

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH ::: GUWAHATI-5.

O.A.No. 156 of 1997

DATE OF DECISION... 1-7-1998.....

Mrs. Rupchani Begum

(PETITIONER(S))

S/Shri N.Dhar, P.B.Mazumdar

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Ors.

RESPONDENT(S)

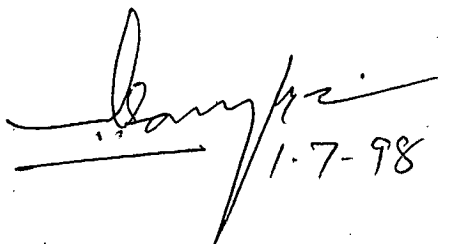
Mr. S. Sengupta

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SHRI G.L.SANGLYINE, ADMINISTRATIVE MEMBER
THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble ADMINISTRATIVE MEMBER


1-7-98

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 156 of 1997.

Date of Order : This the 1st Day of July, 1998.

Shri G.L.Sanglyine, Administrative Member.

Mrs Rupchani Begum
wife of late Mamat Ali,
Village - Pub Kaniha,
P.O. Kaniha,
P.S. Rangia,
Dist. Kamrup (Assam)

. . . Applicant

By Advocate S/Shri N.Dhar, P.B.Mazumdar.

- Versus -

1. The Union of India
represented by the General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
2. The General Manager,
N.F.Railway,
Maligaon, Guwahati-11.
3. The Divisional Railway Manager(P)
N.F.Railway,
Alipurduar, West Bengal.
4. The Permanent Way Inspector,
N.F.Railway,
Rangia,
Dist. Kamrup (Assam).

. . . Respondents.

By Advocate Shri S.Sengupta, Railway counsel.

O R D E R

G.L.SANGLYINE, ADMINISTRATIVE MEMBER

The delay in submitting this Original Application was condoned vide order dated 16.7.1997 passed in Misc. Petition No.212/97.

2. The applicant is the widow of late Mamat Ali who died on 16.10.1992. The deceased was engaged as a Casual Worker in the N.F.Railway on 16.6.1970 and he was granted temporary status on 23.2.1982. He continued to work as a Casual Worker (Gangman) with temporary status till his death.

3. In this O.A. the applicant prays that the respondents be directed to pay her family pension and other death-cum-retiral benefits consequent to the death of her husband who died in harness while in service of the Railways. The respondents have contested the application and submitted written statement. According to them a Casual Worker with temporary status is not entitled to pensionary benefits till his service is regularised against a regular vacancy. The service of late Mamat Ali was not regularised till the date of his death. Therefore, he was not a "Railway servant" who was entitled to retirement benefits. In support of this contention of theirs they have placed reliance on clause(d) of Sub-Para 18 of Para 801 of the Manual of Pension Rule 1950, Clause(23) of Rule 3 of Railway Services (Pension) Rules, 1993 and section 2 of these Rules which specifies the categories of employees to whom the pension Rules are applicable. According to this Clause, Casual workers/employees are not included in such categories.

4. Late Mamat Ali was a casual employee who had held temporary status since 23.2.1982 but his services were not yet regularised as on the date of his death on 16.10.1992. He had joined as a Casual Worker in the N.F.Railway on 16.6.1970. Mr Dhar, learned counsel for the applicant has submitted that Mamat Ali had worked for such long period under the N.F. Railway and, therefore, he should be considered as a temporary Railway servant and pensionary benefits should be granted to him. Consequently, such benefits granted to him should flow to the applicant in the form of Family Pension and other retirement benefits. At any rate, Late Mamat Ali had acquired Temporary Status and therefore Family Pension is admissible

to the applicant. Mr Dhar further submitted that the delay in the regularisation of the service of Late Mamat Ali has illegally caused loss of Pensionary benefits to the applicant and therefore the prayer in this O.A. be granted. The Railway has its own rules to the effect that casual labourers who had completed 120 days complete service should be considered for empanelment by the appointed Screening Committee for absorption of such workers against regular Group 'D' posts irrespective of whether such workers are engaged on projects or otherwise. The respondents had failed to do so in the case of Mamat Ali even till the time of his death. The failure of the respondents cannot be allowed to result in sufferings of the applicant. Mr S.Sengupta, learned Railway counsel, on the other hand supported the respondents. He referred to Rule 2005 of the Indian Railway Establishment Manual, Volume II, 1990 Edition, whereunder the entitlements and privileges admissible to casual labour who are given temporary status after completion of 120 days or 360 days of continuous employment, as the case may be, are specified. These do not include pension and other retirement benefits and, therefore, he submitted that though late Mamat Ali had acquired temporary status no pensionary or other retirement benefits was admissible to him. Retirement and pensionary benefits are for Railway servants only. In order to attain the status of 'Railway servant' the temporary status holders will have to undergo the selection prescribed in para 2006 of the above mentioned Manual and the absorption will be subject to availability of vacancies, suitability and eligibility of the individual casual worker and rules regarding seniority, unit, method of absorption etc. as decided by the Railway administration.

