

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 609 of 2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Chhabi Hembram,
Daughter of Late Mistry,
Aged about 21 years who was a
Gangman under SE (P/Way),
Eastern Railway/Pakur,
Residing at Village – Kolaidanga,
P.O. – Bagdabra,
District – Murshidabad,
Pin – 742212.

2. Chhaya Hembram,
Daughter of Late Mistry,
Aged about 19 years
Who was Gangman under
SE (P/Way),
Eastern Railway/Pakur,
Residing at Village – Kolaidanga,
P.O. – Bagdabra,
District – Murshidabad,
Pin – 742212.

.. Applicant

- VERSUS -

1. Union of India,
Service through the General Manager,
Eastern Railway, 17, N.S. Road,
Kolkata – 700 001.

2. Sr. Divisional Personnel Officer,
Eastern Railway, Howrah Division,
Pin – 711 101.

3. Sr. Divisional Engineer (Coordination),
Eastern Railway, Howrah Division, Howrah,
Pin – 711 101.

4. Assistant Engineer,
Rampurhat Railway Station,
Eastern Railway,
P.O. – Rampurhat,
District – Birbhum,
Pin – 731 224.

.. Respondents

For the Applicants : Mr. A.K. Banerjee, Counsel
Mr. P. Sanyal, Counsel

For the Respondents : Mr. B.K. Roy, Counsel

Order dated: 1.6.16.

ORDER

This application has been filed seeking the following reliefs:-

- "a) An order directing the respondent to rescind, revoke/cancel the purported speaking order dated 12th November, 2013.
- b) To pass order/or directions upon the respondent authorities to release and pay the entire settlement dues and minor pension to the applicants which they are legally entitled as per extant Rules, within a time bound direction.
- c) To pass such other further order/or orders as your Lordships may deem fit and proper.
- d) Leave may kindly be granted to file this application jointly as per Rule 4(5)(a) of the CAT's Procedure Rule 1987."

2. The facts of this case in a nut shell would be as under:

The father of the applicants was an ex-railway employee posted as Gangman under SE (P/Way)/E. Railway/Pakur who died in harness on 20.11.1994 before completion of his total service period. The mother of the applicants pre-deceased their father. The applicants were then minors. When the applicant No. 1 became major she sought for settlement dues and minor pension before the concerned authority followed by reminders but without any result. They were thus compelled to file O.A. No. 432 of 2012 praying for release of family pension and other settlement dues of their deceased father. The said O.A. was disposed of by this Tribunal by an order dated 3.10.2013 with a direction upon the respondent No. 4 or any other competent authority to examine the grievance of the applicants and if there was no impediment with regard to the family pension to grant them appropriate benefits within three months of the communication. But the applicants lament that the respondents sat tight over the matter and did not communicate

their decision which prompted the applicants to file a contempt petition before this Tribunal. During the pendency of the contempt case, the respondent No. 3 by a Memo dated 12.11.2013 communicated the applicant No. 1 that the applicants are not eligible for settlement dues and family pension. By an order dated 7.4.2014 the above contempt application was disposed by the Hon'ble Tribunal by giving liberty to the applicants to challenge the purported speaking order. Emboldened thereby the applicants have preferred this O.A. to challenge the speaking order.

3. It was argued by the Ld. Counsel for the applicants that the employee who died in harness on 20.11.1994 had served as Casual Labour since 30.9.1970, he was screened and medically examined and appointed on 16.6.1984 as a regular employee. He was on a regular pay scale with annual increment since 1985.

4. The respondents have dispelled the claim of the applicants on the ground that the father of the applicants was engaged as Casual Labour on Daily Rated Basis on 30.10.1970, de-casualised on 16.6.1984. He remained absent at the screening test held on 24.1.1989 and 25.1.1989 at Azimganj. He was transferred from PWI/Azimganj to PWI/Pakur on about March, 1992. But he was unauthorizedly absent from 1985. Respondents have averred that after introduction of Scheme for decasualisation the Daily Rated Casual Gangman were given the Daily Rated scale of pay but that did not confer them the right for regular employment. Such, Casual Labour on completion of 120 days service in Open Line and on completion of 180 days on the Construction Organization were eligible to be screened for gaining temporary status. Regular posting after gaining temporary status was not mandatory. It was not dependant on availability of vacancy and not otherwise.

The respondents denied that the father of the applicants was regularised ever and thereby were justified in denial of family pension to the applicant.

