

22-2-08

Mr. Nand Kishore - Counsel for applicant
Mr. Haura Singh - Counsel for respondent -

Heard the learned counsel for
the parties.

Order Reserved

(M.L. CHAUHAN)

Judg. member

26/2/08
Order pronounced today
in the open court by the aforesaid
Bench on 21st instant ^{ALW} - A -
No. 387/2006

26/2/08.

C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH.

JAIPUR, this the 26th day of February, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

ORIGINAL APPLICATION No. 387/2006

Smt. Laxmi
w/o Late Shri Bharti Mania,
r/o Hutment Near Officer's Rest House,
North Western Railway,
Loco Colony,
Jaipur

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

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

... Respondents

(By Advocate: Shri Hawa Singh)

ORIGINAL APPLICATION No.450/2006

Smt. Laxmi Devi
 w/o late Shri Om Prakash,
 Ex-waterman,
 r/o Fauji Colony,
 200 Ft. Road,
 Near Yadav's Kothi,
 By Pass Road, Alwar

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager,
 North Western Railway,
 Hasanpura Road,
 Jaipur
2. Divisional Railway Manager,
 North Western Railway,
 Power House Road,
 Jaipur

.. Respondents

(By Advocate: Shri Hawa Singh)

O R D E R

By this common order, I propose to dispose of both these OAs as common question of law is involved.

2. OA No.450/06 has been filed by the applicant Smt. Laxmi Devi w/o late Shri Om Prakash, Ex-Waterman whereas OA No.387/2006 has been filed by the applicant Smt. Laxmi w/o late Shri Bharti Mania. In both these OAs, the relief prayed for is regarding payment of family pension from the date of death of their husband with all consequential benefits alongwith interest. At this stage few facts may be noticed.

✓

In OA No.450/06, the applicant is wife of late Shri Om Prakash, Ex-Waterman who expired on 1.9.2003. It is averred that husband of the applicant was engaged in the Railway as substitute on 19.4.1977 and was granted temporary status on 30.5.91. It is further averred that Ministry of Railways decided to regularize 50,000 Railway Casual Labourers who were on roll as on 30.4.1996 vide letter dated 8.4.1997 (Ann.A3). Pursuant to such exercise, the applicant was also screened alongwith other persons and panel was prepared vide letter dated 10.3.97 and name of the applicant find mention at Sl.No.224. However, husband of the applicant expired on 9.1.2003. Thereafter the matter was taken for grant of family pension before the Pension Adalat. Since nothing was heard, the applicant has filed this OA.

In OA No.387/06, husband of the applicant was appointed in the Railway in the year 1979. The husband of the applicant remained under medical treatment during 17.4.1993 to 23.4.1998 and submitted a medical certificate to take him on duty but respondents did not oblige the applicant. He has filed OA No. 131/99 which was decided on 27.10.99 thereby directing the respondents to take the applicant on duty within 15 days and regularize the period of absence by sanctioning any kind of leave due to him including leave without pay. Pursuant to the judgment

rendered by this Tribunal, the applicant was taken on duty. It is pleaded that though the husband of the applicant was regular as is evident from the judgment of this Tribunal in the earlier OA, however, the husband of the applicant was again screened and he was found fit for regular appointment vide DRM (E) No. EE/891/3 dated 25.1.2002 and his name figured at Sl.No.1 of letter dated 28.2.2002 (Ann.A4). It is further stated that husband of the applicant had completed 24 years of service and expired on 16.3.2003.

3. On the basis of the facts as stated above, the learned counsel for the applicant argued that husband of the applicants were railway employees, as such, widows were entitled to family pension in terms of Railway Services (Pension) Rules, 1993. The learned counsel for the applicant further argued that in terms of provisions contained in Indian Railway Establishment Manual, it is only the Casual Labourers who have been excluded from the definition of the railway servant. In this behalf attention was invited to the General Rule 103 sub rule (43) of the Railway Establishment Code Vol.I, which defines a railway servant means a person who is a member of service or holds a post under the administrative control of the Railway Board including certain other posts. It also prescribes persons who do not come within the scope of

