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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.24 of 1989.

Date of decision : December 21, 1990.

Dukhi Swain and another ... Applicants.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr.G.K.Misra,  
Miss. S.Mohanty, Advocates.

For the respondents ... M/s.D.N.Misra,  
S.C.Samantray  
P.K.Mohanty, Advocates.

C O R A M:

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
  2. To be referred to the Reporters or not ? No.
  3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
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J U D G M E N T

K.P.ACHARYA, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the applicants pray that direction be given to the respondents that the applicant No.1 is entitled to family pension and the amount to which she is entitled to, should be paid to her and in addition to the above, direction be given to the respondents that an amount of Rs.1550/- be paid to the applicants towards C.M.T.D. and further more, to give appointment to applicant No.2 on compassionate ground.

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2. Shortly stated, the case of the applicants is that applicant No.1, Dukhi Swain is the widow of Late Laxman Swain who was employed under the South Eastern Railway as a Gangman. Applicant No.2, Tareswar Swain is the son of the said Late Laxman Swain. Admittedly, Laxman Swain while in service died on 25.4.1971 leaving behind his widow and a son. During the life time of Laxman Swain, though he had not opted for the pension scheme, yet prayer of the applicants is that direction be given to the respondents for grant of pension in favour of the dependents of the deceased namely <sup>the</sup> widow. In addition to the above, applicants pray for a direction to give an appointment to Applicant No.2 on compassionate ground.

3. In their counter, the respondents maintained that Laxman Swain not having opted for the Pension Scheme and the widow, applicant No.1 not having also opted for the pension scheme for which communication had been made with her, it is no longer open to her to claim pension and since Laxman Swain had opted contributory provident fund scheme, money in deposit has been paid to the widow and she has received the same. Therefore, on this count, the widow is not entitled to any relief. That as regards the appointment on compassionate grounds, the respondents maintained that according to the declarations made by Laxman Swain in the past, applicant No.2, Tareswar Swain does not appear to be his son and therefore, he is not entitled to any appointment on compassionate grounds. In addition to the above, it is also maintained that the case is barred by limitation and should be dismissed in limine.

4. We have heard Mr.G.K.Misra, learned counsel for the applicant and Mr.D.N.Misra, learned Standing Counsel (Railways) for the respondents. At the outset, Mr.D.N.Misra, heavily pressed before us that the case should be dismissed in limine on account of the fact that the same is barred by limitation. We are unable to accept this argument of learned Standing Counsel (Railways) because it is <sup>a</sup> continuing cause of action and therefore section 21 of the Administrative Tribunals Act, 1985 has no application. It was next contended by Mr.D.N. Misra that the case should be dismissed on the ground of claim of plural remedies. During the course of argument advanced by Mr.G.K.Misra, learned counsel for the applicants it was submitted that he does not want to press item No. (2) of the prayer i.e. to pay share value and C.M.T.D. to the applicants. Hence, this prayer not being pressed the case does not suffer from <sup>the</sup> infirmity of claiming plural remedies. In view of this, we find no merit in the aforesaid contention of learned Standing Counsel (Railways).

5. Now, coming to the question of grant of family pension to the applicant No.1, Mr.D.N.Misra, learned Standing Counsel (Railways) submitted that in the past, in such cases, this Hon'ble Tribunal has held that once a particular employee opts for contributory provident fund and has not exercised his option to switch over to pension scheme, it is no longer open to him to change his stand for option for the pension scheme. <sup>Those judgments</sup> <sub>should</sub> apply in full force to the facts of the present case. Learned Standing Counsel (Railways) Mr. Misra,