5. Ld. Counsel for the applicant during the course of hearing cited the

provisions of Rule 75 of Family Pension Scheme for Railway servants which envisages as under:-

75. Family Pension Scheme for railway servants, 1964: -

(1) The provisions of this rule shall apply: -

(a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and

(b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No. F (P) 63 PN-1/40 dated the 2nd January 1964 as in force immediately before the commencement of these rules.

Note: - The provisions of this rule have also been extended from 22nd September 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme.

(2) Subject to the provisions of sub-rule (3), where a railway servant dies:-

(a) after completion of one year of continuous service; or

(b) before completion of one year of continuous service, provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service;

(c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in rule 53:

the family of the deceased shall be entitled to family pension 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table (not printed)

Explanation. - The expression "Continuous one year of service" wherever it occurs in this rule, shall be construed to include "less than one year of continuous service" as provided in clause (b).";

Citing the aforesaid Ld. Counsel would argue that completion of one year regular service was not mandatory for grant of family pension.

6. In order to strengthen his contention, Ld. Counsel further invited my attention to the Railway Establishment rules which laid down the eligibility conditions for grant of family pension. Excerpts whereof being as under:

"(2) Eligibility :- Family pension, according to these rules, will be admissible to the family of the employee subject to the following conditions:-

- (a) In case the employee dies while in service he must have completed at least one year's service. Period of extraordinary leave should be counted for the purpose of reckoning one year. [R.B. No. F(E)III-71-PN-1/8 of 18.5.72 and 0.12.73]. (N.R., S.N. 5663 & 6065).

It has been decided by the President that the condition of one year's service will not apply henceforth provided the Railway servant had been medically examined and found fit for appointment under the Government.

These orders take effect from 27.1.79 and shall not apply to the families of Railway servants who died before completion of one year's continuous service before 27.1.79. [R.B. No. F(E) III/78 PN 1/12 of 27.2.79](N.R., S.N. 7230).

On re-consideration the Railway Board has decided that the benefit of Family Pension Scheme, 1964 be extended to the families of those Railway servants also who died before completion of one year continuous service prior to 27.1.79 but who had been examined by the appropriate medical authority and declared fit by that authority for railway service prior to the appointment. These orders will be effective from 24.10.86 and no arrears will be admissible. [R.B. No. F(E)III/85/PN/1/19 of 19.12.86](N.R., S.N. 9157).

- (b) In case at the time of employee's death after retirement on or after 1st January, 1964, he was in receipt of any of the ordinary pension viz. Compensation, Invalid, Retiring or Superannuation pension.

The Railway Board has further given the following clarification:-

- (i) The rate of Dearness Relief which was taken into account for revision of pension, i.e. as on 1.1.1986 is to be applied.
- (ii) The date mentioned is with reference to pension i.e. the pension as on 31.12.1985 is to be taken into account.
- (iii) The rate of Dearness Relief which was taken into account for revision of pension, i.e. as on 1.1.1996 is to be applied.
- (iv) The full pension shall be actual full pension sanctioned or the revised pension (in case of pre-1979 pensioners) as per the Liberalised Pension formula of 1979.
- (v) The full pension shall be actual full pension sanctioned or the revised pension (in case of post 1986 pensioners) or the revised notional full pension (in case of pre 1986 pensioners) as per the guidelines given in Office Memorandum dated 14.7.1998 and Office Memorandum dated 12.1.1999 read with corrigendum dated 5.2.1999.

DOPT No. 4/79/2006-P&PW(D) dated 13.5.2008 (RBE No. 59/2008)."

7. Ld. Counsel would further rely upon the decision rendered in **Gita Rani Santra v. Union of India & other** reported in (1997-2001) AT FBJ 295 that a

widow of a Casual worker who had served with temporary status for a minimum period of 20 years would be entitled to family pension and in terms of **Ram Kumar & other v. Union of India & others reported in 1996(1) SLJ (CAT) 116** that if a temporary status Casual Labour in Railway was entitled to pension his widow definitely would be entitled to family pension.

