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Mr. D. N. Mishra
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

O.A.NOS. 200/94, 388/94, 212/96, 622/94 & 623/94
Cuttack, this the 11th day of October 2001.

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN,
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
&
HON'BLE SHRI L.H.MINGLIANA, MEMBER (ADMN.)
.....

IN OA 200/94

Smt.S.Rathnam, aged about 59 years, w/o late S.Surya Rao,
At-Hotbazar, P.O-Jatni, District-Khurda....Applicant

By the Advocates

-1/s A.K.Misra
S.K.Das
S.B.Jena
A.K.Guru,
B.D.Acharya
& J.Sengupta.

Vrs.

1. Union of India, represented through General Manager,
South Eastern Railway, Garden Reach, Calcutta-41.
2. Chief Personnel Officer, South Eastern Railway, Garden
Reach, Calcutta-41.
3. Divisional Railway Manager, South Eastern Railway,
Khurda Road, Jatni, Khurda....Respondents

By the Advocate -

-Mr.D.N.Misra
S.C.(Railways)
Mr.B.Pal, Senior Panel Counsel
(Rlys)

IN OA 388/94

J Som
Dasudeb Sahoo, son of Guria Sahoo, Store Watchman (Retd.),
District Engineer Construction, Cuttack, Village-Jagadi,
P.O-Mantira, Via-Jakhapura, District-Cuttack
.....
Applicant

By the Advocates - 1/s S.K.Pand
D.P.Das
J.K.Pand

Vrs.

1. Union of India, represented through General Manager,
South Eastern Railway, Garden Reach, Calcutta.
2. Chief Project Manager, South Eastern Railway,
Chandrasekharpur, Bhubaneswar, District-Khurda.



3. Divisional Engineer (Construction), Cuttack, At/PO/Dist. Cuttack..... Respondents

By the Advocate - Mr.R.Ch.Rath & Mr.B.Pal, Senior Panel Counsel (Rlys)

O.A. 212/96

Subhadra Bewa, wife of late Akrura Biswal, At-Tarini, P.O-Kaluparaghat, District-Puri, Orissa... Applicant

By the Advocate - M/s D.S.Misra
S.Mohanty
S.Behera

Vrs.

1. Union of India, represented through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal.
3. Divisional Railway Manager, South Eastern Railway, Khurda Road Division, At/PO/-Jatni, District-Khurda.
4. Divisional Personnel Officer, South Eastern Railway, Khurda Road Division, At/PO-Jatni, District-Khurda.

..... Respondents

By the Advocates - M/s D.N.Misra, SC(Rlys)
S.K.Panda
Mr. B.Pal, Senior panel Counsel(Rlys)

O.A. 622/94 & 623 / 94

Smt.P.Ammaji, w/o late P.Venkata Rao
C/o Dr.V.Prithvi Raj, Advocate, Shanti Sudha, Peyton Sahi, Cuttack-753 001 (Orissa).... Applicant

By the Advocate - Dr.B.Prithvi Raj
S.N.Sharma

Vrs.

1. Union of India, represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. Chief Project Manager (Construction), South Eastern Railway, Cuttack, at present Chandrasekharpur, Bhubaneswar.
3. Chief Engineer (Construction), South Eastern Railway, Cuttack, at present Chandrasekharpur, Bhubaneswar.
4. Assistant Engineer (Construction), South Eastern Railway, Talcher.

..... Respondents

By the Advocates - M/s B.Pal
O.N.Ghosh



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ORDER
SOMNATH SOM, VICE-CHAIRMAN

In two referral orders, dated 10.5.1995 in OA Nos.200 of 1994 and 388 of 1994 and referral order dated 16.12.1996 in OA No.212 of 1996, the following two identical questions have been referred to Full Bench. In OA Nos.622 and 623 of 1994, no separate referral orders have been passed. But in order dated 30.6.1995 those two cases have also been referred to Full Bench. The two questions referred to the Full Bench are quoted below:

"(1) Whether casual employee/employees are entitled to retiral benefits or pensionary benefits, if he or they retire while working as casual labourers or even after attaining temporary status and without being regularised or made permanent against substantive permanent posts and whether the Calcutta Bench in "Alati Kar's case (supra)" and this Bench in the cases of Sumati Patra and Manaka Bijili (supra) holding that services of the casual employee in each of these cases "should be deemed to have been regularised", laid down the correct law;

(2) Whether the dependant of a casual labourer, who dies in harness or in indigent circumstances without having his services regularised, would be entitled for being considered for appointment on compassionate ground."