also submitted that there is absolutely no justification to make a departure from the view already expressed in several other cases in the past. Mr.G.K.Misra, learned counsel for the applicants on the other hand submitted that the correspondence on which reliance has been placed by Mr.D.N.Misra, that communication were made with the applicant No.1, calling upon her as to whether she would opt for the pension scheme have not been received by applicant No.1 and hence she is now at liberty to come over to pension scheme. We are unable to accept the argument of Mr.G.K.Misra, learned counsel for the applicants that the applicant No.1 had not received any communication to the above effect. Presumption under section 114 of the Indian Evidence is that all official course of action has been duly performed and apart from the fact that there is no rebuttal evidence, the conduct of applicant No.1 in accepting the contributory provident fund amount (which is admitted) goes a long way to show that she has acquiesced to the grant of payment of money due to her through the contributory provident fund scheme and therefore, we are not in a position to accept the argument of Mr.G.K.Misra that the applicant No.1 always intended to switch over to the pension scheme. We find that there is considerable force on the contention of Mr.D.N.Misra, learned Standing Counsel (Railways) that at this belated stage the prayer of the applicants on this count should not be granted and we also agree with Mr.D.N.Misra that there is no justification on our part to make a departure from the view already taken in several other cases in the past where

the railway employees have changed their mind to switch over to the pension scheme. Therefore, the prayer of the applicants for grant of pension stands rejected.

6. Before we part with this aspect we would like to mention that in view of the decision taken by the Government of India in the Ministry of Personnel, Public Grievances and Pension, granting *ex-gratia* payment to the families of the deceased C.P.F.holders communicated by the Railway Board in their letter No.PC-IV/87 113/881/3 dated 30.6.1988 addressed to all General Managers of Indian Railways, it is found that such decision regarding payment of amount of *ex gratia* shall also be applicable with effect from 1.1.1986 to the widows and dependent children of the C.P.F.beneficiary who died ~~in~~ while in service prior to 1.1.1986. Admittedly, the said Laxman Swain has expired on 25.4.1971 while in service i.e. much prior to 1.1.1986. Therefore, the aforesaid decision of the Ministry will have full application to the facts of the present case. We direct the amount to which the applicant No.1 would be entitled on the basis of this office memorandum be paid to the applicant No.1 with effect from the due date as stipulated in this office memorandum, within a period of 90 days from the date of receipt of a copy of this judgment, after the applicant No.1 complies with the requirement under the Rules.

7. As regards the appointment of applicant No.2 on compassionate ground, an objection was raised by Mr.D.N.Misra, learned Standing Counsel(Railways) that there is a grave doubt

whether applicant No.2, Tareswar Swain is the son of late Laxman Swain because from reverse of Annexure-D, it is found that against the heading ' particulars of all the members of the deceased's family' it has been mentioned that Dukhi Dei is the widow of Laxman Swain, Kumari Nirupama Swain is the daughter and Goura Charan Swain is the son of deceased Laxman Swain. Annexure-D is the application made in the prescribed form by Dukhi Swain for return of provident fund dues. On the basis of Annexure-D it was contended by Mr.D.N.Misra, learned Standing Counsel (Railways) that had the applicant No.2 been the son of late Laxman Swain his name would have certainly found place in this application. The name of applicant No.2 not having found place in Annexure-D, appointment on compassionate ground cannot be given to applicant No.2. On the other hand, Mr.G.K.Misra, learned counsel for the applicants submitted that alias name of applicant No.2 is Goura Charan Swain which has not been inadvertently mentioned by the applicant No.1, Dukhi Dei. Mr.G.K.Misra also invited our attention to Annexure-1 which is a transfer certificate granted by the Headmaster of Sakuntala Devi High School, Taraboi, Puri on 15.10.1983 wherein it is stated that Tareswar Swain is the son of Laxman Swain. However we do not propose to enter into a roaving enquiry about the sonship of applicant No.2. We would observe, ~~as rightly contended by Mr.D.N.Misra~~, that in case applicant No.2 is able to successfully prove and satisfy the competent authority that he is the son of late Laxman Swain, then the competent authority should take a liberal

and sympathetic view in the matter and appoint applicant No.2 on compassionate grounds to a post to which he is found suitable otherwise his prayer will stand dismissed. We leave the matter entirely to the discretion of the Divisional Railway Manager, South Eastern Railway, Khurda Road to do the needful. We further direct applicant No.2 to submit his application before the Divisional Railway Manager, South Eastern Railway, Khurda Road, with a prayer for appointment on compassionate ground and applicant No.2 should adduce satisfactory evidence before the Divisional Railway Manager that he is the son of Late Laxman Swain.

8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Biju Patnaik  
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Vice-Chairman

*Biju Patnaik*  
21-12-90  
.....  
Vice-Chairman



Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
December 21, 1990/Sarangi.