

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 187 of 1995

CUTTACK THIS THE 25TH DAY OF SEPTEMBER, 1996

SMT. BALIKILA KURIMMA ... APPLICANT (S)

VERSUS

UNION OF INDIA & OTHERS ... RESPONDENT (S)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

N. Sahu
(N. SAHU) 25/9/96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH
CUTTACK

Original Application No. 187 of 1995
Cuttack this the 25th day of September, 1996

PRONOUNCED IN THE OPEN COURT

C O R A M:

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

...

Smt. Palikila Kurimamma,
W/o. Late Nookayya, aged
about 48 years, house-hold
duties, resident of Jhadupudi
Village: Kanchili, PO., Dist:
Srikakulam, A.P. STATE
(PIN 532290)

...

Applicant

By the Advocate:

Mr. B.P. Yadav

-VERSUS-

1. The Union of India, rep., by
the Secretary for Railways,
Rail Bhawan, New Delhi
2. The General Manager, South
Eastern Railway, Garden Reach
Calcutta
3. The Divisional Personnel Officer,
South Eastern Railway, Divisional
Railway Manager's Office, Khurda
Road, Post: Jatni, Dist: Puri
Orissa
4. The P.W.I., South Eastern Railway
Sompeta, Kanchili P.O., Srikakulam
Dist: A.P.

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Respondents

By the Advocate:

Mr. D.N. Mishra
Standing Counsel
(Railway Administration)

...

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): Heard Shri B.P. Yadav,
learned counsel for the applicant and Shri D.N. Mishra,
learned Standing Counsel for the Railway Administration.
The prayer in this Application is to direct the

Respondents to pass orders regarding the payment of family pension, service gratuity and compassionate appointment to one of the deceased family members.


2. The applicant's husband **late Palikila Nookayya, S/o.** Late Papayya was admittedly appointed under the Permanent Way Inspector, S.E. Railway, Sompeta (Respondent No. 4) on 24.7.1968. The Provident Fund Number allotted by the 2nd and 3rd Respondents to the applicant's husband is : 489116. The applicant's husband died ^{(i.e. shaka,} while in service on 11.5.1977. The Respondents did not pass any orders regarding family pension and service gratuity and hence the grievance.

3. This Application was admitted on the above facts. But the counter-affidavit filed by the Respondents has revealed some more relevant and material facts. The applicant's husband was appointed as a casual labour in the scale of Rs.70-85 and not as a Gangman as stated by the applicant. After rendering one year and nine months of service, he remained absent from 24.7.1970 and he did not report to duty. His services were terminated on 24.12.1977. To this effect there is an endorsement at Annexure-R/1 which is the service particulars of the applicant's husband. It is stated that as the employee remained unauthorisedly absent for more than three months he was deemed to have resigned from service in terms of Rules 732 which was prevalent at that time. It is further

stated that a person who remained absent for more than three months he should be deemed to have ~~been~~ resigned from service. Thus the main contention that he was working till his death is denied by the Respondents. The small contribution of Rs.105 towards provident fund dues was paid to the applicant's husband. Even the latter dated 25.4.1976 addressed to the Divisional Personnel Officer, S.E. Railway, Khurda Road is as under :

" I was working as ty.gangman under PWI/SPT. My date of appointment is 24.7.1969. I was absented from duty from Apl. 70 to till date due to mental disorder. In this connection I request you to kindly arrange my service settlement dues and also pay the unpaid amount if any. Thus save me from the financial hit."

4. The applicant himself conveys that he absented from duty from April, 1970 till the date of application dated 25.4.1976 "due to mental disorder." He was terminated from service and it was too late in the day to dispute the said termination. Firstly on the ground that he was a casual labour and next on the ground that he was terminated from services for unauthorised absence, he is ~~not~~ entitled to any pension of family pension. Once this finding is recorded, there is no question of any consideration of this Application. Laches can be condoned only when there is a foundation for claim of pension and family pension and once that foundation does not exist as evident from the facts, the admissibility of this



Application is doubtful. The full facts were not disclosed in the Original Application and therefore, it was admitted. There is no question of considering this Application for compassionate appointment as ruled by the Supreme Court, in a number of cases. Once it is established that the applicant's husband worked only as a casual labour and his services were terminated on account of unauthorised absence, the question of any retirement benefits does not arise.


5. Learned counsel for the applicant Shri B.P.Yadav cited a decision of Andhra Pradesh High Court in Writ Appeal No.974 of 1995 - decided on 15.9.1995. The principles laid down in this case are the standing orders provide automatic termination of service for unauthorised absence from duty for a certain period. The High Court held that unauthorised absence without grant of leave amounts to a mis-conduct and therefore, the employee cannot be removed from service without inquiry. In spite of the standing orders for automatic cession^{at} of service, this case is not at all applicable to the facts of the case before me. The termination order should have been contested within a reasonable time from the date it was passed. Two decades later, the applicant cannot contest the said termination order and on the ground that the termination itself was illegal, he cannot claim the retirement benefits. The

claim is far-fetched and unsupported by any principles of law.

Shri Yadav, further cited a decision of the Supreme Court (AIR 1996 SC 752) - (PRA BHAVATI DEVI VS. UNION OF INDIA & OTHERS). The facts of this case are as under :

• The applicant is the widow of late Bipin Kumar Rai who was taken into the Railway Establishment as a casual worker and with effect from 27.4.1983, he acquired the status of a substitute. According to the definition given in Rule 2315 of the terms and conditions applicable to substitutes in temporary service they are persons engaged in the railway establishments on regular scales of pay and allowances. He completed more than one year's of continuous service before his death. The Supreme Court held that he acquired the rights and privilege of a temporary servant and therefore, his dependants are eligible for family pension, under Para 801 of Manual of Railway Pension Rules. The basic facts of the Supreme Court decision is that the deceased 'kept working as a substitute till 5.1.1987 when he died'. Therefore, the applicant in that case worked as a substitute for about four years and he died in harness. •

The facts of the case before me are entirely different. The applicant's husband was stated to have ^{been} unauthorisedly absent and his services were



terminated and therefore, this case is distinguishable.

6. In view of the facts discussed above,
this Application is dismissed. No order as to costs.

Narasimhaiah
(N. SAHU) 23/9/96
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//