this definition. The term excludes the Casual Labour. The learned counsel for the applicants argued that no doubt, there is a provision to the effect that 'Casual Labour with temporary status' are not to be treated as railway servants in the Indian Railway Establishment Manual, but such provision by way of administrative instructions cannot supersede the statutory provisions as contained in the Indian Railway Establishment Code where only 'Casual Labourers' have been excluded and not 'Casual Labour with temporary status'. The learned counsel for the applicant further argued that husband of the applicants were working as substitute, as such, they have to be treated as temporary servant for all intended purposes including grant of pensionary benefits. In support of his contention, the learned counsel for the applicants has drawn my attention to the judgment rendered by this Tribunal in OA No, 604/2003, Smt. Usha Devi vs. UOI, decided on 21.09.2004, judgment of Hon'ble Rajasthan High Court in DB Writ Petition No.8489 of 2002, Union of India vs. Kasturi Devi decided on 30.1.2003, Prabhavati vs. UOI and Ors. reported in 1996 (1) SLR 28, whereby it was held that substitute acquires certain rights and privileges under Rule 238 of IREM and having worked for 6 months, he became temporary servant, thus, entitled to pension under Rule 3(b) of Rule 311. It was held that a widow of temporary status holder become entitled to family pension. The learned counsel

for the applicant also produced appointment letter of one Shri Som Bahadur, which figured at Sl.No.3 in the order dated 28.2.2002 (Ann.A4), and argued that when the husband of the applicant in OA No.387/06 was at Sl.No.1 in that letter and junior has been regularized, it may be assumed that husband of the applicant was also regularized before his death and, as such, the applicant is entitled to family pension. It may be stated here that in the letter Ann.A4 at Note-3, a remark has been written that since the first appointment of Shri Bharti was after 14.7.81, as such, regular appointment to him will be granted after approval of the General Manager. As such, contention of the learned counsel for the applicant that junior persons were regularized prior to the husband of the applicant is of no consequences, as there was no such stipulation in the case of other two persons, as can be seen from Ann.A4.

4. On the contrary, the learned counsel for the respondents has drawn my attention to the reply filed by the department in which it is stated that screening of casual/substitute workers was carried out by the Railway Engineering Department, Chief Project Manager (Construction) Jaipur Division on 12.12.2001 and 24.1.2002 for the purpose of regularization of Class IV category on 25.1.2002. A provisional panel was prepared where name of the applicant's husband in OA

WV

No.387/06 was placed at sl.No.1 in the list of construction department. Similarly, the respondents have also admitted that screening of large number of railway employees was carried out year the year 1997 and panel was prepared on 10.3.1997 in which name of the applicant's husband find mention at Sl.No.224. It is further stated that applicants' husband were only temporary status holder and not temporary employee of the department and there is difference between temporary status holder the temporary employee of the department for which reference has been made to Para 1501 (1) of the IREM. Thus, according to the respondents, so long as casual labour/substitute is not regularized they cannot become railway servant, as such, they are not entitled for family pension under Railway Servants Pension Scheme/Railway Services (Pension) Rules, 1993. For that purpose, the learned counsel for the respondents has placed reliance on the decision of the Hon'ble Apex Court in the case of General Manager, North Western Railway and Ors. vs. Chanda Devi, in Civil Appeal No.5833 of 2007 decided on 12.12.2007 and also decision of the Apex Court in the case of Indian Counsel for Agricultural Research and Anr. Vs. Santosh, in Civil Appeal No. 4499 of 2006 decided on 16.10.2006.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. I am of the view that the matter on this point is no longer res-integra and the same stands concluded by the decision of the Apex Court in the case of Chanda Devi (supra). In this case the Apex Court while noticing the relevant provisions of Railway Manual and also earlier decision given by the Apex Court has categorically held that the respondent widows are not entitled to the family pension benefits simply because Casual Labourers have acquired temporary status and were screened by the competent authority. Family pension to the widows can be granted only if their husbands have been appointed to the post and are also required to put minimum service of one year in the temporary post. For that purpose, the Apex Court has placed reliance on the decision rendered in the case of Ram Kumar and Ors. Vs. Union of India followed in Union of India vs. Rabia Bikaner and Ors., [1997] (6) SCC 580] as is clear from para 19, which thus reads:-

.....We find it difficult to give acceptance to the contention. It is seen that every Casual labourer employed in the railway administration for six months is entitled to temporary status. Thereafter, they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On their appointment, they are also required to put in minimum service of one year in the temporary post. In view of above position, if any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible to pension

under the Family Pension Scheme, 1964. In all these cases, though some of them have been screened, yet appointments were not given since the temporary posts obviously were not available or in some cases they were not even eligible for screening because the posts become available after the death. Under these circumstances, the respondent-widows are not eligible for the family pension benefits." (Emphasis supplied)

Thereafter in para 20, the Apex Court has reproduced Rule 1501 occurring in Chapter XV of the Manual, which thus reads:-

"1501(i). Temporary Railway Servants Definition: A temporary railway servant means a railway servant without lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include 'casual labour' including 'casual labour with temporary status' a contract or part time employee or an apprentice.