Before considering the above two questions, the facts of each case will have to be briefly stated.

2. In OA No.200 of 1994 the husband of the applicant was employed under S.E.Railway as a casual labourer on 24.7.1976 and continued in service uninterruptedly till his death on 26.9.1983. The applicant, his widow has come up with a prayer to grant her family pension.



3. In OA No.388 of 1994 the applicant joined as casual labourer on 24.1.1972 and was granted temporary status on 1.1.1981. He continued as casual labourer with temporary status and retired on superannuation on 30.9.1990 while working in the post of Store Watchman. He has also prayed for pension with effect from the date of his retirement.

4. In OA No. 212 of 1996, according to the applicant, her husband was appointed as a Gangman on 24.6.1967 under the Railways and while working as such he passed away on 28.7.1981. The prayer in the O.A. is for a direction to sanction family pension. In this case the respondents have stated that husband of the applicant was engaged as a casual labourer and passed away without being regularised in the Railway establishment against any post.

5. In OA No.522 of 1994 the case of the applicant is that her husband was working as a casual labourer on daily wages from 4.2.1973. On 1.1.1984 he was granted temporary status. He was medically examined for the purpose of regularisation of his service. While he was in service he passed away on 23.9.1989. The applicant's prayer in this O.A. is for grant of family pension and other retiral benefits.

6. OA No.623 of 1994 has been filed by the applicant in OA No.622 of 1994 along with the brother of the deceased Railway employee. In this O.A. prayer has been made for compassionate appointment of applicant no.2 P.Prakasa Rao on the basis that applicant no.1's husband has worked for long years under the Railways as a casual labourer with temporary status till his death on 23.9.1989.





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7. Respondents in all these cases have filed counters opposing the prayers of the applicants. No rejoinder has been filed in these cases except in OA No.212 of 1996.

8. We have heard the learned counsels of both sides and have perused the pleadings.

9. Before considering the submissions made by the learned counsel of both sides, the relevant provisions of the rules may be quoted. "Railway servant" has been defined under Rule 102(13) of the Indian Railway Establishment Code, and this definition is quoted below:

"(13) "Railway servant" means a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. This term excludes casual labour for whom special orders have been framed."

The term "temporary railway servant" has been defined in Paragraph 1501 of Indian Railway Establishment Manual, Volume I (Revised Edition - 1989), and this definition is quoted below:

"1501. (1) Temporary Railway servants
Definition. - A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", including "casual labour with temporary status", a "contract" or "part-time" employee or an "apprentice"."

A casual labour on being conferred temporary status is eligible to entitlements and privileges which have been laid down in Paragraph 2005 of Indian Railway Establishment



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Manual, Volume II (Revised Edition - 1990) of which the earlier number was Paragraph 2511. This Paragraph 2005 is quoted below:

"2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e., given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).- (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D & A Rules. However, their service prior to absorption in temporary/permanent/regular cadre after the required selection/screening will not count for the purpose of seniority and the date of their regular appointment after screening/selection shall determine their seniority vis-a-vis other regular/temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered.

Casual labour including Project casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and



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ex-servicemen, etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

(c) No temporary posts shall be created to accommodate such casual labour, who acquire temporary status, for the conferment of attendant benefits like regular scale of pay, increment, etc. After absorption in regular employment, half of the service rendered after attaining temporary status by such persons before regular absorption against a regular/temporary/permanent post, will qualify for pensionary benefits, subject to the conditions prescribed in Railway Board's letter No.E(NG) II/78/CL/12 dated 14-10-80. (Letter No.E(NG) II/85/CL/6 dated 28-11-86 in the case of Project casual labour).

