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RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 12 day of 9 2008.

Original Application No. 1164 of 2006

Hon'ble Mr. A. K. Gaur, Member (J)

Smt. Sushila Singh, W/o late Ranjeet Singh, Khalasi under S.E.R.O./Store/Constrn., North Central Railway, Allahabad. C/o Ram Pher Singh, Vill. & P.O. : Birsinghpur, Distt: Sultanpur.

. . . Applicant

By Adv: Sri S.S. Sharma

V E R S U S

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Allahabad.
3. The Divisional Railway Manager, North Central Railway, DRM Office, Allahabad.
4. The Dy. Chief Electrical Engineer/Construction, North Central Railway, DRM Office Complex, Allahabad.
5. The Senior Divisional Electrical Engineer, North Central Railway, DRM Office, Allahabad.

. . . Respondents

By Adv: Sri Amresh Singh

O R D E R

By means of this OA the applicant has claimed following main reliefs:

"i. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to make payment of Family Pension to the applicant as per Rule 75 of the Railway Services (Pension) Rules 1993, w.e.f. 04.06.1984, the date of death of her husband late Ranjeet Singh, S/o Ram Murat, the deceased employee in service who has a regular and permanent employee in Group 'D' category on the post of Khalasi grade Rs. 750-940 w.e.f. 21.01.1982 as per Panel dated 21.01.1982 of Electric (Power) Department of Allahabad Division.

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- ii. That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to make payment of arrear of Family Pension to the applicant w.e.f. 04.06.1984 to the date of payment is started with interest @ 12% per annum compounded annually.
- iii. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to consider case of the applicant for appointment on compassionate ground in Group 'C' post on regular basis with all consequential benefits on this account.
- iv. That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to treat the applicant as regularly appointed instead of as Casual Labour from the date of her appointment as Casual Khalasi on 22.05.1989 with all consequential benefits."

2. According to the applicant her husband died on 04.06.1984 in harness. It is also alleged that at the time of death of her husband on 04.06.1984 her husband was permanent and regular employee in Group 'D' post w.e.f. 21.01.1982 in Electrical (Power) Department of Allahabad Division as per panel issued by the Divisional Railway Manager, Northern Railway, Allahabad dated 21.01.1982 (Annexure A-2 to the OA). The Educational Qualification of the applicant is Intermediate pass with Second division. The applicant submitted representation to Dy. Chief Engineer (Constn.), Northern Railway, Allahabad for payment of family pension and appointment on compassionate ground in Group 'C' post. According to the applicant after vigorous persuasion by the applicant and recommendations of Central Ministries and Recognized Unions she was given appointment on compassionate ground as Casual Khalasi on daily wage on 22.05.1988 and she was posted under Sr. Electrical Foreman (Constn.), Northern Railway, Allahabad (Annexure A-2 to the OA) under the Dy. C.E.E. (Constn.), Northern

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Railway, Allahabad. At present the applicant has been working as Regular Group 'D' employee on the post of Khalasi in the pay scale of Rs. 2550-3200. The applicant much after her appointment on compassionate ground on 22.05.1998, came to know from a Co-Worker of her late husband who was screened alongwith her husband and regularized in Group 'D' post in Electric (Power) Department of Allahabad Division in the same panel dated 21.01.1982 issued by the Divisional Railway Manager, Northern Railway, Allahabad that her husband was also regularized alongwith him w.e.f. 21.01.1982 well before his death during service on 04.06.1984.

3. It is further submitted by the applicant that the aforesaid matter was under active consideration in the PNM Meeting with the Chief Administrative Officer (Constrn.), Northern Railway, K. Gate, Delhi but due to creation of New Zone in Railways and setup of one new Zonal Railway i.e. North central Railway with Headquarter Office at Allahabad, all the Construction Units i.e. Civil Engineering, Electrical Engineering and Signal and Telecom. Engineering as functioning in the geographical jurisdiction of Allahabad Division of Northern Railway alongwith Allahabad Division are now under the jurisdiction and administrative control of the General Manager, North Central Railway, Headquarters Office, Allahabad. Therefore, the Electrical Construction Department has got no

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concerned with the Chief Administrative Officer (Constrn.), Northern Railway, Delhi and the recognized unions of Northern Railway Construction Organization. Accordingly, the matter of appointment and other matters of Construction Department of Allahabad Division which were under consideration in PNM Meeting were virtually treated as closed without any final decision. The applicant, as advised by the Vice-President of aforesaid Union, vide her letter made a representation to the Divisional Railway Manager, North Central Railway, Allahabad and the Dy. C.E.E. (Constrn.), North Central Railway, Allahabad requested for payment of Family pension to her w.e.f. 04.06.1984, the date of death of her husband and also to provide her appointment on compassionate ground and regular basis in Group 'C' post. But no action has been taken so far. Copy of applicant's representation is annexed as Annexure A-4 to the OA. The applicant has also filed copy of General Manager's letter dated 03.07.2002 in order to buttress the contention that in cases where the penal has been delayed on account of the administrative reasons, the name of the deceased casual labour should be borne on the panel alongwith others at the appropriate place and the mention should be made in the remarks column that the employee is since expired. The settlement dues to the family of the deceased employee should be paid as if the deceased employee was deemed to have been regularized on the date of his death. It has also been contended

