

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 297 OF 1994.
Cuttack, this the 8th of March, 2000.

SMT. AMIYA RANI MAZUMDER. APPLICANT.

VRS.

UNION OF INDIA & OTHERS. RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? *Yes.*
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *no.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 297 OF 1994.
Cuttack, this the 8th day of March, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.)

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Smt. Amiya Rani Mazumdar, widow of late
Rabindranath Mazumdar, Ex-Gangman under
PWI (Uluberia) SE Rly., Howrah, at present
residing at Loknath Road, Puri (Orissa). : Applicant.

By legal practitioner; Mr. S. C. Samantray, Advocate.

- VERSUS -

1. Union of India, service through the
General Manager, SE Rly., Garden
Reach, Calcutta-43.
2. The Chief Personnel Officer, SE Rly.,
Garden Reach, Calcutta-43.
3. Sr. Divisional Personnel Officer, SE Rly.,
Kharagpur, Dist. Midnapore.
4. The Permanent Way Inspector, Uluberia, SE Rly.,
Dist. Howrah.

: Respondents.

By legal practitioner; Mr.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, applicant who is the widow of one Rabindranath Mazumdar, has prayed for a direction to the authorities to grant family pension in her favour.

2. Applicant's case is that her husband was appointed as a Casual Gangman on 24.6.1967 and he attained temporary status after completion of six months of continuous service on 24.12.1967. Unfortunately, the husband of the applicant died on 31.8.1976. Applicant has mentioned in para 4.2. of the application that the husband of applicant was not regularised in Railway service during his service life even though he worked for more than ten years. After the death of the husband of applicant, the applicant made a representation asking for grant of pensionary benefits but no consideration was shown to her. Applicant has stated that the Hon'ble SC have deprecated of the action of the employers keeping casual labourers for long period without regularising them. It is also stated that the Calcutta Bench of the Tribunal in several cases have directed that the husband of the petitioner, before them are deemed to be regularised on the date of their death. Applicant has enclosed as Annexure-C the judgment of the Calcutta Bench in OA No. 456 of 1992 - Smt. Lakshmi Bala Das vrs. Union of India and others. It is stated by the applicant that going by the ratio of the decision in the above case, her husband should be deemed to have been regularised from the date of the death and accordingly, she would be entitled to the family pension.

J Som.

3. Respondents, in their counter have opposed the prayer of the applicant stating that the applicant's husband was appointed as a casual labour on daily wage basis. It is stated that he was awarded the scale of pay on 24.2.1967 and temporary status was given to him. It is stated that the applicant's husband expired on 31.8.1876 without being regularised in any post under the Railways. It is further stated that only reason why the applicant's husband could not be regularised was as because of non-availability of post of Gangman during the relevant period. It is stated that there were large number of gangman like the applicant's husband and many of them are senior to the applicant's husband and therefore, the applicant's husband could not be absorbed in regular establishment during his life time. Respondents have stated that in the context of the above facts and in accordance with the relevant rules, applicant is not entitled to the family pension. It is further stated that the ratio of the decision of the Calcutta Bench in Original Application No. 456 of 1992 is not applicable in this case as on fact that case is distinguishable. On the above grounds, Respondents have opposed the prayer of applicant.

4. Question of granting of family pension to the widows of casual labourers has come up before the Hon'ble Supreme Court on several occasions. Rules are also very clear in this regard. Position of law is well settled that a casual labour even with temporary status is not a Railway servant as the definition of Railway servant specifically excludes the casual labourers. It is also well settled that a casual labour can be absorbed in the regular railway establishment only

against a post and w.e.f. such regularisation 100% of his service after such regularisation and 50% of his service prior to regularisation and subsequent to the grant of temporary status are to be counted as pensionable service. Rules regarding family pension also provides that a widow of a railway servant who has put in one year of regular service under the rules before his death is entitled to family pension. In the instant case, applicant's husband passed away while functioning as a casual labour though with temporary status and therefore, applicant does not come within the relevant rules for getting family pension. We have also gone through through the decision of the Calcutta Bench in OA No.456 of 1992. In that case, the Tribunal directed that the husband of the applicant before the Tribunal is deemed to have been regularised on the date of his death. Law is well settled that the Tribunal can not direct the Departmental Authorities to absorb a particular person against a particular post. Before the process of regularisation screening has to be done and in view of this, the decision in OA No.456 of 1992 is clearly distinguishable. In the context of the above, we hold that the applicant is not entitled to the reliefs claimed by her in this Original Application. The OA is therefore, rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.