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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 98 of 1989.

Date of decision : March 1, 1990.

P.D.S.Srinivas Rao ... Applicant.

Versus

Union of India ... Respondent.

For the applicant M/s. V.Prithvi Raj,  
J.N.Jethi,  
R.Venkata Ramana, Advocates.

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

C O R A M:

THE HON'BLE MR.P.S.HABEEL MOHD., MEMBER (ADMN.)

A N D

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

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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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JUDGMENT

N.SENGUPTA, MEMBER (J) The reliefs sought for by the applicant are for setting aside the order of removal of one P.V.Narseyya from service and to give him (applicant) pensionary benefits with effect from 28.6.1972.

*Heb. Feb. 28*

2. The material facts are that one P.V.Narseyya was working as a Store Issuer at Khulda Road under the South

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Eastern Railway. He did not report to duty from 28.6.1972 and since then his whereabouts have remained unknown.

As Narseyya remained absent from duty the Railway Administration started a Departmental proceeding and ultimately removed him from service by their order dated 19.4.1977. The applicant alleges that he is the son of the said Narseyya and his (applicant's) mother Laxmibai after finding her husband missing for some months, out of shock died on 2.1.1973. He also alleges that he was a minor child of 5 years at the time of the death of his mother. His case is that the Railway Administration did not take any step to ascertain if Narseyya was dead or alive at the time of initiation of the proceedings and as Narseyya has been unheard of for more than 7 years, he is presumed to have been dead and as there is no presumption as to when such an unheard of person died, the order of removal might have been after the said Narseyya died in which case the entire disciplinary proceeding would be invalid; since the Railway authorities proceeded with disciplinary proceedings on the assumption that Narseyya was alive it was for them to make enquiries about the whereabouts of Narseyya. The applicant has further alleged that as it cannot be said that Narseyya was alive on 19.4.1977, the order of removal from service is to be set aside and he is entitled to the family pension payable during the period he could get under the rules, to the P.F. accummulations of Narseyya and other benefits as indicated in Railway Board's letter No.F(E)/III/86/P.N.-1/17 dated 19.9.1986.

*MacEwen 11/3*

3. The respondents do not admit that Narseyya is dead or that he had any wife named Laxmibai who gave birth to the applicant.

4. We have heard Mr. J. N. Jethi, learned counsel for the applicant and Mr. D. N. Misra, learned Standing Counsel for the Railway Administration. As would be evident, the respondents do not admit that the applicant is the son of Narseyya. The applicant in support of his case that he is the son of Narseyya, has filed copies of certificates given by the Tahasildar and an M.L.A. and affidavits of himself and another. There can hardly be any doubt about the incompetence of a Tahasildar and an M.L.A. to decide question of heirship, therefore those certificates may at best amount to evidence, but without the examination of the persons who granted them they cannot be acted upon. It has first to be decided whether the applicant is the son of Narseyya and when really Narseyya died. These are questions which without doubt can not be service matter -s, those questions are to be decided. The jurisdiction of this Tribunal does not extend to decide matter which do not come within the ambit of "service matter", therefore without an adjudication by a competent court about the sonship of the applicant, it is not possible for this Tribunal to say whether the applicant can or cannot get any of the reliefs he has prayed for.

5. The application is disposed of accordingly, but however without costs.

PSH 13/3/1990  
Member (Administrative)

Member (Judicial)