



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O. A. NO. 542 OF 2013

1. Smt. Khiroda Devi, wife of late Ishwar, aged about 64 years, Housewife, residing at Vill. Nou Gachhi, P. O. & P.s. Rajmahal, Dist. Sahibganj, Bihar. Pin - 803108 *J.S.*
2. Shyamalati Devi Daughter of Late Ishwar aged about 33 years, residing at Vill. Nou Gachhi, P. O. & P.s. Rajmahal, Dist. Sahibganj, Bihar. Pin - 803108 *J.S.*

... Applicants

- Versus -

1. Union of India service through the General Manager, Eastern Railway, Fairlie Place, Kolkata - 700 001.
2. The Railway Board, service through the Chairman, Rail Bhawan, New Delhi.
3. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata - 700 001.
4. The Divisional Railway Manager, Eastern Railway, Howrah.
5. The Divisional Railway Manager, Eastern Railway, Malda, Pin - 732102.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A.No.542/2013

Date of Order: 9.9.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

KHIRODA DEVI & ANOTHER
VS.
UNION OF INDIA & OTHERS
(EASTERN RAILWAY)

For the applicant : Mr. J.R. Das, counsel

For the respondents : Mr. D. Nandi, counsel

ORDER

Bidisha Banerjee, Member (J):

The applicants in this O.A. have sought for the following reliefs:-

- i) *An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals(Procedure) Rules, 1987 to move this application jointly;*
- ii) *To direct the respondents to make the payment of the retiral benefits of the later husband of the applicant No.1 including pensionary benefit etc. with interest forthwith;*
- iii) *deleted(as per liberty granted by this Tribunal);*
- iv) *An order directing the respondents to make payment of retiral benefits due to late Ishwar to her family members including payment of widow pension/family pension to applicant No.1 with due interests thereon as decided by this Hon'ble Tribunal;*
- v) *An order directing the respondents to immediately release the due DCRG amount, Widow Pension/Family Pension, benefits as well as such enhanced pension and pensionary benefits as due with all other retiral amount within no time;*
- vi) *An order directing the respondents to place all relevant papers/documents in respect of the matter before the Hon'ble Bench for proper adjudication of the issue involved therein in the interest of justice;*
- vii) *Any other order or further order/orders and/or direction/directions as to this Hon'ble Tribunal may deem fit and proper."*

2. At hearing it transpired that the applicant has been denied family pension on the ground that she is the widow of a decasualised Gangman.

3. The respondents have admitted the following facts by way of their reply :-

"Lt. Iswar was a decasualized Gangman under PWI/BHW(then HWH Divn.) who died in harness on 22.11.81.

a) The ex employee (Lt. Ishwar) was appointed as decasualised Gangman in scale 200-250/- on pay Rs.200/- w.e.f. 26.12.78 on a sanction ESA(Employment Sanctioning Authority) as per letter No.W/10/Ruling/46 dtd 18.10.78 w.e.f. 26.12.78. As mentioned AEN/New Farakka vide his letter no.E/Settlement dated 04.01.2002, the service of the deceased employee was never regularised in the Railways and was never posted against regular post. Subsequently his pay was raised to Rs.206/- w.e.f. 01.02.81 deducting the period of LWP. He was on LWP for 312 days during his short period of service as DC Gangman from 26.12.78 to 21.11.81 i.e. 2 years 10 months 25 days.

b) The applicant had earlier filed OA1250/2001 before Hon'ble CAT/Kolkata claiming for retiral benefits and compassionate appointment for herself. As per order of Ld. Tribunal passed in O.A.No.1250/2001, a speaking order was issued to the applicant vide no.DCC/Comp/Misc/Smt. Khiroda Devi/01 dated 21.03.2002.

- c) Aggrieved, the applicant further filed CP(c) No.23 of 2004 before Ld. Tribunal which was subsequently disposed of vide order dated 18.03.2005.
- d) Now, the applicant has again filed the instant case seeking retiral benefits of ex-employee and compassionate appointment in favour of her daughter, Shyamalati Devi.
- e) It is pertinent to mention here no such person as Shyamalati Devi(as stated by the applicant instant O.A) has been found on local enquiry. The present family members of Lt. Iswar is as follows:-

- a) Smt. Khiroda Devi @ Khisi-Beda@Khirni Bewa-Wife of deceased;
- b) Smt. Saroti-Bewa-Married daughter;
- c) Smt. Malati Devi-Married daughter;
- d) Smt. Samloni Devi@ Samloni-Beba -Widowed daughter.

