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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 69 OF 1995.
Cuttack, this the 30th day of November, 2000.

PRAMILA DAS AND ANOTHER.

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APPLICANTS

Versus

UNION OF INDIA & OTHERS.

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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)
VICE-CHIEF MAN 2000

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 69 OF 1995.
Cuttack, this the 30th day of November, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE- CHAIRMAN

AND

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

1. Pramila Das, Aged about 47 years,
2. Prasant Kumar Das, Aged about 23 years,
being legal heirs as wife and son of
late Basanta Kumar Das, resident of
Chhanaghar, PO; Kusumati, PS; Jatni. : Applicants.

By legal practitioner : Mr. P. C. Mohapatra, Advocate.

- Versus -

1. Union of India represented through its
General Manager, South Eastern Railway,
11, Garden Reach Road, Calcutta-43.
2. Divisional Personal Officer,
South Eastern Railway, Khurda Road,
At/PO/PS; Jatni, Dist. Khurda.
3. Loco Foreman, South Eastern Railway,
Khurda Road, At/PO/PS; Jatni,
Dist; Khurda.

: Respondents.

By legal practitioner : Mr. D. N. Mishra, Standing Counsel.

J. Som.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

Applicant No.1 is the wife of one Basanta Kumar Das and applicant No.2 is his son. In the Original Application, they had made a prayer for compassionate appointment but in order dated 2-2-1995 it has been noted that the prayer for compassionate appointment is not pressed. The remaining prayers made by the applicants in this Original Application are that the letter at Annexure-4 issued by the Respondent No.3 should be quashed and the next prayer is to direct the Respondent No.2 to pay the final benefits which were payable to Basanta Kumar Das, the Railway servant.

2. Applicants' case is that Basanta Kumar Das, the husband of applicant No.1 and father of applicant No.2 was working as Engine cleaner. He joined his post on 1-3-1969 and was a permanent regular staff. His Billa No. is 611 and his Provident Fund No. is 319618. Applicants have stated that in course of his employment, Basanta Kumar Das suffered a Head injury and ^{were} incourse of treatment he became mad and his whereabouts ^{^ Som} not known. Thereafter, the applicants moved the Railway Authorities to settled the dues payable to the Basanta Kumar Das but without any result and that is why they have come up in this Original Application with the prayers referred to earlier.

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3. Respondents have filed counter opposing the prayers of the applicants. For the present purpose, it is not necessary to refer all the averments made by the Respondents in their counter.

4. Learned counsel for the applicant is absent without any request for adjournment. As this is a 1995 matter it can not be allowed to drag on indefinitely. We have, therefore, heard Mr. D. N. Mishra, learned Standing Counsel appearing for the Respondents and have also perused the records. It has been submitted by the Standing Counsel and this has also been mentioned in their counter that the petitioners have come up 20 years after the removal of the Railway servant, i.e. the husband of the applicant No. 1 and this is barred by limitation. They have also stated that no records are available at this point of time to show as to whether any representation was made by the applicants for getting the dues and if dues have been paid to B. K. Das. It is also stated that applicants are not entitled to family pension and it is not possible for them to check up as to whether other dues have been paid to them.

Respondents have enclosed at Annexure-R/2 the Circular dated 31.3.1962 laying down the period of preservation of office records connected with establishment matters and it has been submitted that all the records relating to B. K. Das has been destroyed in accordance with this circular.

For considering the prayers made by the applicants, it would be enough if we go by the averments made by the Respondents themselves in their counter. The first point to be noted is that applicants have prayed for quashing the Memo at Annexure-4. This memo is merely a service certificate which speaks that the applicant No. 1's husband has been discharged

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from service w.e.f. 5-8-1975. Therefore, this memo is not liable to be quashed. As regards, quashing of the order of discharge of BK Das, this prayer has been made after passage of 20 years and this prayer is clearly barred by limitation. First prayer of the applicant is accordingly rejected.

5. The second prayer of the applicants is for a direction to the Respondents to give them the dues which they are entitled to. Respondents in para-3, page-2 of their counter have stated that BK Das was engaged as a substitute engine cleaner on 01-03-1969 and was discharged from service on 05-08-1975 for unauthorised absence for above three months in duty. From this averments of Respondents themselves it appears that BK Das worked as substitute engine cleaner from 1.3.1969 till 5.8.1975. Question for consideration is whether his widow will be entitled to family pension. Normally, family pension is payable to a widow of a Government servant who has put in one year of service. Hon'ble Supreme Court in the case of Prabhavati Devi Vrs. UI reported in AIR 1996 SC 752 have held that widows of substitutes are entitled to family pension provided the substitutes have worked more than six months. In the instant case from the counter of the Respondents it appears that BK Das worked as substitute for more than six months and therefore, going by the above decision of the Hon'ble Supreme, the wife of BK Das will be entitled to family pension after the Death of BK Das but the next point which arises for consideration is that the applicants have made no averment that BK Das has in the meantime passed away. They have only made averments that after he became mad he was moving about here and there and his whereabouts not known. Under general law, a man is presumed to be dead if his whereabouts not known for

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about seven years. In view of the above we prima facie feel that the applicant No.1 will be entitled to family pension in case it is established that BK Das is presumed to be dead.

6. It is further submitted by learned Standing Counsel appearing for the Respondents that ^{as} BK Das was discharged from service, the family is not entitled to family pension. We are unable to accept this proposition because Fundamental Rule only provides dismissal or removal of a Govt. servant from service entails forfeiture of past service. Such forfeiture is also applicable in case of resignation. Similar rule is therefore in force for the Railway servants. In the instant case, BK Das according to the counter of the Respondents was not dismissed or removed from service. According to the Respondents he was discharged from service and therefore, on this ground the claim for family pension can not be rejected.

7. We therefore, dispose of this Original application by issuing a direction to Respondent No.2 that he should get an enquiry conducted about the whereabouts of BK Das and come to the finding as to whether in the eye of law he could be presumed to be dead. This enquiry should be completed within a period of 120 days from the date of receipt of a copy of this order. Thereafter question of sanctioning of family pension to the applicant No.1 should be considered in the light of the decision of the Hon'ble Supreme Court referred to above and a final decision on this should be taken within a period of 60 days from the expiry of the period of 120 days and the result be intimated to the applicant within a

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period of 15 days thereafter. It is submitted by learned Additional Standing Counsel that Family pension scheme might have not been in existence at that time for the Central Govt. employees. Family pension scheme made to be in existence sometime in 1960. This aspect should be taken note of by Respondent No.2 while deciding the case of the family pension to the applicant No.1.

8. In the result, therefore, the Original Application is disposed of in terms of the observations and directions made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN

KNM/CM.