

(2011) 12 AHC CK 0453
In the Allahabad High Court
Case No : Writ - A No. - 46149 of 2011

Union of India and Others

APPELLANT

Vs

Smt. Somwati and Another

RESPONDENT

Date of Decision : 23-12-2011

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 18(3)

Citation : (2012) 2 ADJ 732

Hon'ble Judges : Sunil Ambwani, J;Manoj Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Union of India through General Manager, North Eastern Railway, Gorakhpur and the Divisional Railway Manager (Personnel) North Eastern Railway, Izzatnagar, District Bareilly have filed this petition challenging the order dated 28.01.2011 passed by Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter referred to as Tribunal) on O.A. No. 320 of 2009 at the instance of respondent No.1. The Tribunal has quashed the order dated 10.04.2007 of the Railway Authority whereby the claim of the respondent no.1 (hereinafter referred to as claimant) for family pension was rejected, and has directed the petitioners to calculate and pay family pension along with arrears to the claimant w.e.f. 16.01.1995, along with interest on the arrears at the rate of 9% per annum till the date of payment, and to continue to pay family pension, etc. according to the rules. The order of the Tribunal further directs the petitioners to pay to the claimant gratuity amount along with interest at the rate of 9 % per annum till the date of payment.

2. The claimant's case before the Tribunal was that her husband was enlisted as Casual Labour on 07.07.1978 in the Engineering Department of Northern Eastern Railway, Pilibhit. He worked in different spells on different jobs in the Engineering and Construction Department as Casual Labour Khalasi, Seasonal Waterman, etc. upto 08.09.1985. On 09.09.1985, he was granted time scale of pay against a

regular temporary post in the Engineering Department under IOW-1st Pilibhit. Thereafter, he worked in the same capacity against regular temporary post from 09.09.1985 to 16.01.1995 when he was murdered while returning from duty. After his death, the claimant made several representations to the authorities for grant of family pension, which was ultimately denied by the order dated 10.04.2007, on the ground that since her husband was just a time scale khalasi, therefore, she would not be entitled to family pension. The claimant relying on Family Pension Rules, 1964, and Railway Board's letter No. F(P) 65 PN 71/2 of 21.10.1965, claimed that she was entitled to family pension, as her husband was absorbed on 09.09.1985 against a regular temporary post. The claimant also relied on decision by Central Administrative Tribunal, Patna Bench, Patna in O.A. No.481 of 1995 (Smt. Mithai Devi Vs. U.O.I)

3. On behalf of the Railways (petitioners in this petition) a counter reply was filed contesting the claim, inter alia, on the following grounds:

(a) the husband of the claimant was unscreened casual labour working as time scale khalasi, and was not a regular railway servant, therefore, he was not entitled to pension;

(b) granting of time scale means that casual labours are allowed temporary status for availing some facilities like leave, pass etc., but it does not confer any right for the benefits admissible to permanent railway servant;

(c) time scale /temporary status granted to casual labours does not provide them with regular employee status until they are screened and are found suitable in the screening test for appointment on regular basis;

(d) the parity claimed by the claimant with regard to a decision in O.A. No. 481 of 1995 (Smt. Mithai Devi v. Union of India) is not available to her as in that case the person was screened and was under process for absorption/appointment against regular post whereas the husband of the claimant did not enjoy similar status.

4. In a rejoinder to the counter reply of the railways, the claimant reiterated her stand and stated that time scale khalasi (temporary scale granted) are entitled to pensionary benefits. Moreover, keeping an employee temporary for an indefinite period, like 17 years in the case of her husband, cannot absolve the railways from its liabilities to an employee. In any case, regularisation of the services is the responsibility of the employer and for the lapses on the part of an employer the widow cannot suffer. However, in the rejoinder, the claimant did not dispute the stand taken by the railways that the husband of the applicant was not screened, as was in the case of Mithai Devi (supra).

5. The Tribunal noted the submissions made on behalf of the railways, in paragraph No.3 of its judgment. It would be useful to quote its contents:

The respondents contested the case, and filed the Counter reply. It has been alleged by the respondents that husband of the applicant was a casual labour

working as Time Scale Khalasi, and at the time of the death he was working as Time Scale Khalasi. It is stated that husband of the applicant was not a regular railway employee and hence the applicant is not entitled for family pension. It has further been alleged that the time scale/temporary status granted to the casual labour, substitute Khalasi are not treated as regular employee until they are screened and are found suitable in the screening test for appointment on regular basis. As the husband of the applicant was not a regular employee hence the applicant is not entitled for family pension benefits. Therefore, O.A is liable to be dismissed.

