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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 227 OF 1996
Cuttack, this the 19th day of July, 1999

Smt. Palina Papamma 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.

Somnath Som
(SOMNATH SOM)
VICE- CHAIRMAN
19.7.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.227 OF 1996
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CORAM: HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Smt. Palina Papamma ... Applicant
wife of late Bhimayya, aged about 46 years
household duties, resident of
Samanth Ramachandrapuram village,
post Kanchili, Srikakulam Dist.,
A.P. Pin-532 290

Advocates for applicant - M/s B.P. Yadav
K.V. Rao

Vrs.

1. The Union of India represented by the Secretary for Railways, Rail Bhawan, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
3. The Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, Jatni Post, Puri District, Orissa.
4. The Permanent Way Inspector, South Eastern Railway, Sompeta, Kanchili Post, Srikakulam Dist., A.P., Pin-532 291..... Respondents

Advocate for respondents - M/s R.C. Rath
P.K. Rath.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for compassionate appointment of her son and family pension to herself.

2. The facts of this case, according to the applicant, are that her husband Bhimayya, son of Jagannaikulu was appointed in S.E.Railway, on 24.3.1967,

as a Gangman under Permanent Way Inspector, S.E.Railway, Sompeta (respondent no.4). Provident Fund Number allotted to the applicant's husband was 488163. The applicant's husband died while in service on 25.7.1984. After the death of the petitioner's husband, the petitioner applied for family pension for her and compassionate appointment to one of the members of the deceased Railway employee. Senior Divisional Personnel Officer in his letter dated 11.4.1990 directed the petitioner to produce the Death Certificate and Photograph and other documents relating to the son in whose favour compassionate appointment was sought. The applicant submitted the necessary documents and filed a further representation on 28.6.1995 but without any result. That is how she has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have submitted that the application is hopelessly barred by limitation. They have stated that the applicant's husband Bhimayya was engaged by Railways as casual labourer on 24.3.1967 in the pay scale of Rs.70-80 under respondent no.4. While continuing as casual labourer he joined the Provident Fund Scheme and Provident Fund Number 488163 was allotted in his favour. The applicant's husband while working as Casual Gangman died on 25.7.1984 at his village as per Death Certificate issued by Superintendent, Taluk Office, Sompeta. The applicant's husband was not empanelled for absorption in permanent establishment of Railways in Group-D post. The respondents have pointed out that casual labourers working in Railways are not Railway servants and they do not hold any post. They only are entitled to benefit granted to them under the provisions of Indian Railways Establishment Manual and Industrial Disputes Act. A casual labourer continues to be a workman under the Industrial Disputes Act till he is absorbed in

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regular cadre when he becomes a Railway servant. The applicant's husband was not regularised on the date of his death and as such as a widow of casual labourer the applicant is not entitled to any pensionary benefit. The respondents have further stated that granting of temporary status to a casual employee does not make him temporary Railway servant. Accordingly, the respondents have stated that the applicant is not entitled to family pension. It has been further stated that she has been paid Provident Fund and Insurance amount to which she is entitled in the year 1985. The respondents have further stated that the Hon'ble Supreme Court have decided in Ram Kumar's case (AIR 1988 SC 395) that casual labourers are not entitled to retirement benefits and this decision has been affirmed in the case of Union of India and others v. Sukanti and another, etc., SLP (C) Nos. 3341 of 1993 and 10951 of 1995. The decision of the Hon'ble Supreme Court in the case of Union of India and others v. Sukanti and another (supra) has been enclosed at Annexure-R/1. The respondents have also stated that provision for compassionate appointment is not applicable to the applicant's son as her husband has died while he was a Casual Gangman and there was no statutory rule on the date of death of husband of the applicant providing compassionate appointment to the son of the deceased Casual Gangman. On the above grounds, the respondents have opposed the prayers of the applicant.

4. I have heard Shri B.P.Yadav, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned counsel appearing for the respondents and have perused the records.

