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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.146 OF 1992.

Cuttack this the 3rd day of October, 1996.

C O R A M :

THE HONOURABLE MR. N. SAHU,
MEMBER (ADMINISTRATIVE).

Chandrama Pradhan, aged about 27 years,
Wife of Late Kandha Pradhan,
At present residing At- Jhadakuda,
P.O.Humma, P.S. Rambha,
District- Ganjam, Pin-761 027. Applicant

By the Advocates :: M/s. M.R.Panda,
D.K.Pani, &
S.P.Sahu.

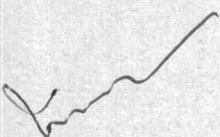
Versus.

1. Union of India, represented
through its Secretary, Telecommunication,
New Delhi.
2. Telecom District Engineer,
At/P.O.Berhampur, Dist-Ganjam-761001.
3. Sub-Divisional Officer, Telegraph,
Berhampur, District Ganjam-761 001. Respondents

By the Advocate :: Mr. P.N. Mohapatra,
Addl.Standing Counsel.

O R D E R.

N. SAHU, MEMBER (ADMINISTRATIVE) : The reliefs prayed in this Original
Application are as under :

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- (i) Order passed under Annexure-10
be quashed ;
 - (ii) Order passed depriving the petitioner
of lawful employment is illegal and
unconstitutional ;

- (iii) Order directing the opposite parties to consider the case of the applicant in accordance with the relevant executive instructions ;
- (iv) Order allowing all or any other benefit as available to the petitioner under law;
- (v) Order directing the opp.parties to regularise the service of late Kandha Pradhan and give all service benefits, as available to widow of regular employee such as, family pension, gratuity and provident fund."

2. The facts leading to the present application are as under :

The applicant is the wife of deceased Kandha Pradhan who worked as a Casual mazdoor under the Sub-Divisional Officer, Telegraph, Berhampur. He died on 4.6.1987 leaving behind him a widow and a son aged about 6 years. Late Kandha Pradhan was appointed in the year 1977 as a casual mazdoor and was subsequently promoted in 1985 as casual labourer Grade-II. As such he continued till his death on 4.7.1987. The applicant made a representation to the Sub-Divisional Officer on 11.8.1987 and later to the Telecommunication District Engineer for employment even as a casual mazdoor on rehabilitation grounds. On 6.12.1988 she again represented to the opposite party No.2. Later on further representations were made to the President, Prime Minister and on 6.6.1989 to the General Manager, Telecommunication. By Annexure-8 she was informed that as relaxation of normal recruitment rules would not be applicable to a casual mazdoor, her case could not be considered. She persisted further with another

representation to which the impugned Annexure-10, the reply to the said representation, was issued. This stated that her case did not fall within the rules under the scheme framed for compassionate appointment. The claim of the learned counsel for the applicant Shri M.K.Nayak is that there was an uninterrupted service of a decade without any penalty and that previous service should have been regularised. Even though Pradhan died, his service should be deemed to have been regularised and thus her widow should be extended the benefits of such regular employment. He cited a decision reported in ATR 1992(1) CAT Calcutta page 141 in the case of MALATHI KAR v. UNION OF INDIA AND OTHERS in which their Lordships held that a casual mazdoor who had rendered service for a considerable length of time and was not regularised due to the inaction of the authorities, should be deemed to have been regularised and the widow of the applicant would be entitled to get family pension and other service benefits available to a regular Government employee.

3. In the counter affidavit it is stated that Late Kandha Pradhan worked from December, 1978 to 4th June, 1987 with intermittent breaks; that is, he worked only for 71 days during 1978-79, 33 days during 1979-80 and 48 days during 1980-81. It is submitted that he did not work even for a single day during 1981-82. He was given the relief of payment of

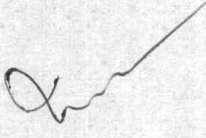
Rs.1000/- on the death of Kandha Pradhan for his funeral rites. It is further stated that under Government orders dated 30.3.1985 and 22.6.1988 fresh employment of casual mazdoors after 30.3.1985 for any type of work under any circumstances stood completely banned. As stated above, there is no provision for appointment to the dependants of casual mazdoors on compassionate grounds. The most important point raised in the counter affidavit is that the husband of the applicant died before his turn came to be regularised. As he was a casual labourer without the status of a regular employee, no legal heir and family is entitled to get employment.

