

CENTRAL ADMINISTRATIVE TRIBUNAL,

JAIPUR BENCH, JAIPUR.

Decided on: October 5, 2006

CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN (JUDICIAL)

(A) O.A.NO.429/2005

Mani S/O Shri Chinnaswamy, aged about 50 years, Helper Khallasi, Carriage Workshop Ajmer, Resident of Topdara Phatak, Ajmer.

By: Mr. Nand Kishore, Advocate.

Versus

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

By : Mr.V.S.Gurjar, Advocate.

(B) O.A.NO.459/2005

Smt. Naikum W/o Late Shri Yakub, aged about 43 years, working as Cleaner, Carriage Workshop, Ajmer, North Western Railway, Ajmer, Resident of top Dara Phatak, Ajmer.

By: Mr. Nand Kishore, Advocate.

Versus

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

By : Mr.Anupam Agarwal, Advocate.

(C) O.A.NO.582/2005

Smt. ~~Mangi~~ Bai, aged bout 41 years, wife of late Shri Mohan Lal S/o Shri Bhainroo Lal, Ex Substitute Gangman under PWI/RMA under DRM Kota, aged bout 41 years, R/o house No.206, Kailash Puri, Kota, working as substitute Water woman, under Janitor/DRM Office, Kota.

By: Mr. Pradeep Ashthana, Advocate.

Versus

1. Union of India through 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.

By : Mr. Anupam Agarwal, Advocate.

O R D E R (ORAL)

KULDIP SINGH, VC

All the above three O.As. are being disposed of by this common order, as these involve common questions of facts and law. For the facility of reference, the facts have been taken from O.A.no.429 of 2005.

The wife of applicant, Smt. Halimel D/o Pandu Shetty, was appointed as casual labour on 27.2.1980. She was treated as temporary w.e.f. 1.1.1984 on completion of 360 days between 1.1.1981 to 1.1.1984, in terms of Board's letter No.E(NG)II/84/CL/41 dated 12.9.1986. She was medically examined by the Railway Doctor on 20.5.1987 and was found fit in "C-One" category. She was given regular scale of pay w.e.f. 1.1.1984 i.e. Rs.196-232 and was fixed at Rs.196/- as basic pay as on 1.1.1984 (Annexure A-1). She was also contributing towards Provident Fund in Account No.1696530 and the balance as on 31.3.1993 was Rs.8303/- with condition as pensionable (Annexure A-3). She expired on 30.5.1993.

The applicant requested for payment of terminal benefits by letter dated 20.7.1994 (annexure A-5). The

applicant was released a sum of Rs.14,941/- only in the year 1995, without any particulars and nothing was said about family pension.

The applicant pleads that since the deceased worked as temporary railway employee between 1.1.1984 to 30.5.1983, applicant becomes entitled to family pension as per rule 18 (3) of Railway Services (Pension) Rules, 1993.

☞ The applicant is also entitled to family pension in view of Para 75 of Railway Services (Pension) Rules, 1993.

The applicant has quoted number of decisions such as AIR 1982 SC 584 (L.Robert D'Sauja Vs. Ex Engineer); 1996 (1) SLR, Page 116 (Ram Kumar & Others Vs. Union of India & Others); SCC (1996) 27 (Prabhawati Devi Vs. UOI etc.), AJT 2002 (2) 225 (S.K.Mastan Bee Vs. G.M.S. Railway & others).

The Railway Board have framed a policy vide letter dated 1.6.1994 in reference to Supreme Court judgment delivered in the case of Inderpal Yadav & others Vs. Union of India &

☞ Others, AIR 1985 SCC 648. He has also claimed that case is covered by decision of Rajasthan High court in the case of UoI & Others Vs. Santosh Yadav (Annexure A-10).

Respondents have filed a reply. They submit that applicant is not entitled to any relief in view of the statutory rules. IREM and Railway Service (Pension) Rules, 1993 provide (under para 2005) that casual including project casual labour are eligible to count only half of the period of service rendered by them after one has been conferred temporary status as qualifying service for pensionary benefits. This benefit is admissible only after their absorption in regular employment. They will not be

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brought on permanent or regular establishment or treated in regular employment in Railways until and unless they are selected by regular selection for Group D post in the manner prescribed. Rule 75 of the Rules of 1993 further provides that a railway servant entering service in a pensionable establishment on or after completion of one year of continuous service or before completion of one year of continuous service is entitled for family pension provided he was immediately, prior to his appointment to the service or post, was declared fit for railway service.