(d) Casual labour who have acquired temporary status and have put in three years continuous service should be treated at par with temporary railway servants for purpose of festival advance/Flood Advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees.

(e) Casual labour engaged on works, who attain temporary status on completion of 120 days continuous employment on the same type of work, should be treated as temporary employees for the purpose of hospital leave in terms of Rule 554-R-r (1985 Edition).

A casual labour who has attained temporary status and has been paid regular scale of pay, when re-engaged, after having been discharged earlier on completion of work or for non-availability of further productive work, may be started on the pay last down (sic) by him. (This shall be effective from 2nd October, 1980)."

The Hon'ble Supreme Court in paragraph 7 of the judgment in Ram Kumar v. Union of India, AIR 1988 SC 390, have noted the entitlements of casual labourers who had been granted

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temporary status. Paragraph 7 is also quoted below:

"7. With the acquisition of temporary status the casual labourers are entitled to:

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
 - (2) Scales of pay.
 - (3) Compensatory and local allowances.
 - (4) Medical attendance.
 - (5) Leave rules.
 - (6) Provident Fund and terminal gratuity.
 - (7) Allotment of railway accommodation and recovery of rent.
 - (8) Railway passes.
 - (9) Advances.
 - (10) Any other benefit specifically authorised by the Ministry of Railways.
- It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits."

From the above it is clear that a casual labour is not a Railway servant, and a casual labour with temporary status is not a temporary Railway servant.

10. It has been submitted by the learned counsel for the petitioner in OA No. 212 of 1996 that the claim for retiral benefits cannot be denied because the casual labour and Railways are required to screen the casual labour with temporary status for the purpose of absorbing them in regular establishment. Because of the lapse of the Railway administration in regularising them, the claim for pension/family pension cannot be negated. This contention cannot be accepted because casual labourers have to be first conferred with temporary status and then casual labour with temporary status have to be absorbed in regular establishment depending upon availability of vacancies. Such absorption of a casual labour with temporary status has to



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be done when his turn comes. In the case of Malati Kar
(Smt.) and others v. Union of India and others, (1992) 21
ATC 583, Calcutta Bench of the Tribunal considered the claim
of the widows of casual labour with temporary status for
pensionary benefits. The Tribunal noted that the widow of a
casual labour with temporary status, who has not been
regularised in permanent establishment, is not entitled to
family pension, and in consideration of the fact that the
deceased casual labour whose widows were before them in
those batch of cases, had put in long years of service, they
had directed that the four casual labourers, whose cases
were before them, should be deemed to have been regularised
on dates of their death and on that basis, family pension
was ordered to be given to their widows, the applicants
before the Calcutta Bench in the batch of cases - Malati Kar
and others. It has been mentioned in paragraph 18 of this
order in Malati Kar's case (supra) that the Hon'ble Supreme
Court in Robert D'Souza v. Executive Engineer, Southern
Railway, AIR 1982 SC 54, have held that deceased casual
employee had to be treated as a temporary railway servant
till the date of his death in 1983, having been granted
temporary status from 1979. We have already extracted the
definition of "temporary Railway servant", contained under
the rules, and it is provided that temporary Railway servant
does not include a casual labour with temporary status.
Thus, the terms "temporary railway servant" and "casual
labour with temporary status" connote two different types of
persons. This aspect has been gone into by the Hon'ble
Supreme Court in Ram Kumar's case (supra), wherein it has
been held that casual labourer and casual labourer with
temporary status are not entitled to retiral benefit of