6. The submissions of the railways were dealt with by the Tribunal in paragraph 5 of its judgment. The contents thereof are quoted herein under:

From perusal of pleadings of the parties, it is evident that there is a very narrow controversy for deciding the O.A. It is admitted fact that husband of the applicant was a temporary railway Government employee working against the regular vacancy, and till his death he remained in that capacity, and he availed all the benefits which accrued to the temporary employee. It is a fact that during continuation of service, husband of the applicant was murdered by some miscreants and thereafter widow-applicant moved for family pension but she had been denied for family pension on the ground that she was not the widow of the regular employee. Hence, she is not entitled for family pension. It has been alleged by the respondents that husband of the applicant was not screened in order to acquire status of permanent employee but this is not the case for regularization etc. but this is a case regarding the family pension admissible to the widow of the deceased employee. It is relevant to peruse that what are the Rules of the Railway regarding admissibility of the family pension of a temporary employee because it is the main contention of the respondents that as husband of the applicant namely Govind Ram was a temporary employee and hence a temporary employee is not entitled for family pension. Learned counsel for the applicant cited Rule 18 Sub rule (3) of Railway Services (Pension) Rules, 1993. It has been provided in sub rule (3) that " in the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families to permanent railway servants under these rules". According to the above rule, even a temporary railway servant's family is entitled for family pension in case of death in harness. It is undisputed fact that husband of the applicant died in harness while in service. He was murdered by some miscreants. Hence, it is evident from perusal of the Rules of the Railways regarding pension that even family of the temporary railway servant is entitled for family pension. It is the main contention of the respondents that as husband of the applicant was the temporary employee and hence she was not entitled for family pension. But this is not being substantiated by any Railway Rules rather it has been specifically provided in the Rules that even the family of the temporary Railway servant is entitled for family pension. In my opinion, the respondents were not justified in denying the entitlement to the applicant from getting the family pension on the pretext that husband of the

applicant was a temporary employee."

7. The reasoning of the Tribunal, as is evident from the high lighted portions, for grant of family pension is based on the assumption that the admitted case of the railways was that the husband of the applicant was a temporary railway servant working against a regular vacancy. Therefore, by placing reliance on Rule 18 (3) of Railways Services (Pension) Rules, 1993 it came to the conclusion that in the event of death in harness of a temporary railway servant, his family shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent railway servants under the rules. By observing that the O.A. under consideration was not a case for regularization, the Tribunal brushed aside the contention on behalf of the railways that the claimant's husband was not screened for attaining the status of a permanent employee.

8. We have heard Sri A.K. Gaur assisted by Sri S.K. Anwar for the petitioners and Sri Vinod Kumar for the respondent no.1.

9. Learned counsel for the petitioners vehemently argued that the assumption drawn by the Tribunal that it was an admitted fact that the husband of the applicant was a temporary railway Government servant working against a regular vacancy was incorrect and not based on record. The counsel for the petitioner stated that there is a difference between, "casual labour with temporary status", and a "temporary railway servant". The Railway Services (Pension) Rules, 1993 provide for pensionary benefits to temporary servants but the same benefit is not available to a casual labour with temporary status.

10. In paragraph 18 of the writ petition, the petitioner has quoted the Rule 1501 from Chapter XV of the Indian Railway Establishment Manual, which defines temporary railway servants as under:

1501 (I) Temporary railway servants

Definition:-A "temporary railway servant" means a railway servant without a 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".

11. Learned counsel for the petitioner further submitted that where a casual labour has worked for certain number of days then he has to be given temporary status which entitles him to certain privileges as are enumerated in Rule 2005 of the Indian Railways Establishment Manual. It would be useful to quote Rule 2005:

2005. Entitlements and privileges admissible to casual labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be)----(a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A

Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily-rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to 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. 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 grounds, quotas for handicapped and ex-servicemen, 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.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment, etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in the Railway Board's Letter No. E(NG)II/78/CL/12 dated 14.10.1980. [Letter No. E(NG)II/85/CL/6 dated 28.11.1986 in the case of project casual labour.]

(d) Casual labour who have acquired temporary status and have put in three years' continuous service should be treated on a par with temporary railway servants for purpose of festival advance/flood advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days" continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-I (1995 Edn.).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last drawn by him. (This shall be effective from 2nd October, 1980.)

12. Relying on the highlighted portions of Rule 2005, learned counsel for the petitioners has submitted that casual labour who acquire temporary status would not be brought on the permanent or regular establishment or treated as in regular employment in Railways until and unless they are selected/screened through regular Selection Board for Group D post in the manner laid down from time to time. On the basis of the aforesaid Rule, learned counsel for the petitioner further submitted that it is only after absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/ temporary/permanent post, will qualify for pensionary benefits.