4. Opposing the claim on facts Shri Nayak focussed on the Memo. filed before this Court on 10.11.1995 with a copy to the respondent's counsel. Enclosed to the Memo. are the muster roll particulars of the applicant's husband late Kandha Pradhan from the year 1977 to 28.3.1987 which contain the dates, work number, file number, book number, particulars of days worked and the names of the officer under whom he served. It is the contention of Shri Nayak that even after one year, this statement was not controverted by the respondents. No doubt, the applicant did not work one full month during all the years. Very rightly as pointed out by Shri P.N.Mohapatra and even according to the note submitted, the applicant did not work from 1.6.1980 to 2.7.1982, roughly for a period of two years

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at a stretch. But with the exception of this gap, the work particulars disclosed in the note show a fairly regular work schedule of the applicant engaged by the different Supervisors and Junior Engineers whose names are also furnished. Since this was not controverted in spite of several opportunities being given, I take the statement furnished to be true and disclosed the correct picture of the number of days worked by late Kandha Pradhan for the period from 1977 to March, 1987. In the conspectus of the above facts, the question at issue is what benefits would his widow be entitled to.

5. According to Shri P.N.Mohapatra, learned Addl. Standing Counsel, the applicant is not entitled to compassionate appointment on several grounds. Firstly, under the rules framed by the Ministry the dependants or legal heirs of a casual mazdoor are not entitled to compassionate appointment. As stated earlier, her claim for rehabilitation assistance was negatived as early as on 21.12.1988 for a fresh employment of any casual mazdoor and as early as on 1.9.1989 she was informed that her claim for compassionate appointment in relaxation of normal recruitment rules is not applicable to the casual mazdoors. Annexure-10 is only a repetition of the same order. Therefore, the claim for compassionate appointment is hit by laches and delay. Secondly, there is no question of compassionate appointment after lapse of such a long period. In a catena of decisions of the



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Supreme Court, it is held that the only ground which justifies compassionate appointment is the penurious condition of the family of the deceased and such an appointment cannot be granted after the lapse of a reasonable period of time. A comprehensive pronouncement of law on compassionate appointment can be found in the celebrated case of UMESH KUMAR NAGPAL v. STATE OF HARYANA AND OTHERS, SLP (C) No.10504 of 1993 and No.2385 of 1994 decided on 4.5.1994 (Swamy's CLD 994/2 page 42). In this case also it has been clearly held that compassionate appointment cannot be granted after lapse of a reasonable period of ^{time} which must be specified. In the rules, this period is normally 5 years. If the petitioner has been able to carry on her livelihood during the intervening period, that itself would show that her condition was not such as would attract a compassionate appointment. Thus there is no case for compassionate appointment as would be applicable to the survivor of a regular Government servant dying in harness.

6. I am impressed, however, by the plea advanced by Shri Nayak on the basis of the Supreme Court decision reported in 1987 SC 2342 in the case of DAILY RATED CASUAL LABOURERS EMPLOYED UNDER P.& T. DEPARTMENT v. UNION OF INDIA AND OTHERS, that denial of minimum pay in the pay scales of regularly employed workmen amounts to exploitation of labour. It held that classification

of casual labourers for the purpose of payment of different rates of wages is violative of Articles 14 and 16 of the Constitution of India. The State cannot deny to the casual labourers at least the minimum pay in the pay scales of regularly employed workmen, even though the Government may not be compelled to extend all the benefits enjoyed by the regularly recruited employees. The applicant was paid daily wages equal to 75% of 1/30th of the minimum of Group 'D' time scale plus admissible D.A. What the Supreme Court directed is that he should be paid the minimum of the Group 'D' scale of pay without any increments. The petitioners in the case cited above filed the first writ petition No. WP 302/96 on 5.2.1986 for issue of a writ in the nature of mandamus to the Union of India directing them to pay to the petitioners the same salary and allowances and other benefits as are being paid to the regular and permanent employees of the Union of India in the corresponding cadres. The Supreme Court itself directed that this minimum pay be paid from 5th of February, 1986. Following para-7 of the above Supreme Court order, I direct that the applicant be paid the minimum pay of Group 'D' staff with the corresponding D.A. and A.D.A. from 5.2.1986 till 28.3.1987 which was the last working day according to the Memo. dated 10.11.1995, filed by him and the amount already paid by way of wages during this period shall be deducted and the

balance amount should be paid within a period of 8 (eight) weeks from the date of receipt of a copy of this order.

