882/1998, Union of India vs. Smt. Laxmi Bai whereby the Hon'ble High Court while relying upon the decision in the case of Union of India and ors. vs. Rabia Bikaner and Ors, 1997 SCC (L&S) 152 and distinguishing the case of Prabhavati Devi vs. Union of India and ors. {1997 (6) SCC 5801] has made the following observations:-



"The facts in the case of Prabhavati are that husband of Prabhavati Devi was screened and was also appointed against regular vacancy, therefore, Prabhavati wife of Bipin Kumar Rai in that case was entitled for family pension.

Here in case in hand, the facts are not in dispute that the husband of the respondent was not screened. He expired in 1975 and in the comparable cases of the co-workers Bhima, Gulab and Nazir Mohammed, they were screened first time in 1977 and on that date the husband of the respondent was no more in this world. No evidence has been placed on record that he has been screened, therefore, in our view the Tribunal has committed error in allowing the family pension, specially when the husband of the applicant-respondent has not been screened during his life time, nor any appointment on the regular basis has been given to him."

The ratio as laid down by the Rajasthan High Court in the aforesaid case is squarely applicable in the facts and circumstances of this case.

4.7 At this stage we may also notice the contention of the learned counsel for the applicant that even casual labour who has been granted temporary status is entitled to family pension even if he has not been absorbed in railway service in terms of decision rendered by the Central Administrative Tribunal, Ahmedabad Bench in the case of Smt. Vallam Badia vs. Union of India and ors, 2003 (2) (CAT) 271. We have considered the submissions made by the learned counsel for the applicant. The decision rendered by the Ahmedabad Bench is based on the decision rendered by the Apex Court in the case of Ram Kumar vs. Union of India and ors. 1996 (1) ALJ 116 (SC) whereby the

40

earlier decision rendered by the Apex Court in the case of Ram Kumar vs. Union of India and ors., AIR 1988 SC 390 was reviewed. The Ahmedabad Bench observed that the decision rendered by the Apex Court in Union of India vs. Rabia Bikaner and ors, 1997 SCC (L&S) 1524 which is based on the earlier decision of the Ram Kumar's case reported in AIR 1988 SC 390 cannot be said to be a good law in view of the three Judges decision rendered by the Apex court in the case of Ram Kumar vs. Union of India and ors, 1996 (1) SLJ 116 whereby it has been held that casual labourers with temporary status are entitled to pensionary benefits.. We have given thoroughful consideration to the judgement rendered by the Ahmedabad Bench of the Tribunal. We are of the view that the three Judges Bench of the Hon'ble Supreme Court in Ram Kumar vs. Union of India has never held that the railway casual labour attaining temporary status is entitled for pensionary benefits even though they have not been screened or absorbed for the purpose of absorption in service as regular employee. At this stage, it will be useful to quote relevant portion of the judgment of Apex Court, which is in the following terms:-

"The only other question to be seen with regard to entitlement to pension. It appears that the Board on the basis of Fourth Pay Commission report has provided for pension at the time of Superannuation even to those who are temporary employees. In Paragraph 12 of our order on the basis of material then placed before us, we had taken the view that temporary employees were not entitled to pension on superannuation. We

u/s

direct the Railway Board to consider the claim of the temporary employees, who were before us for pension at the time of superannuation or otherwise in view of the fact that the Board has taken its own decision differently. Obviously appropriate material had not been placed before this Court when the submission of Mr. Ramaswamy for Railway Administration was accepted in the order. The decision is beneficial to the employees and we direct that the Board's decision may be implemented."