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pension. In Malati Kar's case (supra) also the Calcutta Bench of the Tribunal did not hold that casual labour with temporary status will be entitled to pension and their widows to family pension. That is why in Malati Kar's case the Tribunal had ordered for deemed regularisation. As we have earlier noted, regularisation of casual labour with temporary status has to be done after screening and in their turn against a post in the regular establishment. There is no provision in any of the rules for deemed regularisation. Such a concept is not provided in any of the rules. In view of this, the conclusion is inescapable that the Tribunal cannot order that a casual labour with temporary status is deemed to be regularised. In view of this, we hold that Malati Kar's case (supra) does not lay down the correct law. In Sumati Patra's case and Manaka Bijili's case (supra) the Tribunal ordered for deemed regularisation of the applicants' husbands on the dates of their death. In doing so, this Bench of the Tribunal had followed the decision of the Calcutta Bench of the Tribunal in Malati Kar's case (supra). In view of this, we hold that the decisions in these two cases do not lay down the correct law.

11. As regards family pension, the matter has been concluded by the Hon'ble Supreme Court in the case of Union of India and others v. Rabia Bikaner and others, 1997 SCC (L&S) 1524, where it has been held that widow of casual labourer with temporary status, who has not been absorbed in regular establishment of Railways after screening is not entitled to family pension.



12. The second question referred to the Full bench is with regard to entitlement of dependant of such casual labourer for compassionate appointment. In Establishment Serial No.18 of 1987 issued by the Railway Board on 31.12.1986, enclosed at Annexure-R/1 to the counter filed in OA No.623 of 1994, it is provided that if a casual labourer with temporary status dies in harness during his employment with the Railways and if the family faces extreme hardship, the General Manager by exercising his personal discretion can give appointment to eligible and suitable widow of such casual labourer on compassionate ground. Compassionate appointment in such case can be given only as a casual labourer (fresh face) or as a substitute. There are instructions of the Railways regarding giving compassionate appointment to a near relative of a deceased employee. But this instruction dated 25.8.1980 relates to compassionate appointment in case of a deceased railway employee. As we have earlier held, a casual labour with temporary status is not a railway servant. In view of this, it is clear that after issuing of the Establishment Serial No.18 of 1987, a dependant of a casual labourer ^{with temporary status} who has not been regularised is entitled to compassionate appointment. But in that case the compassionate appointment can be given only to widow, son and daughter, and the benefit of giving compassionate appointment to a near relative other than widow, son and daughter is not available to a casual labourer with temporary status who dies in harness without being regularised.

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13. The learned counsel for the petitioner in OA No.212 of 1996 has relied on the decision of the Hon'ble Supreme Court in the case of Yashwant Hari Katakhar v. Union of India and others, 1995 AIRSCW 370. That case does not deal with a railway employee or a person in the engagement under the Railways. There the Hon'ble Supreme Court held that the petitioner before their Lordships had put in 18 1/2 years of service and there is nothing on record to show why he was not made permanent. Keeping in view the facts and circumstances of that case, the Hon'ble Supreme Court held that the applicant before their Lordships shall be deemed to have become permanent after he has served the Government for such a long period. As that case does not deal with employees under the Railways, the same does not provide any support to the case of the applicants before us.

14. In view of our above discussions, the two questions referred to Full Bench are answered as follows:

- (1) There being no provision in the relevant rules of the Railways for deemed regularisation of casual labour and casual labour with temporary status, the decisions of Calcutta Bench in Malati Kar's case (supra) and the decisions of this Bench of the Tribunal in Sumati Patra's case (supra) and Manaka Bijili's case (supra) do not lay down the correct law.
- (2) The dependant of a casual labourer with temporary status who dies in harness without having his service regularised, is entitled to consideration for compassionate appointment strictly in terms of

Establishment Serial No.18 of 1987.

15. These five cases may now be put up
before the Division Bench for consideration and disposal.

Sd/- SOMNATH SOM.
VICE-CHAIRMAN.

Sd/- C. NARASIMHAM.
MEMBER-(3).

Sd/- L. H. MINGLIANA.
MEMBER-(ADM)

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Section Officer
Central Administrative Tribunal
Cuttack Bench, Cuttack

CAT/Cutt. Bench/ 11th Oct, 2001/AN/1