The Apex Court also took into consideration the judgment rendered by the Gujarat High Court and finally in para 26 has held that the Gujrat High Court in their opinion has committed fundamental error in opining otherwise. It failed to notice that when casual labour has been excluded from the definition of permanent or temporary employee, he with temporary status could not have become so and there is no legal sanction therefore. It is for the legislature to put the employees to an establishment in different categories. It may create a new category to confer certain benefits to a particular class of employees. Such a power can be exercised also by the Executives for making rules under the proviso appended to Article 309 of the Constitution of India.

Thus, according to me, the contention of the learned counsel for the applicants that since there is no provision under Indian Railway Establishment Code for excluding casual labour with temporary status from the definition of the railway servant, as such, provision contained in Para 1501(i) of the Manual is of no consequence, cannot be accepted in view of the law laid down by the Apex Court. The reliance placed by the learned counsel for the applicants to the decision of this Tribunal in the case of Usha Devi (supra) is also misconceived. That was a case where husband of the applicant was screened. He was also given appointment in Traffic Department in Group-D category. The papers for verification of character and antecedents of her husband were also forwarded to the District Magistrate which were not received till 9.10.86 when husband of the applicant expired. It was in this context, the Bench has held that the husband of the applicant being railway servant, thus was entitled for pensionary benefits. At this stage, it may also be noticed Rule 3(26) of the Railway Services (Pension) Rules, which thus reads:-

"substitute means a person engaged against a regular, permanent or temporary post by reason of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service."

According to this rule also a substitute shall not be deemed to be a railway servant unless he is absorbed in regular railway service. Thus, sine-qua-non to treat the substitute as railway servant for the purpose of granting pensionary benefits is his regular absorption in railway service which may in a given case depends upon availability of posts. So long the posts are not available, even if the person is screened for the purpose of absorption against Group-D post, he does not become a railway servant, thus not entitled to pensionary benefits, as can be seen from para 19 of the judgement rendered in the case of Chanda Devi (supra), relevant portion of which has been extracted above.

Further, the reliance placed by the learned counsel for the applicant to the judgment of Rajasthan High Court in the case of Smt. Kasturi (supra) is also without any basis as that was a case of Railway servant who died before completing 2 years of regular service on promotional post. It is not a case of such nature. That apart, the Apex court in the case of Santosh (supra) has also held that widow of temporary status holder claiming pension on the ground that deceased husband having worked for 20 years, thus deemed to have been in regular service, it was held that the widow of such person is not entitled to family pension in terms of Casual Labourers (Grant of
WL

Temporary Status and Regularization) Scheme of Govt. of India, 1993.

Further the issue whether the legal representatives of the Casual Labour who has acquired temporary status can be denied family pension under the provisions of Railway Services Pension Rules, 1992 was also under consideration before the Larger Bench consisting 5 Members of this Tribunal in OA No.1722 of 2005 decided on 5.9.2007. The Larger Bench answered the question as follows:-

"Legal representatives of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is essential that before his death, he should have been subjected to screening, and should have been regularized in service, which only enables the legal representatives to claim the benefit of family pension. This will also be subject to the conditions laid down under the provisions of the Railway Services (Pension) Rules, 1993 or circulars issued from time to time."

7. Thus, viewing the matter from any angle, I am of the view that the applicant in these OAs have not made out any case for grant of relief. The fact remains that husbands of the applicants were screened for their absorption against Group-D posts.

8. For the foregoing reasons, the OAs are dismissed with no order as to costs.

9. In view of disposal of OAs, no order is required to be passed in MA No.26/2008 (OA No.387/2006), which also stand disposed of.



(M.L.CHAUHAN)

Judl.Member

R/