

(D)

09.10.2007

OA No. 135/2007

Mr. C.B. Sharma, Counsel for applicant.
Mr. T.P. Sharma, Counsel for respondents.

*Rejoinder
Not filed*
Reply has been filed. Let the matter be listed on 13.11.2007. In the meanwhile, the applicant may file rejoinder, if any.

8
29/10/07
AHQ

J.P. SHUKLA
(J.P. SHUKLA)
MEMBER (A)

M.L. CHAUHAN
(M.L. CHAUHAN)
MEMBER (J)

13/11/07 Mr. C.B. Sharma, Counsel for applicant.

Mr. T.P. Sharma, Counsel for respondents.

Heard the learned counsel
for the parties.

For the reasons detailed
supra, the OA stands dismissed
by a separate order.

J.P. Shukla
(J.P. Shukla)
MA

M.L. Chauhan
(M.L. Chauhan)
MP

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 13th day of November, 2007

ORIGINAL APPLICATION No.135/2007

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Smt. Lalita Bai,
w/o late Shri Shyam Lal,
aged about 35 years,
r/o in front of S.D.Public School,
Sainik Nagar, Gangapur City,
and presently working as Gangman
Under PWI (North), West Central Railway,
Gangapur City (Rajasthan).

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur.
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Senior Divisional Personnel Officer,
West Central Railway,
Kota Division, Kota.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R (ORAL)

The applicant has filed this OA for grant of family pension on account of death of her husband who was temporary status holder.

2. Facts, which are relevant for this case, are that husband of the applicant while serving in respondent Railways was granted temporary status on the post of Gangman expired on 22.5.1992. Consequently, request for appointment on compassionate grounds due to sudden death of her husband and also for family pension was made to the respondents. Though certain terminal benefits were granted by the respondents but case of the applicant for grant of family pension was turned down. Accordingly, the applicant has filed this OA on the ground that in similar circumstances this Tribunal has allowed family pension in the case of Smt. Meena Devi vs. Union of India and ors. reported in 2004 (1) ATJ 556 and the Principal Bench of this Tribunal also held that families of temporary status holder employees are also entitled for family pension and further the Hon'ble High Court of Gujarat in the case of Rukhiben Rupabhai vs. Union of India and ors. reported in 2006 (2) ATJ page 1 also upheld that family of the casual labour with temporary status is also entitled for family pension.

3. Notice of this application was given to the respondents. The respondents have opposed the claim of the applicant on the ground of limitation and also that the applicant is not entitled to the benefit of family pension by placing reliance on the case of Union of India and Ors. vs. Rabia Bikaner, JT 1997 SC 95. According to the respondents, since the deceased employee was not regularized till his death, as such, he was not a permanent employee of the railway. Thus, the applicant is not entitled to family pension.

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

5. According to us, the matter on this point is no longer res-integra. In view of the conflicting judgments rendered by various benches of this Tribunal, the matter was referred to Larger Bench at Principal Bench consisting of 5 Members in OA No.1722/2005, Smt. Bhagwati Devi vs. Union of India and other connected matters. The question posed before the Larger Bench was as follows:-

"Whether the legal representatives of a casual labourer who had attained temporary status could be denied benefits of family pension for the reason that before his death he had not been subjected to screening and had not been formally regularized in service."

The Larger Bench after considering various judgments rendered by different Benches of this Tribunal, the judgments rendered by the Hon'ble Apex Court and after noticing the definition of railway servant as defined under Rule 3(23) of the Railway Services (Pension) Rules, 1993 answered the reference in the following terms:-

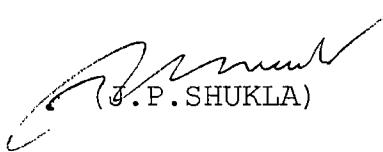
"Legal representatives of a casual labourer may not be entitled to benefit of family pension although the deceased employee might have attained temporary status in accordance with the relevant rules. It is essential that before his death, he should have been subjected to screening, and should have been 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 Service (Pension) Rules, 1993 or circulars issued from time to time."

Thus in view of the decision rendered by the Larger Bench in the case of Smt. Bhagwati Devi (supra), the applicant has not made out any case for our interference.

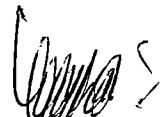
It may also be stated here that similar view was taken by the Hon'ble Apex Court in the case of ICAR and Anr. Vs. Smt. Santosh, JT 2006 (9) SC 43 whereby the Apex Court while interpreting the Casual Labour (Grant of Temporary Status and Regularisation) Scheme of Government of India 1993 has held that since the 1993 Scheme which governed the matter did not provide for family pension to casual labourers acquiring temporary status, respondents was not entitled to any

family pension. It may be stated here that in all essential respects, a person having temporary status governed by the 1993 Scheme as well as casual labour who has been conferred temporary status in terms of the scheme prepared by the railways stand alike.

6. Thus, for the foregoing reasons, we are also of the view that the applicant is not entitled to family pension. Accordingly, the OA is bereft of merit and the same is dismissed with no order as to costs.



J.P. SHUKLA
Admv. Member



(M.L.CHAUHAN)
Judl.Member

R/