

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00299/2017

Thursday, this the 15th day of November, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

1. M.Syamala,
W/o.late P.Mohanan,
Mapla Khalasi,
SC Railway, Madgaon, Goa.
Smitha Bhavanam, Aithottuva,
West Kallada, Kollam District,
Kerala – 691 500.
2. Omana Amma,
W/o.K.Balakrishna Pillai,
Mapla Khalasi,
SC Railway, Madgaon, Goa.
Parappurathu House, Kadappa Muri,
Mynagappally Post, Kollam District,
Kerala – 690 519. ...Applicants

(By Advocate – M/s.Varkey & Martin)

V e r s u s

1. Union of India represented by General Manager,
South Central Railway, Railway Nilagam,
Secunderabad – 500 071.
2. The Chief Administrative Officer,
Works Construction Branch,
South Central Railway, Secundarabad – 500 071.
3. General Manager,
South Western Railway,
Hubli, Karnataka – 580 020. ...Respondents

(By Advocates Mr.Thomas Mathew Nellimoottil)

This Original Application having been heard on 9th November 2018,
the Tribunal on 15th November 2018 delivered the following :

O R D E R

The applicants are aggrieved by the denial of family pension and death gratuity with effect from the date of death of their husbands. The reliefs sought in the O.A are as follows :

1. Hold that denial of family pension and death gratuity to the applicants with effect from the day following the dates of their husbands is unjust, illegal and without jurisdiction.
2. Declare that the applicants 1 and 2 are entitled to draw family pension and death gratuity as admissible under Annexure A-6 (series) rules and as allowed by Annexures A-7 (series) judicial orders with effect from 24.11.1995 and 30.10.1997 respectively and direct the respondents accordingly.
3. Grant such other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that Shri.P.Mohanan and Shri.K.Balakrishna Pillai, husbands of applicants 1 and 2 while working as Mopla Khalasis (temporary status) under the Deputy Chief Engineer/C/Gauge Conversion at Madgaon (Goa) in South Central Railway died on 23.11.1995 and 29.10.1997 respectively with each having 15 years of service at their credit. Both the applicants were called by the respondents for settlement of various dues and pension to which they have responded through an affidavit dated 29.2.1996 and 27.5.1998 respectively. Thereafter both the applicants have also made representations for compassionate ground appointment to their sons. It is submitted that in response to their representations they were told to choose either family pension or compassionate appointment for their wards to which they preferred compassionate appointments for their sons.

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3. It is submitted that vide Office Order dated 16.7.2002 and 6.9.2002 Shri.M.Maneesh, son of 1st applicant and Shri.B.Jayachandran, son of 2nd applicant were appointed as Substitute Gangman in Group D on compassionate grounds. It is submitted that subsequently they came to know that grant of compassionate appointments to their sons was not a bar for grant of family pension and other retirement benefits. Accordingly they have made representations on 15.4.2016. Since the same has not been responded to, they were compelled to approach this Tribunal.

4. As grounds they submit that as per Railway Services (Pension) Rules, 1993 they are entitled for family pension. Apart from that they also place reliance on order of this Tribunal dated 5.4.2002 in O.A.No.363/2001 which was upheld by the Hon'ble High Court vide judgment dated 5.10.2005 in O.P.No.22652/2002.

5. Per contra, the respondents in their reply statement submitted that the deceased employees were only temporary status casual labour Mopla Khalasi and were not absorbed against any permanent cadre post as on the date of their death. In support of their contention they rely on (i) Rule 2002 of the Indian Railway Establishment Manual (Vol.II) as per which casual labours are not eligible for any entitlement and privileges other than those statutorily admissible under the various Acts, such as Minimum Wages Act, Employee's Compensation Act etc. or those specifically sanctioned by the Railway Board from time to time. (ii) as per Clause (b) of Rule 2005 casual

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labour who acquire temporary status, will not be brought onto the permanent or regular establishment or treated as in regular employment in Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. (iii) as per Rule 2006 of the Indian Railway Establishment Manual (Vol.II) absorption of casual labour in regular Group D employment is not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration. Hence the respondents submit that the family of the deceased casual labour is entitled for only gratuity and will only become eligible for family pension if the deceased casual labour had been granted temporary status and absorbed against any regular post after the necessary screening in any permanent establishment/divisions.

6. In the rejoinder the applicant place their reliance on Annexure A-8 order of this Tribunal in O.A.No.43/2009 dated 12.11.2009 and Annexure A-9 and Annexure A-10 of the South Western Railway whereby the order in the aforesaid O.A has been implemented. The applicants claims that their case is squarely covered by these orders.

7. An additional reply statement has also been filed by the respondents reiterating their contentions in the reply and submitting that as per the orders of the Railway Board for de-casualization of casual labours, the casual labour who were on live register as on

31.5.1997 were absorbed/empanelled subject to screening by the Committee. The deceased employees while they were in service have never approached the Railway Administration for screening against any regular post.