The Ld. Counsel also referred to a decision rendered by the Hon'ble Gujarat High in **Rukhiben Rupabhai v. Union of India & ors. in Civil Appeal Nos. 4776, 5641 and 5770 of 2004.**

8. Per contra, the Ld. Counsel for the respondents relied upon the decision rendered by Hon'ble Apex Court in **Pudgi Tudu v. Union of India & anr.** decided in **Civil Appeal No(s). 28628/2012** arising out of an order dated 10.8.2011 in **WPCT No. 87/2010** rendered by Hon'ble High Court at Calcutta wherein the Hon'ble Apex Court had upheld the decision of the Tribunal as well as the Hon'ble High Court denying family pension to the widow of a Casual Labour employed in December, 1976 de-casualised, re-casualised and appointed as temporary Gangman w.e.f. 20.12.78. He held that post till 18.4.1983, i.e., the date of death.

9. Ld. Counsels were heard and materials on record were perused.

In **Rukhiben Rupabhai supra** the Hon'ble High Court formulated the following questions:-

"16. According to the learned Counsel for the parties, the question for determination is whether the widow of a casual labourer with temporary status' is entitled to family pension and whether position in case of 'substitute' is different."

The Hon'ble Court having delved indepth into the various provision of the Railway Manual (2511) and the decisions rendered in regard to Casual Labours

with temporary status, their rights to pension, and the rights of their widows to family pension, and concluded as follows:-

"39. In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labourer has served for requisite period continuously, he has to be treated temporary, in other words, he is a 'temporary railway servant.' This is incidence of statutory provision and judicial pronouncements. Having acquitted this status, he is entitled to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularisation against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularisation/confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing of an employee 'casual/temporary status/and depriving him statutory and constitutional rights under Arts. 14, 16, 21, 41 and 42. Therefore, appointment against permanent post along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yadav case (supra), therefore, illegal, and cannot be given effect to by the Railways changing the position of 'casual labour' from 'temporary casual labour' to 'casual labour with temporary status'.

40. Substitutes, if absorbed against regular posts, would be entitled to pensionary benefits. In case they were holding temporary status before appointment as substitutes they shall be treated 'temporary railway servants'. The period spent by them as casual labour, before appointment as substitute shall be counted for acquiring status of 'temporary railway servant' thereby, becoming at par with other temporary railway servants for pensionary benefits and his widow to family pension. The contentions advanced by learned Counsel for the petitioners are accepted and those of the respondents rejected. The casual workers attain the status of 'temporary railway servant' and are further entitled to regularisation against available posts would not deprive them of retiral pension. Their widows/widowers, on his/her demise, whether during service or after superannuation, would be entitled to family pension, same would be the position of the substitute, in the circumstances discussed above."

(emphasis supplied)

10. Citing the judgment supra the Ld. Counsel for the applicant had argued that the present applicant being the widow of the deceased Casual Labour with temporary status, who had served the organisation for a considerable period, would be eminently eligible for family pension and other death benefits, while the

respondents to the advantage of the applicant have emphatically admitted that the employee "Sarwan Balmiki could not be regularised as no Gr. 'D' post was lying vacant in the office during his tenure".

11. In view of the clear finding of the Hon'ble Gujrat High Court in Rukhiben Rupabhai (supra) that the "pensionary right would not depend on regularisation /confirmation and availability of posts and that the employee should be deemed to have become permanent since laxity on the part of the employer should not militate against the right of the employee" and in view of the fact that the Hon'ble High Court did not restrict consideration in cases of those Casual Workers who have rendered 20 years of service as Casual Labour with temporary status, I am of the considered view that the case of the present applicant inarguably and indebatably squarely fits into the factual matrix of the cited decision. As such she would be entitled to relief identical to that of the widow, Rukhiben Rupabhai and other widows/ parties to the decision.

12. That apart it could be noted that the cited decision in Pugdi Tudu supra was not rendered on the basis of the provisions of Family Pension Scheme for Railway Servants found in 1964 which inarguably and irrefutably holds that field in regard to grant of family pension and explicitly allows family pension to the widows of deceased Railway servants who have not completed one year's of continuous service but were examined by the appropriate medical authority and declared fit by that authority for Railway service.

It is trite, axiomatic and settled law that a decision in a case is only on ^B authority for what it actually decides [AIR 1968 SC 647]

13. In view of the above enumerations supra the impugned order is quashed.

14. Consequently, the respondents are directed to consider the matter in terms of **Rukhiben Rupabhai** and the provisions of family pension scheme cited supra and pass appropriate orders within three months from the date of

communication of this order.

15. This O.A. is accordingly disposed of. There shall be no order as to costs.

(Bidisha Banerjee)
Judicial Member

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