

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

O.A.No.95/2005

Decided on : August 4, 2005

CORAM : **HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN.**

Smt. Kanchan Bai working as Peon in the office of DRM Kota, Central Western Railway Kota Division, Kota wife of late Sh.Tej Mal S/o Shri Ghasi Lal, Gangman, PWI at Kota, aged about 44 years r/o Q.No.399/B, Railway Workshop Colony, Kota Division, Kota (Husband of the applicant) was working on the post of Gangman, PWI (N), Kota Division, Kota Rajasthan.

..... Applicant

By : Mr. Pradeep Asthana, Advocate.

Versus

1. The Union of India through its General Manager, Central West Railway, Jabalpur.
2. The Divisional Railway Manager, Central Western Railway, Kota Division, Kota.
3. The Sr. Divisional Personnel Officer, Central West Railway, Kota Division, Kota.

..... Respondents

By : Mr.Anupam Aggarwal, Advocate.

ORDER (ORAL)

KULDIP SINGH, VC

The applicant who is widow of Late Shri Tej Mal has filed this O.A. Under Section 19 of the Administrative Tribunals Act, 1985, seeking a direction to the respondents to make payment of the monthly family pension w.e.f. 10.7.1988 at the admissible rates, as per the rules. The applicant also claims interest on the arrears of pension @ 24% per annum.

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The facts in brief are that late Shri Tej Pal husband of the applicant was working with the respondents as Gangman under PWI, Kota and expired on 10.7.1988, while he was in service.

It is further submitted that her husband was initially appointed as Gangman on NAC basis on 21.3.1982 and on completion of 120 days of work, he was granted temporary status w.e.f. 21.12.1982. Thereafter, he was also allotted Permanent Provident Fund Account which could be verified from the letter, Annexure A-3. It is further stated that particulars of the family were also submitted by her husband which were incorporated in the record, copy of which is Annexure A-4.

It is further submitted that in view of sudden demise of the husband of applicant, office of respondent no.2 also issued direction vide order dated 4.4.1989 to settle all the terminal benefits finally to all concerned but till date such payments have not been finalized (Annexure A-3). The applicant further stated that she made a representation for appointment on compassionate grounds and applicant was offered appointment as Water woman (casual labour) w.e.f. 9.4.1990 and has also been granted temporary status. The applicant further made representations to the respondents for grant of family pension but till date no order has been passed granting the relief. The applicant then also got issued a legal notice through her counsel but still no order has been passed. It is further stated that in several similar cases respondents have released pension and thus, respondents should have released the pension to the applicant also who is similarly situated like others in whose favour orders have been passed by this Tribunal or by the appropriate courts but in the case of

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the applicant nothing has been done. It is, thus, prayed that a direction be issued to the respondents to release family pension to the applicant.

Respondents are contesting the O.A. They plead that the O.A has been filed on the basis of the notice dated 15.10.2004 (Annexure A-1), which is not an order as defined under the Administrative Tribunals Act, 1985, for the purpose of filing of Original Application and as such the O.A. is not maintainable being pre-mature. It is also submitted that the O.A. is barred by time and as such is not maintainable on this count also.

On merits the respondents plead that though applicant has claimed that deceased had been allotted permanent Provident Fund Account Number but that does not give any benefit to her for grant of family pension as one should be appointed and have worked at least for one year on a sanctioned post, besides the fact that his services should have been regularized. However, in the case of the deceased no such action was ever taken by the respondents till the death of the deceased. Since, he had never been regularly appointed against any sanctioned post so he was not entitled to the family pension.

I have heard the learned counsel for the parties and gone through the record of the case.

Learned counsel for the respondents had referred to a judgment titled Union of India & Others Vs. Rabia Bikaner & Ors. (1997) SCC (L&S) Page 1524 wherein it was held that widow, of a casual employee with temporary status but not appointed to temporary post or regularized, is not entitled to the pensionary benefit as per the Railway Servants (Pension) Rules, 1993. Reliance was placed on Rules

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3 (23), 6 and 75 of the Rules and Para 2511 of IREM. Relying upon this judgment learned counsel for the respondents submitted that in the case in hand also the late deceased Shri Tej Mal was granted temporary status but had not been appointed on regular basis against any sanctioned post so, his widow is not entitled to any family pension.