13. In support of his contention, the learned counsel for the petitioners has placed reliance on two decisions of the Apex Court namely, Union of India and others Vs. Rabia Bikaner etc., , and General Manager, North West Railway and Others Vs. Chanda Devi, . 14. In the case of Rabia Bikaner (supra) the Apex court in paragraph no.3 of its judgment observed that the casual labourers will be brought on to a pensionable establishment only on their absorption against regular temporary posts. It follows that they will come under the purview of the pension scheme from the date of their absorption against the regular temporary post. In paragraph no.4 of this judgment the Apex Court observed as under:

It is contended by the learned counsel for the respondent-widows that under para 2511--"Rights and Privileges admissible to the casual labourers who are treated as temporary after completion of six months" continuous service"---of the Railway Establishment Manual, they are entitled to family pension. 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 empaneled. After empanelment, they are required to be screened by the competent authority and as 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 the above position, if any of those employees who had put in the required minimum service of one year, that too after 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.

15. Relying on the case of Chanda Devi (supra) the counsel for the petitioner further contended that in spite of the 1993 Pension Rules the claimant would not be entitled to pension, as there is a difference between a "casual labourer with a temporary status", and a "temporary railway servant". The counsel for the petitioner contended that unless a "casual labourer with temporary status", undergoes screening/absorption process in regular railway establishment whether against a permanent post or a temporary post he cannot be conferred the status of a temporary railway servant thereby making him entitled to pensionary benefits.

16. In response to the arguments advanced on behalf of the petitioners, the counsel for the claimant (respondent No.1) has argued that the order of the Tribunal is just and proper; that the railways in their counter reply before the tribunal have not specifically denied the claim of the claimant that her husband was absorbed and had worked against a regular temporary post; that on similar facts and situation, the Tribunal in other cases have awarded family pension, which were affirmed or have attained finality; and that in any view of the matter since her husband had worked for a considerable length of time, therefore, it should be presumed that he was absorbed /regularized in service, and in any view of the matter was entitled to pension by being treated as temporary railway servant.

17. In support of his contention the counsel for respondent no.1 has placed reliance on the decision of the Apex Court in the case of Prabhavati Devi Vs. Union of India and others, . However, we may note that this decision is not of much help to the respondent as it has already been considered and explained in the case of Rabia Bikaner (supra).

18. We have gone through the record of the case and have considered the submissions made by the counsels for the parties. From the record we find that the Tribunal had relied on Rule 18 sub rule (3) of the Railway Services (Pension) Rules, 1993, so as to hold that even family of temporary railway servant shall be eligible to family pension. However, while relying on the aforesaid Rule, the Tribunal failed to notice the fine difference between a casual labourer (having temporary status) and a temporary railway servant. Probably because the pleadings of the parties were not specific enough or the relevant Rules and decisions were not placed before it. But here before us, the counsels have placed the entire law and the provisions governing the field. From the Rules and the judgments that we have noticed above, we find that a temporary railway servant is different from a casual labour (having temporary status). The status of a temporary railway servant is attained by a casual labour (having temporary

status) only after he undergoes screening test and absorption process in the regular railway establishment either against a temporary post or permanent post.

19. Now, the question that we are required to decide is whether the husband of the claimant was a temporary railway servant or just a casual labour with temporary status on the date of his death. In the present case we find that the claimant has nowhere pleaded in denial to the specific stand of the Railways that her husband had not underwent screening/ absorption process. Rather it has been pleaded by her that it should be presumed by the sheer length of her husband's service that he was absorbed / regularised. We are afraid that no such presumption can be drawn. Moreover, no documentary evidence was produced on behalf of the claimant to substantiate that her husband had, after undergoing screening test, attained the status of temporary / regular railway servant. Mere award of time scale of pay would not confer the status of a temporary railway servant in regular establishment, as has been noticed in the two judgments of the Apex Court referred to above. Accordingly, we hold that the respondent no.1 was unable to establish that her husband underwent screening/ absorption process, and had attained the status of a temporary railway servant so as to make her entitled to family pension under the rules.

20. In view of the aforesaid discussion we find that the order of the Tribunal to the extent that it allows family pension to the respondent no.1 is unsustainable in law. However, the order of the Tribunal to the extent that it directs payment of gratuity and interest thereon cannot be faulted.

21. Before parting, we express our anguish on the state of affairs in Indian Railways with regard to keeping persons engaged as casual labourers for decades without giving them benefit of absorption in the regular establishment. However, we note with satisfaction that the Railways have allowed the benefit of compassionate appointment to the claimant's son.

22. In the result, the petition is partly allowed. The order dated 28.1.2011 (Annexure No.4) passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad, is set aside only to the extent that it awards family pension to the respondent no.1. The direction in the order to pay gratuity to the respondent no.1 along with interest is maintained and affirmed.

23. There shall be no order as to costs.