The following is also mentioned:-

- 1) Gratuity amounting Rs.351/- was passed for payment.
- 2) No other dues was/were payable.
- 3) F/Pension was not admissible as he was not regular employee as per R.S.R.P.-1993

In this connection Hon'ble Supreme Court's judgment in the matter Pudgi Tudu(SLP(c)No.28628 of 2012) is relevant.

Moreover, the case is more than 32 years old at present since the death of ex-employee and beyond the jurisdiction of the Division.

In this regard the Hon'ble Supreme Court's judgment dated 04.05.1994 in the case of **Umesh Kumar Nagpal –Vs.- State of Haryana & Ors. and Anil Malik Vs. State of Haryana & Ors.(JT 1994(3) SC-525)** has held as follows:-

"The compassionate employment can not be granted after a lapse of reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment can not be claimed and offered whatever the lapse of time and after the crisis is over."

A xerox copy of the letter No.CPO/SC/SA/POL/Pt.VII dated 14.03.1995 referring the judgement of Hon'ble Supreme Court's dated 04.05.1994 is marked as annexure "R-1" to this reply."

4. We have heard the id. counsel for the parties and perused the materials on record.
5. We fail to understand how the case of **Umesh Kumar Nagpal – Vs.- State of Haryana & Others and Anil Malik Vs. State of Haryana & Others** would come to play since the applicant has given up the prayer of compassionate appointment and only sought for family pension. Further, it transpires from the reply that her prayer for family pension has been denied on the basis of a decision of the Hon'ble Apex Court in the case of **Pudgi Tudu (Special Leave to Appeal(Civil)No.28628/2012 arising out of WPCT.No.87/2010)** . In the said matter the husband of Pudgi Tudu was admittedly a casual labour who was decasualised and appointed as temporary Gangman on 20.12.1978 and served as such till 18.04.1983 i.e. the date of his death. He was a casual Gangman with

temporary status while the decision in **O.A.No.795/2001(Bhadoo Devi vs. Union of India)** as cited by the applicant, was the case of a decasualised Gangman on regular scale of pay of Rs.200-250/-. Therefore, the ld. counsel for the applicant placing the decision in **O.A.795/2001(Bhadoo Devi vs. Union of India)** would submit that the case of the applicant being identical to that of Bhadoo Devi , is squarely covered by the decision in Bhadoo Devi and hence would deserve identical relief.

6. Ld. counsel for the applicant would also rely upon the following decisions :-

(i) **Harjeet Kaur vs. DTC** rendered by Hon'ble High Court at Delhi, to contend that family pension cannot be denied on technical plea;

(ii) **O.A.284/2005(Smt. Anita Devi vs. Union of India & Ors.)** rendered by Principal Bench of this Tribunal, to contend that widow of a Casual Labour with temporary status is entitled to family pension which could not be denied on account of delay of 11 years. The extract of the decision would go thus:-

"33. If one has regard to the above, having regard to the law laid down in Ram Kumar's case and more particularly when Railway Services Pension Manual do not stipulate continuous service as a temporary government servant on extension of benefit at par with temporary govt. servant to those casual labourers, who had acquired temporary status, the widow of a casual deceased casual labour is certainly entitled to the family pension, which is implicit in the rules and clarified by the law laid down by the Apex Court.

34. As regard the limitation is concerned, in the matter of pay and allowances, though there is no limitation, yet the Apex Court in S.K. Mastan Bee v. General Manager, Southern Railways & Others , 2003(1) SCSLJ 136 while inter-changing the grievance, taking a compassionate view on equity based, allowed the claim of the petitioners therein. I follow the same and rule that no limitation is attached in the pension matters and even there is some limitation, it would not amount to latches unless a right is defined, adjudicated and redressal is done, one has a right to come to the Tribunal for redressal."