5. Learned counsel for the petitioner has stated that according to Rule 101 of Manual of Railway

Pension Rules, 1950 which was in force prior to coming into force of the Railway Servants (Pension) Rules, 1993, the retirement benefit for a temporary Railway servant includes family pension if at the time of death the employee has completed one year continuous qualifying service. It is stated that the applicant's husband had completed more than one year service after getting temporary status and therefore the applicant is entitled to family pension. This is not correct because Rule 101 of Manual of Railway Pension Rules, 1950 deals with retiral benefits for a permanent Railway servant in sub-rule (1) of the above Rule. Sub-rule (2) of Rule 101 deals with temporary Railway servant and this does provide for family pension if the employee had completed one year service. But this provision is not applicable to the husband of the petitioner because by the time of his death he had not been absorbed in the regular establishment of the Railways. Temporary service under Rule 410 of Manual of Railway Pension Rules, 1950 is defined as continuous officiating service in a temporary or permanent pensionable establishment prior to the date of confirmation or the deemed date of confirmation in a permanent post. It is clear that a casual labourer becomes a temporary Railway servant only after he is absorbed in regular establishment after screening and empanelment. The definition of "Railway servant" specifically provides that casual labourers are not included in the definition. In view of this, the applicant as the widow of deceased casual labourer, who continued as such on the date of his death, is not entitled to family pension. Learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Prabhavati Devi v. Union of India and others, AIR 1996 SC 752. That was a

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case of pension of widow of a substitute. The applicant's husband was not working as a substitute at the time of his death and therefore the decision in **Prabhavati Devi's case (supra)** is not applicable to the applicant. This very point has been decided 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. In that case their Lordships of the Hon'ble Supreme Court have noted that according to the Railway Board's letter dated 26.10. 1965 the Family Pension Scheme, 1964 for Railway employees is applicable in case of regular employees on pensionable establishment. Every casual labourer employed under the Railway administration for six months is entitled to temporary status. Thereafter they will be empanelled. After empanelment, they are required to be screened by the competent authority and as and when vacancies for temporary posts in the regular establishment are available, they should be appointed in the order of merit after screening. On such appointment, they are also required to put in minimum service of one year in the temporary post. In this judgment their Lordships of the Hon'ble Supreme Court have also referred to the earlier decisions in **Ram Kumar's case (supra)** and the case of **Union of India v. Sukanti (supra)** referred to by the respondents in their counter. In consideration of the above, it is clear that the applicant is not entitled to family pension as at the time of death her husband was not absorbed in a regular establishment but only was a casual labourer. This prayer of the applicant is therefore held to be without any merit and is rejected.

6. The second prayer of the applicant is for compassionate appointment to her son. The respondents have opposed the prayer on the ground that at the time of

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death of her husband there was no rule for providing such compassionate appointment. The learned counsel for the petitioner relied on Establishment Serial No. 18/87, dated 20.1.1987, a copy of which has also been filed. From this it appears that in Ministry's letter dated 4.5.1984 the Railway Administrations were advised that General Managers could exercise powers personally to decide requests for appointment on compassionate grounds as casual labourer or substitute of ward of a casual labourer who dies due to accident while on duty, provided the casual labourer concerned is eligible for compensation under the Workmen's Compensation Act, 1923. It further appears that the Railway Men's Federation suggested that the benefit of compassionate appointment should be extended to families of casual labourers who are on regular scales of pay and who die in harness in the same manner as for wards of other Railway employees who die during service. It is further stated that it was explained to the Federation that the provisions relating to compassionate appointment in the case of regular employees cannot be extended to casual labourer with temporary status, but individual cases of extreme hardship can be considered on merits. In view of the above, in paragraph 5 of the circular it has been specifically provided that if a casual labourer with temporary status dies in harness, i.e., during his employment with Railways and if the case presents features constituting extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary power for giving appointment to eligible and suitable ward of such casual labourer on compassionate grounds. Such appointment will be only in the form of engagement as casual labour (fresh face) or as

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 substitute. From Annexure-2 to the OA it appears that Senior Divisional Personnel Officer, S.E.Railway, Khurda Road Division in his letter No.DPO/KUR/EA/PWI-SPT dated 11 4.1990 directed the petitioner to furnish certain documents which, according to the petitioner, she submitted. From this it appears that the Railway authorities did take up the case of giving compassionate appointment to the son of the applicant. But apparently no final decision on this was communicated to the petitioner. In view of this, the prayer of the applicant for giving compassionate appointment to her son is disposed of with a direction to the respondents that further action in pursuance of the letter dated 11.4.1990 at Annexure-2 with regard to giving compassionate appointment to the son of the applicant, should be completed within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order and the result communicated to the petitioner within 30(thirty) days thereafter.

7. In the result, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.

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 (SOMNATH SOM)
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 VICE-CHAIRMAN