To rebut these contentions, learned counsel for the applicant has referred to a judgment entitled Union of India & Others Vs. Smt. Santosh & Another, decided by Rajasthan High Court at Jaipur in Writ Petition No.5316 of 2004, which had arisen out of order dated 7.4.2003 passed by this Bench of Tribunal in O.A.No.233/03. In the said case also the applicant was employed on the post of Helper initially as a casual labour but he had been granted temporary status and was contributing to the Provident Fund Account. He died while in active service. In the year 1986, a list was prepared for screening him as Labour in order to regularize him against a Group D post. The widow of said employee had also made an application for family pension which was turned down. While considering the issue, the Tribunal found that the judgment relied upon by the learned counsel for the respondents in the case of Rabia Bikaner (supra) was not followed by the Ahmadabad Bench of this Tribunal and the said judgment was affirmed by the Division Bench of the Gujrat High Court. Relying upon judgment in the case of Smt. Vallam Badia Vs. Union of India & Others, in which the judgment in the case of Rabia Bikaner (supra) was also discussed, the Court had allowed the family pension.

The Hon'ble Rajasthan High Court also in the case of Smt. Santosh (supra), observed that the judgment of Rabia Bikaner (supra) was based on earlier judgment of the Hon'ble Supreme Court



in the case of Ram Kumar & Others Vs. Union of India & Others, but after the judgment delivered in Rabia Bikaner's case (supra), the judgment in the case of Ram Kumar (supra) had been reviewed by the Supreme Court itself. Thus, it was argued before the Rajasthan High Court also that Rabia's case is not valid law in view of the review judgment in the case of Ram Kumar (supra) by the Hon'ble Supreme Court. The Court dismissed the Writ Petition filed by the Union of India and also allowed family pension to the widow of the employee who was a casual employee and had been conferred with temporary status.

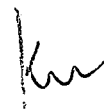
Learned counsel for the applicant then relied upon another judgment in the case of Kazori Devi Vs. union of India & Others, dated 15.7.2004 in O.A.No.555 of 2002 decided by Jaipur Bench of C.A.T. Wherein also the judgment in the case of Rabia Bikaner's case (supra) was discussed and the Court held that the applicant is very much entitled for the family pension on the death of the husband. The respondents were directed to pay family pension to the applicant as per the instructions and rules with arrears.

So, the question that arises for consideration regarding entitlement of widow of a casual labour with temporary status to the family is now well settled. The judgment given by the Rajasthan High Court in the case of Smt. Santosh (supra) also shows that the facts as given in that case and in the instant case of the applicant are similar. In that case the applicant had worked for a period of about 6 years as casual labour with temporary status and same is the position in this case also where deceased was granted temporary status on 21.12.1982 and he expired on 10.7.1988. In the case of Smt. Santosh, her husband was granted temporary status w.e.f. 1.1.1983



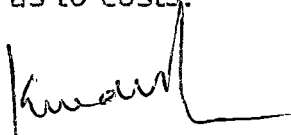
and he expired on 29.12.1988. Rather he had served for a lesser period as casual labour with temporary status than the deceased husband of the applicant and in the said case, Smt. Santosh was allowed family pension. So, following the law laid down in the case of Rajasthan High Court at Jaipur in CWP No.5316 of 2004, wherein specifically it was mentioned that the case of Rabia Bikaner's (supra) does not lay down a good law, so I hold that the present case is also liable to be allowed and the applicant who is widow of casual employee holding temporary status is held entitled to the family pension. So, the O.A merits acceptance and is allowed.

Before parting with the judgment I may also mention that learned counsel for the respondents Mr. Anupam Aggarwal has cited the judgment in the case of Rabia Bikaner (supra) despite the fact that the same does not lay down a good law any more in view of subsequent judgements. I have reason to believe that he had knowledge that Rabia Bikaner's case does not lay down a good law any more because in O.A.No.55 of 2002 in the case of Kazori Devi (supra), Mr. Anupam Aggarwal had represented the Union of India and therein also he had cited the judgment in the case of Rabia Bikaner and his contention was turned down based on certain amendments. The counsels representing cases on behalf of their clients before a Court of law are not expected to conduct themselves to win or lose a case but their primary aim is to assist the Court to arrive at a proper decision in a particular case based on the latest law laid down by the superior courts. However, in this case instead of citing the judgment which holds the filed, the learned counsel for the respondents Shri Anupam Aggarwal preferred to cite a judgment which does hold the field any



more. Even the conduct of the respondents is also strange. This case also belongs to the Railways and the Railways have also preferred to file a reply to the O.A denying the claim of the applicant based on decision in the case of Rabia Bikaner's case (supra) despite the fact that in other cases this judgment has not been accepted by courts. Obviously, the respondents are in knowledge of such events. I am, therefore, constrained to observe that the Railways should not deny the claim of the deserving applicants on the issue involved in this case when they know well that judgement in the case of Rabia Bikaner's case does not hold a good law any more.

Accordingly the O.A is allowed. The respondents are directed to release family pension to the applicant from the date of death of the deceased employee and pay the same to her within a period of two months with interest @8% from the date the same became due to the actual date of payment. There shall be no order as to costs.


(KULDIP SINGH)
VICE CHAIRMAN

August 4, 2005.

HC*