From the portion as quoted above, it can be seen that the earlier judgment was given by the Apex Court on the basis of material then placed before the Apex Court and it was in that context that in para 12 of the earlier judgment, finding was given by the Apex court that the temporary employees were not entitled to pension on superannuation. The Apex Court has further observed that the 'Railway Board has now taken decision differently' which decision is beneficial to the employees and direction was given that Board's decision may be implemented. As already stated above, the three Judges Bench of the Apex Court in the case of Ram Kumar vs. Union of India , 1996 (1) ALJ 116 has not held that railway casual labours attaining temporary status are entitled for pensionary benefits irrespective of their absorption in service as regular employee, as held by the Ahmedabad Bench in the case of Smt. Vallam Badia (supra). According to us, the Ahmedabad Bench has read something in the subsequent judgment of the Apex Court which was not there. The Board's decision for grant of pension to the project

casual labourers who have been treated temporary pursuant to the scheme framed by them and approved by the Apex Court in the case of Inter Pal Yadav is contained in Board's order dated October 14, 1980 which has also been made applicable to the project casual labourers who have been treated as temporary on completion of 360 days which stipulates that benefit of half of such service rendered by them as temporary employees, if the same is followed by their absorption in service as regular railway employees by way of selection through regular selection board for Class-IV staff should be counted for the purpose of retrial benefits. Thus, person with temporary status not followed by their absorption as regular employee is not entitled to pensionary benefits.

4.8 At this stage, we may also notice the relevant statutory rules regarding grant of pension/family pension. The President in exercise of powers conferred by proviso to Article 309 of the Constitution has framed Railway Services (Pension) Rules, 1993. Rule 2 stipulates that save as otherwise expressly provided in these rules, these rules shall apply to the railway servants mentioned therein. Rule 3(23) defined railway servant to mean a person who is a member of railway service or holds a post under the administrative control of the Railway Board and Rule 3(26) defined substitute to mean a person engaged against a regular,

permanent or temporary post and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service. Rule 14 stipulates that the period of employment in the capacity mentioned therein shall not constitute service for the purpose of pensionary benefits which inter-alia includes (i) in a part-time capacity, (ii) at casual market or daily rates, (iii) in a non-pensionable post, (iv) in a post paid from contingencies except as provided in rule 31 and (v) under a covenant or a contract except followed by conferment. Rule 31 stipulates that in respect of a railway servant in service on or after 22nd day of August, 1969, half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to conditions mentioned therein. To the similar effect is Rule 32 which stipulates that the service rendered as substitute shall be counted for pensionary benefits from the date of completion of three months in case of teacher and four months in other cases of continuous service as substitute followed by absorption in a regular Group C or Group D posts without any break. Thus, from the provisions as quoted above, it is clear that absorption in regular service is sine qua non for counting the service in respect of casual labour as well as substitute. Further, from the provisions as quoted above, it is also clear that pension rules are

402

applicable only to a person who is member of the railway service or holds post under the administrative control of the Railway Board. Admittedly, casual labour who has been granted temporary status is not holder of the post under administrative control of the Railway Board. Such status are granted only on completion of certain period of days without there being any regular post and casual labour who has been granted temporary status can be said to be a member of the railway service/railway servant only when he is absorbed against a regular post.

4.9 Thus, even on the basis of statutory rules, so long as casual labourers or labour employed on project who have been treated temporary (temporary status) in terms of modified para 5.1 of the scheme if not absorbed in service as regular employee, such persons are not entitled to pensionary benefits. However, there is exception to this general rule as contained in Rule 75(2)(a) and (b) of the Railway Pension scheme for railways servants which stipulates that if the deceased railway servant concerned immediately before his appointment was examined by the appropriate medical authority and declared fit by that authority for railway service, family of such person shall be entitled for family pension. This provision is attracted when the railway authorities have decided to bring the casual labour who had acquired temporary

status to permanent establishment and for that purpose selection has been made by the selection board and after selection such casual labour has been found medically fit but before regular appointment could be given, the deceased railway servant has died, family pension can be granted to widow of such person. Such is not the case here, as such reference made by the learned counsel for the applicant to the aforesaid rule is misconceived.

5. For the foregoing reasons, we are of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.

(M.L.CHAUPAN)

Member (J)


(V.K.MAJOTRA)

Vice Chairman (A)

28.2.05