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on behalf of the applicant that vide letter dated 03.07.2002 the General Manager has decided clearly that even a casual labour who had been screened but had expired before the issue of panel of screening, the name of deceased casual labour should be borne on the panel alongwith others at the appropriate place and settlement dues to the family of the deceased employee should be paid as if the deceased employee was deemed to have been regularized on the date of his death.

4. The sole grievance of the applicant is that as her husband was treated as casual labour in Construction Organization even after his death on 04.06.1984, the applicant was denied family pension and compassionate appointment in Group 'C' post on regular basis or casual basis.

5. Denying the aforesaid plea the respondents have filed detailed reply and submitted that the husband of the applicant was engaged in Group 'D' category as casual labour in Construction Organization. It is wrong to say that on 21.01.1982 her husband was regularized. In fact, on 21.01.1982 a [penal list of Division was prepared in order to settlement of lien of casual labour in the division and the same will not confer the benefit of regularization to the applicant. Since the husband of the applicant was working as scale rated employee in the department and his

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services were not regularized/Screened, the applicant is not entitled to get family pension. So far as the compassionate appointment is concerned the authorities have still considered the case of the applicant thrice, and after carefully considering the Railway Board circular on the point, accorded the benefit of compassionate appointment to the applicant under the dying in harness rule.

6. The applicant has filed rejoinder affidavit and submitted that the question of lien arises only when the services of the employee concerned is regularized and confirmed against a permanent post. Therefore, it is admitted fact in this para that services of the Casual Labour empanelled vide panel dated 21.01.1982 were regularized and they were granted lien in Electrical (Power) Department of Allahabad Division. The deceased employee working in Construction Organization was also included in the screening and in the said panel and, thereafter, regularized w.e.f. 21.01.1982. The panel was issued for regularization of services of 158 casual labours working in open line alongwith (Allahabad Division) and Electrical Construction Department of Allahabad Division. The name of the deceased employee was at Sl. No. 76 of the panel. All the empanelled persons included in the panel were posted against permanent post w.e.f. 21.01.1982, but due to mistake and lapse on the part of Divisional Authorities as well as Construction

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Authorities, the services of the deceased employee could not be regularized in the year 1982 and he was wrongly treated as temporary status employee upto his death i.e. 04.06.1984.

7. I have heard parties counsel at length. It is submitted by the learned counsel for the respondents that the applicant is not entitled for family pension w.e.f. 04.06.1984 i.e. the date of her husband and also to get appointment on compassionate ground on regular post in Group 'C' post. Learned counsel for the respondents has further argued that the applicant has already filed a representation dated 10.03.2005 before the Competent Authority for redressal of her grievances and the same is pending. It is settled principle of law that for seeking mandamus or direction from the respondents, first and foremost requirement is that the grievance of the applicant must have been raised before the respondents and, thereafter, if the applicant is still dissatisfied with the order passed by the competent authority he/she may approach his Tribunal by way of filing OA. In the present case I find that the representation preferred by the applicant has not been considered and decided by the respondents even after a lapse of about one year.

8. I have given my anxious thought to the pleas advanced by the respondents that the OA is

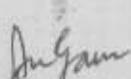
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misconceived due to delay and latches. In my considered view the claim of family pension is a recurring cause of action and also in view of letter dated 10.12.2004 (Annexure A-3 to the OA) and letter issued by Uttariya Railway Mazdoor Union, the delay if any, in filing OA deserves to be condoned.

9. In view of the aforesaid observation I hereby direct respondent No. 2 and 3 to consider and decide the pending representation of the applicant (Annexure A-4) dated 10.03.2005 taking into account the letter dated 03.07.2002 issued by General Manager, Northern Railway, New Delhi (Annexure A-5 to the OA), Rule 75 of Railway Servant (Pension) Rules, and also letter dated 06.05.1982 regarding appointment on compassionate ground in Group 'C' category by a reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. It is also directed that while deciding the representation of the applicant dated 10.03.2005, (Annexure A-4 to the OA), the respondents should take into account the averments contained in the OA as part of representation.

10. With the aforesaid observation the OA is disposed of. No cost.

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Member (J)