The Railway had from time to time taken action for absorption of casual labour. He stated that in the Combined Seniority List of Casual Labours (Way side) as on 31-3-90 of Open Line (Assam+ Bengal) and Construction Organisation (Departmental + Employment Exchange) of APDJ Division the position of Late Mamat Ali was at Sl.No.1175 and upto 1991 up to Sl.No.733 were screened, up to 1992 up to Sl.No.836 were screened and up to 1994 up to Sl.No.1047 were screened. Thus according to seniority late Mamat Ali was not due for screening as at the time of his death. In fact, Sl.No.1174 Sri Salil Kr.Sarkar and Sl.No.1176 Sri Mantoo Das respectively immediately senior and junior to Mamat Ali were regularised only vide Order No.E/255/12(E)/AP-Pt.I dated 31-3-1997. Such absorption of casual labour in regular establishment is also subject to availability of vacancies in Group 'D' posts and other constraints.

5. I have heard learned counsel of both sides. It is amazing to see the insensitivity of the respondents to the interests of late Mamat Ali. According to the rules of the Railways a casual labour is entitled to be conferred a temporary status after completion of 120 days or 360 days of continuous service as the case may be. Mamat Ali joined as Casual Worker of the N.F.Railway on 16-6-1970 but he was conferred temporary status only on 23-2-1982 according to the written statement of the respondents. It took almost 12 years for the Railway to confer on him the temporary status which should and could have been conferred immediately after the completion of the requisite period of 120 days or 360 days as mentioned earlier. All this long period he was illegally denied his right to hold the temporary status.

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Had temporary status been conferred on him within a reasonable time the late Casual Labour would have been considered for screening for empanelment for absorption in regular establishment long before his death and perhaps, could have been absorbed within reasonable time before his death. Then after according him temporary status on 23.2.1982 he was not screened for the purpose of regularisation of his service till the date of his death on 16.10.92. This is another long period of more than 10 years which had passed without him being considered towards regularisation. It is settled law that regularisation of service of Casual Labour is a constitutional goal. How long a Casual Labour will have to wait for realisation of this goal ? In the case of Late Mamat Ali he was denied of his right to be considered for regularisation till death even after serving for about 22 years. The respondents have cited examples of others and rules to justify this denial to late Mamat Ali. I am not persuaded to accept that instances of others can justifiably explain away the injustice meted out to late Mamat Ali. Perhaps the very others had been suffering all along on account of the delay of the respondents in granting them temporary status and regularisation of their services. However, the issue in this present application is regarding granting of family pension and other retiral benefits to the widow of the casual employee, late Mamat Ali, who had held a temporary status, but was not yet regularised or appointed against a regular post at the time of his death. The law in this regard is well settled now that no pensionary benefits or other retiral benefits are available to casual labourers who have not been regularised though acquired temporary status and to the widows of such casual

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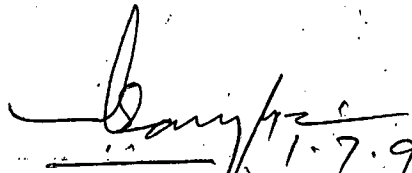
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labourers who held temporary status, but not regularised till death. In this regard the decisions of the Hon'ble Supreme Court in Ram Kumar and others Vs. Union of India & Ors. reported in 1989(1) SLJ 101 and Union of India & Ors. Vs. Rabia Bikaner reported in JT 1997(6) SC 96/(1997) 6 SCC 580 may be referred to.

6. In view of the above, therefore, the application of the applicant has no merit. Accordingly, it is dismissed.

7. No order as to costs.

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(G.L. SANGLYINE)
ADMINISTRATIVE MEMBER
1.7.98