As per rule 3 (23) "Railway servant" means one who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding a post of Chairman, Financial Commissioner or a member of the Railway Board but does not include casual labour or persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control. Since the wife of the applicant was not covered within the definition of "railway servant", applicant is not entitled for any relief.

The O.A. is barred by time. Keeping in view the provisions of Para 2311 (3) (b) of the IREM, a casual employee having been granted temporary status but not appointed to any permanent post until completes one year continuous service or his service are not regularized is not entitled for any pensionary benefit. The applicant has failed to place on record even an iota of evidence to

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disclose any such status of his wife to substantiate his claim for grant of family pension.

It is pleaded by them that the verdict of the Hon'ble Supreme court in the case of Union of India Vs. Rabia Bikaner still holds the field and has not yet been overruled. Mere working of deceased for the period from 1.1.19894 to 30.5.1993 confers no right in favour of the applicant for family pension as his wife never worked against a permanent post/pensionable post and her services were not regularized before her death. She was never screened medically for posting against a permanent pensionable post.

The applicant has filed a rejoinder annexing therewith copy of a judgment in the case of Uchhav Kanwar Vs. Union of India & others, O.A.no.35/2005(Annexure A-11), decided on 17.11.2005 claiming that present case is covered by the said decision.

I have heard the learned counsel for the parties and perused the material on the files.

I find that the issue involved in this case is no longer res integra and stands settled by this Bench of the Tribunal in the case of Uchhav Kanwar (supra). The relevant part of the judgment being relevant is reproduced as under:

"However, from the perusal of the judgment given by the Principal Bench in the case of Smt. Meenma Devi (supra), I find that this judgment of Rabia Bikaner (supra) has been distinguished. Even otherwise, I find that decision in the case of Rabia Bikaner (supra) was given based on view taken in the case of Ram Kumar Vs. Union of India & Others, and the said decision in the case of Ram Kumar (supra), has been reviewed by the Hon'ble Supreme Court itself. So, the decision in the case of Rabia Bikaner

(supra) cannot be applied to the facts of the present case and as per the latest decision of the Principal Bench in the case of Smt. Meen Devi (supra), in which also the applicant could not join his duties due to severe illness and ultimately died before joining his duties. The court had allowed the claim of the applicant for family pension. In this case also I find that the applicant had worked in the railways since 1986 on casual basis and his juniors had also been regularized along with him so his family cannot be denied family pension. Moreover, I find that the applicant's husband in this case has been medically examined by the Divisional Medical officer, Chittorgarh and was found fit, vide medical certificate dated 25.12.1987 which fact stands admitted by the respondents in their reply. Had the applicant not been medically examined earlier, one could have understood the logic behind insisting upon requirement of medical examination. Thus, the claim of the applicant has to be allowed. It is accordingly allowed.

The respondents are directed to release the family pension to the applicant from due date in accordance with the rules within a period of 3 months from the date of receipt of copy of this order".

I find that in all these O.As. the deceased had been treated as temporary employee and they were medically examined by the railway doctor and they were put in the regular pay scale of Rs.196-232. In fact in the case of Mangi Bai, her husband was screened for appointment against the vacancies, after verification of character and antecedents and after passing the prescribed medical examination of B/one, etc. Once he was empanelled for regular employment subject to medical test and character and antecedents verification, and now is dead, there is no question of his being put to any test or verification. Thus, the case of all the applicants is found to be covered by the decision in the case of Uchhav Kanwar (supra).

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The various decisions relied upon by learned counsel for the respondents based upon case of Rabia Bikaner (supra) are distinguishable in view of decision of the Principal Bench in the case of Smt. Meena Devi Vs. Union of India & Others, 2004 (1) ATJ, Page 556.

The plea of limitation taken by the respondents is also, not maintainable in view of the fact that it is a question of grant of pension to the applicant which is recurring cause of action.

However, at this stage, learned counsel for the respondents submitted that the matter is still pending consideration before the Hon'ble Supreme court of India in CSLA© CC 9778/2005 titled GEN. MANAGER, NORTH WEST RAILWAY & ORS. VS. CHANDA DEVI, arising out of judgment and order dated 25.4.2005 of DBCWP No.5317 of 2004 of High Court of Rajasthan at Jaipur.

All the three O.As. are, thus, disposed of in the same terms as contained in the case of Uchhav Kanwar (supra). However, this will be further subject to the decision of the Hon'ble Supreme court of India in the case of Chanda Devi (supra) pending before it. No costs.

  
(KULDIP SINGH)  
Vice Chairman (J)

October 5, 2006

HC\*