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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.118 OF 1995
Cuttack, this the 4th day of June, 1999

Sri Malayya Applicant

Vrs.

The Union of India and 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)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN, 6.99

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.118 OF 1995
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Malayya, son of late Peddababu,
aged 55 years, ex-employee,
resident of Samantiyapalli vill,
Jarada Police Station, Ganjam District,
Orissa Applicant

Advocate for applicant - Mr.B.P.Yadav

Vrs.

1. The Union of India, represented by the Secretary of Railways, New Delhi.
 2. The General Manager (W), North Frontier Railways, Gauhati.
 3. The Divisional Railway Manager, North Frontier Railway, D.R.M.Office, Tinsukia, Assam.
 4. The Divisional Engineer, North Frontier Railways, Tinsukia, assam.
 5. The Inspector of Works (C.L.), North Frontier Railway, Mariani, Dist.Jorhat, Assam.
 6. Sri Jaggayya, son of Peddababu (Kalasi), c/o Inspector of Works, North Frontier Railways, Mariani, Dist.Jorhat, Assam.... Respondents
- Advocate for respondents - Mr.B.Pal.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som - In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to give employment to the applicant and to give him service gratuity and pension.

2. The applicant's case is that he was appointed in the office of Inspector of Works, North Frontier Railway, Mariani, in the district of Jorhot, Assam, as a casual labourer (Khalasi) and worked as such from 1961 to 1963. His service was made permanent in letter dated 1.5.1963. In May 1963 the applicant fell ill and with the permission of his superior officer, went to his home at village Samantiapalli, Ganjam District, for better treatment. After recovery from illness the applicant went to the office of Inspector of Works, North Frontier Railway, Mariani, to join his duties, but he was not allowed to join. He also appeared before the Divisional Railway Manager, North Frontier Railway, Tinsukia in the third week of June 1963 and also met the Divisional Engineer, North Frontier Railway, Diburgarh. According to the applicant, he informed both the officers that he lost his job because of false appointment of another person in the name of the applicant. The applicant's case is that his brother one Jaggayya (respondent no.6) falsely impersonated the applicant and joined his post and he threatened the applicant against making any complaint. Because of threat from his brother the applicant was unable to proceed with the matter further and in the meantime respondent no.6, the brother of the applicant managed to persuade the Railway authorities to stop further enquiry on the application of the petitioner against respondent no.6. In 1988 the applicant again took up his case and submitted an application to General Manager, North Frontier Railway, Gauhati. He also submitted applications before Divisional Railway Manager, North Frontier Railway, Tinsukia; Divisional Railway Engineer, Diburgarh; and Chief Engineer, North Frontier Railway, Maligam. He also sent

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letters to Railway Board and others. The applicant also pointed out that respondent No.6's correct name is Jaggayya and he has been convicted by the Judicial Magistrate, First Class, Jhorhat, of a criminal offence, but no action was taken against his complaint. Ultimately, Divisional Engineer, North Frontier Railway, Tinsukia was asked to enquire into the matter. The Divisional Engineer forwarded the photostat copy of the Service Book of the person holding the post with three left thumb impressions of respondent no.6 but no further action was taken. He filed appeals to Chairman, Railway Board and Minister of Railways and Hon'ble Prime Minister but without any result. That is how he has come up in this petition with the prayers referred to earlier.

3. The departmental respondents in their counter have pointed out that the Application is hopelessly barred by limitation. The applicant was engaged as a casual labourer from 23.11.1962. He worked as such till 25.12.1962 and again from 28.12.1962 to 15.8.1963 and thereafter he ceased to be employed as casual labourer and left the employment on his own volition. After more than thirty years it is not possible to get the records regarding his employment. The departmental respondents have further stated that in 1963 there was no Divisional Railway Manager at Tinsukia and the applicant could not have met such an officer in the third week of June 1963. As regards the allegation of impersonation the departmental respondents have stated that one Mallaya, son of Peddababu of village Samtapali, District-Ganjam, was selected for a Group-D post and posted as Pointsman on 26.12.1966. His date of birth was 1.1.1937. This person Shri Malaya was appointed as regular Gangman (Pointsmen) on 26.12.1966 and after

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working for about two years in the place of appointment, he was transferred and posted under Inspector of Works, and he worked Mariani Unit, as Mali under Assistant Engineer, Mariani. In the year 1971 the character and antecedent of Malaya who was working as Mali were verified by authorities of Orissa State. The departmental respondents have stated that there is no record of the applicant having submitted petition to General Manager, North Frontier Railway, Maligaon on 29.3.1988. An application dated 10.6.1988 was filed by the applicant. This is at Annexure-R/1. From this petition it appears that after 25 years the applicant came up to claim his post and mentioned about Jaggayya having been engaged against his name. After enquiry it was found that descriptions of two Malayya, the applicant and the one (Malaya) who has been employed as a Mali are different in the matter of their engagement and appointment, place of first posting and date of birth. The applicant's statement is that after being absent for about a month he returned to Mariani in June 1963 for appointment, but he was not allowed to join because his brother Jaggayya had joined as Malaya in his place. This is controverted by the fact that the other Malaya was not in service prior to 1966. He was appointed only in December 1966 and was transferred to Mariani as Mali on 14.6.1968. The respondents have also given a comparative statement in paragraph 9 of their counter in which the bio data of the applicant as per Casual Labour Register and bio data of Shri Malaya, ex-Mali have been indicated. On the basis of this, the departmental respondents have stated that the applicant is a different person from Malaya who was working as Mali and therefore, they have opposed the prayer of the applicant.

4. We have heard Shri B.P.Yadav, the learned counsel for the petitioner and Shri B.Pal, the

learned Senior Panel Counsel appearing for the Railways and have perused the records. In course of hearing the applicant had passed away and his legal heirs have been substituted.

5. The applicant's case is that he worked as a Khalasi from 1961 to 1963 and thereafter fell ill in the last week of May 1963 and came to his village for treatment and went back to join his duties in the third week of June 1963 after a gap of little over one month. In June 1963 he found that his brother Jaggayya has joined his post as Malaya impersonating him. Because his brother threatened him with dire consequences he did not pursue the matter till 1988, i.e., for twenty-five years. It is difficult to believe that because of threat of his brother the applicant kept quiet for twenty-five years and came up only in 1988 to claim his job. The departmental authorities have pointed out that a person named Malaya, son of Pedababu joined as Gangman (Pointsman) in December 1966 for the first time and was transferred as Mali in 1968 to Mariani. In view of this, they have pointed out that the details of the applicant's bio data and the bio data of Malaya who worked as Mali are quite different. This was also established during enquiry. It is no doubt true that the person named Malaya who was engaged as Mali has the same father's name Peddababu as the father's name of the applicant. But all other details do not tally. The date of initial engagement as Gangman differs and therefore it is not possible to hold that Malaya who was appointed in 1966 and worked as Mali from 1968 got appointed by impersonating the present applicant. In any case, whatever rights, if any, the applicant had, had been lost by his long silence for twenty-five years.

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6. In consideration of all the above, we hold that the applicant has not been able to make out a case for the relief claimed by him. The Original Application is, therefore, held to be without any merit and is rejected but without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)

VICE-CHAIRMAN
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