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(iii) **S.K. Mastan Bee vs. General Manager, South Central Railway and Another** [2003 Supreme Court Cases(L&S) 93] where the Hon'ble Apex Court held that *"an illiterate widow with meagre resources who had been deprived by the Railways of her Gangman husband's arrears of family pension, her claim was maintainable despite delay."*

(iv) **Satyavir Singh vs. Delhi Transport Corporation** rendered by Hon'ble Delhi High Court on 22.08.2005 that *"Grievance relating to payment of dues like salary, subsistence allowance are recurring in nature— The complaint of unfairness or illegality cannot be brushed aside on the ground of delay in approaching the court."*

(v) **O.A.448/2004(Shri Balkrishna Balram Patil vs. Union of India & Ors.)** rendered by Bombay Bench of this Tribunal on 17.11.2005 that *"Casual labour working on Group 'C' posts are entitled to regularisation in group 'D' posts only and on regularisation they are entitled to pay scale of Group 'C' post", to contend that placing a casual employee on regular scale meant that he was placed on regular basis.*

7. We discern this Tribunal in **Bhadoo Devi supra** clarified what a decasualised Gangman meant and observed as under:-

"10. A reading of the order dt. 28.6.2001 (annexure-A5) whereby the claim of the applicant was rejected, shows that Late Shri Mahesh was appointed as "DC Gangman" on-6/4/79. The expression "DC" was explained by the Id. counsel for the respondents as "decasualised". The word "Decasualised" has not been defined in the Rules as has been stated by the Id. counsel for the respondents.

However, the very word "decasualised" indicates that the man as on casual basis earlier, but his casual engagement was finished. In the Webster Dictionary "Decasualisation" means-

" the act or process of decasualizing"

"Decasualize" means -

"to do away with the casual employment of (labour): eliminate the casuals from (industry) by making the employment relation more permanent."

It is thus evident that when the applicant's husband was decasualised, it meant that he got higher status in service and was no more on casual basis. Rather he had become regular employee of the Railway. It is significant to point out that on decasualization the applicant's husband was allowed regular pay scale. This circumstances by itself is sufficient to hold that the husband of the applicant was a regular Rly. servant. It has, therefore, to be held that Shri Mahesh had been appointed on regular basis and he had become a railway servant w.e.f. 6.4.79.

It may be that the post on which the husband of the applicant was appointed on 6.4.79 was temporary one, but by that it cannot be inferred that Shri Mahesh was not appointed in Railway Service.

11. *In this connection, the ld. counsel for the respondents referred to rule 14 of the Railway Service (Pension) Rules, 1993 and canvassed that the period of work on casual basis is not to be counted for pensionary benefits. Rule 14(ii) stipulates that period of employment "at casual market or daily rate shall not constitute service for pensionary benefits.*

As already stated, the applicant's husband had already been decasualised which fact is evident by the order dt. 28.6.2001. Therefore, it cannot be said that the period of employment from 6.4.79 to 20.8.87 (date of death) of the applicant's husband was of casual nature. This rule does not assist the respondents in justifying the order dt. 28.6.2001.

12. *No Railway Board's order/Rule or Regulation providing that even after decasualisation, the period of employment continues to be on casual basis or that service rendered after decasualisation is not countable for the purpose of pensionary benefits, has been cited on behalf of the respondents.*

13. *In our consider opinion, the respondents have erred in denying the family pension benefit to the applicant.*

14. *Consequently, the OA is allowed. The respondents are directed to determine the amount of family pension payable to the applicant w.e.f. 21.8.87 and pay the same to her within a period of three months from the date of communication of this order. If the amount is not paid within aforesaid period, the applicant shall also be entitled to interest at the rate of 12% per annum from the date of filing this OA till the date of actual payment, on the entire arrears of family pension. It is also directed that the family pension shall be continued to be paid to the applicant as per Rules.*

15. *Applicant shall get Rs. 2000/- from the respondents as cost of this OA."*

8. In view of the admitted position supra that the applicant is a widow of a decasualised Gangman who rendered service on regular scale of pay, we are of the considered opinion that the applicant would be entitled to consideration on par with Bhadoo Devi and therefore, we remand the matter back to the authorities to consider her case afresh in accordance with the decision in **O.A.795/2001(Bhadoo Devi vs. Union of India)** untrammelled by their earlier consideration and issue orders afresh in regard to her eligibility towards family pension.

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9. Let appropriate orders be issued within 3 months. No costs.

(Dr.Nandita Chatterjee)
Administrative Member

Bidisha Banerjee
(Bidisha Banerjee)
Judicial Member

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