7. The next contention of the applicant's counsel is for payment of benefits to the widow on the assumption that late Kandha Pradhan must be deemed to have been regularised before his death. Shri Nayak submitted the following decisions :

1996(1) Vol-20 ATJ 467
74(1992) CLT 286
ATR 1992(1) CAT 141

This is not a case of compassionate appointment of a regular Government servant dying in harness. The Supreme Court decision in Nagpal's case would not strictly apply to the case of a casual labourer. Strictly speaking, the two rulings, namely, Smt. Malathi Kar v. Union of India and others (supra) and Gitabala Samanta v. Union of India and others OA No.932 of 1992 decided on 14.5.1993, the first one cited by the learned counsel for the applicant, may not be applicable to the instant case. The only common feature is that the applicants in the cited cases and the applicant's husband in the present case have rendered long service. In those cases, the casual labourers have acquired temporary status and in the applicant's case, her husband was promoted to Casual labourer Grade II. In the cited cases, they were screened and medically examined for absorption. The concerned railway authorities have declared those applicants fit in the medical examination and could not

formally regularise them because before the authorities could issue necessary orders, the concerned railway employees died. In the instant case, there is no averment as to what steps have been taken to regularise the applicant's husband. This is certainly unfortunate. Except for the break from 31.5.1980 to 3.7.1982 I find that from 3.7.1982 till 1.3.1987 the deceased Kandha Pradhan was very regular. From 5.12.1977 till 31.5.1980 he was also very regular. As I treat the statement of work with full particulars of work as true and correct, the question at issue is whether the instructions of the Telecommunication Department for casual employment to the wards of the deceased temporary status casual mazdoor in G.I. Deptt. of Telecom letter No.268-365/88-STN. dated 7.5.1991 would not apply. The said instructions are quoted as under :

" I am directed to say that a proposal to grant casual employment to the wards of temporary status casual Mazdoors who die in harness has been under consideration in this department. The matter has been carefully examined and it has been decided that in the cases of "Temporary Status Casual Mazdoors" who die in harness leaving behind their family in indigent condition, the wards (i.e. son, daughter or wife) of such deceased may be given casual employment in relaxation of ban imposed vide 270-6/84. STN. dated 30.3.1985 and 22.6.1988. This will be subject to the condition that none in the family (son, daughter or wife) is employed in whatsoever capacity. The Casual Labourer so appointed will be eligible for conferment of temporary status and regularisation against Group 'D' posts as per "Casual Labourers Grant of temporary status and regularisation scheme" and Orders issued from time to time.

All such cases may be decided with the specific approval of Chief General Managers."

8. It is true that the family of the deceased temporary status casual labourer is not entitled for pension when his services have not been regularised. In respect of the railways, a casual labourer who has attained the temporary status but has not been regularised in the railway service is not eligible for pension. There is a Railway Board's letter dated 19.12.1986 which points out that the Family Pension Scheme will apply to railway servants who die before completion of one year continuous service, provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit for railway service. But here is a case where no such fitness has been certified and the applicant's case of processing is also not made clear from the records. There is a clear distinction between the temporary railway servant who is appointed against a post and a temporary status casual labourer who continues to be a casual labourer with certain additional benefits but is not appointed against any post. Once the screening was done, there is possibly some force in the argument that the authorities are duty bound to complete the process of regularisation at the earliest without keeping the matter hanging for years together, otherwise the very purpose of giving pensionary benefits to a casual labourer will be defeated.

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9. In the present case before me, there is no evidence that screening has been done. Thus, this is not a fit case for grant of family pension or any pensionary benefits to the applicant widow of late Kandha Pradhan. However, in view of the continuous service rendered, I should declare Kandha Pradhan to have attained a temporary status casual mazdoor when he died and in view of the instructions contained in the letter dated 7.5.1991 which though did not exist at the time of his death, could be applied to the applicant and she should be considered for casual employment. I would, therefore, direct the respondent No.2 the Telecom District Engineer to refer the applicant's case to the Chief General Manager for application of the circular referred to above and for considering the case of the applicant for appointment to the post of a Casual mazdoor within a period of two months from the date of receipt of a copy of this order.

10. To sum up, therefore, the applicant cannot claim pensionary benefits, even family pension. She cannot also claim the benefit of compassionate appointment either to her or to her children, as the case may be, in the sense in which a regular Government servant dying in harness would bequeath the right to indigent representative of his family to claim, but in view of the relaxation provided by the Telecom Department

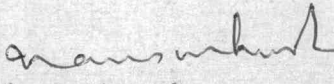
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I hold that she should be considered for the post of a casual labourer,

In the result, the Original Application is disposed of in the above manner. No costs.


(N. SAHU) 3.10.96
MEMBER (ADMINISTRATIVE).

DJena/ 3.10.96.