8. Heard Shri.Martin G Thottan for M/s.Varkey & Martin, learned counsel for the applicant and Shri.Thomas Mathew Nellimoottil, learned counsel for the respondents. All documents have been examined. The crux of the case of the applicants is that having been cast in the role of a casual labour for admittedly more than 15 years their wives are entitled to family pension and other benefits. It is not denied that they were casual labours. But at the same time it is also clearly seen that they are not accommodated in any post even on a substitute basis. Rule 2005 of the Indian Railway Establishment Manual (Vol.II) while discussing the entitlements and privileges admissible to casual labour who are treated as temporary (ie. given temporary status) as this to mention :

(b) Sub casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-serviceman etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

9. The applicants call to their assistance the order of this Tribunal in O.A.No.363/2001 in which family pension was ordered in the case of a deceased 'temporary status' employee. However, it is necessary to see that there is a distinction because unlike in this case the applicant in the said O.A was holding the post of a substitute Gangman for over five years. So also various rules of Railway Services (Pension) Rules, 1993 extracted in this O.A pertains to railway servants under whose definition the deceased employees do not seem to come under.

10. Even while considering the question whether the service rendered by a casual labour prior to his absorption in regular cadre, Rule 2005 of Indian Railway Establishment Manual, Vol.II has laid down that such services will not count for the purpose of seniority and what matters would be the date of regular appointment after screening/selection. Only in the event of regularization half of the service rendered by a temporary status casual labour from the date of attaining temporary status till regular absorption, will be eligible to be treated as qualifying service for the purpose of pension and pensionary benefits. By implication pension will be admissible only after the absorption or regular employment and the rules clearly excludes casual labours who acquired temporary status unless they have been brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D posts in the manner laid down from time to time. Again, Rule 2006 of Indian Railway Establishment Manual, Vol.II laid down that absorption of casual labour in regular Group D employment

is not automatic and subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration.

11. Based on the above, this Tribunal cannot conclude that there is an effective case for the applicants. The Original Application fails and is dismissed accordingly. No costs.

(Dated this the 15th day of November 2018)

**E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A.No.180/00299/2017

1. **Annexure A1(1)** – True copy of the affidavit dated 29.2.1996 submitted by the first applicant.
2. **Annexure A1(2)** – True copy of the affidavit dated 27.5.1998 submitted by the second applicant.
3. **Annexure A2(1)** – True copy of the representation dated 11.9.2001 submitted by the first applicant.
4. **Annexure A2(2)** – True copy of the representation dated 29.1.2002 submitted by the first applicant.
5. **Annexure A3** – True copy of the representation dated 11.4.1999 submitted by the second applicant.
6. **Annexure A4(1)** – True copy of the Office Order No.13/2002 dated 16.7.2002.
7. **Annexure A4(2)** – True copy of the Office Order No.20/2002 dated 6.9.2002.
8. **Annexure A5(1)** – True copy of the representation dated 15.4.2016 submitted by the first applicant.
9. **Annexure A5(2)** – True copy of the representation dated 15.4.2016 submitted by the second applicant.
10. **Annexure A6(1)** – True extract of the Rule 18(3) of the Railway Service (Pension) Rules, 1993.
11. **Annexure A6(2)** – True extract of the Rule 70(1)(b) of the Railway Service (Pension) Rules, 1993.
12. **Annexure A6(3)** – True extract of the Rule 75(2)(a) of the Railway Service (Pension) Rules, 1993.
13. **Annexure A6(4)** – True extract of the Rule 92 of the Railway Service (Pension) Rules, 1993.
14. **Annexure A6(5)** – True extract of the Rule 93 of the Railway Service (Pension) Rules, 1993.
15. **Annexure A7(1)** – True copy of the order dated 5.4.2002 in O.A.No.363 of 2001.
16. **Annexure A7(2)** – True copy of the judgment dated 5.10.2005 in O.P.No.22652 of 2002 (S) of the High Court of Kerala.

17. **Annexure A8** – True copy of the order dated 12.11.2009 in O.A.No.43 of 2009 delivered by this Hon'ble Tribunal.
18. **Annexure A9** – True copy of the South West Railway's Order No.SWR(P)HQ/209/Appeal/BRA dated 5.3.2010.
19. **Annexure A10** – True copy of the South West Railway's Order No.P(CN)G.147/CN/BNC/OA.43/2009 dated 10.3.2010.
20. **Annexure RA1** – True extract of Rule 2002 of the Indian Railway Establishment Manual (Vol.II).
21. **Annexure RA2** – True extract of Rule 2005 of the Indian Railway Establishment Manual (Vol.II).
22. **Annexure RA3** – True extract of Rule 2006 of the Indian Railway Establishment Manual (Vol.II).
23. **Annexure RA4** – True copy of the letter No.P(CN)353/OA 897/2016/Smt.Syamala dated 2.11.2017.
24. **Annexure RA5** – True copy of the Office Order No.P.99/97 dated 26.6.1997 showing the absorption of empanelled casual labours/substitutes of Engineering Department in SCB Division.
