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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 228 OF 1996

Cuttack, this the 19th day of July, 1999

Smt. Maddu Appalamma

....

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

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 228 OF 1996

Cuttack, this the 19th day of July, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Smt. Maddu Appalamma,
w/o late Appalaswamy, aged
about 61 years, resident of
Samantha Ramachandrapuram (Vill) Kanchili Post,
Srikakulam District (AP 532 290) Applicant

Advocate for applicant - Mr. B.P. Yadav.

Vrs.

1. The Union of India, represented by the Secretary for Railways, Rail Bhavan, New Delhi.
2. The General Manager, South Eastern Railway, Garden Reach, Calcutta.
3. The Divisional Personnel Officer, Divisional Railway Manager Office, South Eastern Railway, Khurda Road, Jatni Post, Puri District (Orissa).
4. The Permanent Way Inspector, South Eastern Railway, Sompeta, Kanchili Post, Srikakulam Dist (AP) Pin-532 290
..... Respondents

Advocates for respondents - M/s B.Pal,
O.N. Ghosh &
S.K. Ojha.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has

prayed for a direction to the respondents to pay her family pension and service gratuity and for compassionate appointment to her.

2. The case of the applicant is that her husband was appointed in 1965 under Permanent Way Inspector, Sompeta (respondent no.4) as a casual labourer, i.e., Gangman. He rendered service for 2839½ days upto 8.2.1971 as a casual labourer. Thereafter he got a substantive and permanent employment in respondents' office, but the respondents had not taken any action to give permanent post to the applicant's husband. The applicant's husband died on 3.7.1990 in a train accident of 20 Down Konark Express. Even though the applicant's husband had worked for 25 years continuously, service gratuity and family pension were not given to the applicant, the widow, nor was any compassionate appointment provided to her son. Because of this, she has come up with the aforesaid prayer.

3. Respondents in their counter have stated that the applicant's husband late Appalaswamy joined as a casual labourer on 24.8.1966 under Permanent Way Inspector, Sompeta. His date of birth was 13.11.1935. While in employment under the respondents, he joined the Provident Fund Scheme and was allotted Provident Fund No. 488207. The husband of the applicant while working as a casual Gangman on authorised scale of pay, died on 3.7.1990 in his village as per the Death Certificate issued by Mandal Revenue Officer, Kanchili. During his period of employment, he was not empanelled for absorption in permanent establishment. Respondents have submitted that a casual labourer does not hold any post and his service is not pensionable. Only after a casual labourer is regularised, period of service rendered after

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conferment of temporary status is counted towards pension to the extent of 50% of such temporary service and as such, the applicant is not entitled to any family pension and service gratuity. According to the respondents, the applicant has been paid Provident Fund of Rs.2716/-, insurance amount of Rs.3964/- and Rs.12,761/- towards terminal gratuity. As regards compassionate appointment to her son, it has been submitted that the matter has been referred to the Head Office for orders and after receipt of the same, the result will be intimated to the applicant. In view of this, the respondents have opposed the prayer of the applicant for grant of family pension and service gratuity.

4. The applicant has filed a rejoinder in which she has submitted that her husband Appalaswamy was appointed under the respondents on 13.11.1963 or earlier because, according to the counter of the respondents, his date of birth was 13.11.1935 and age of recruitment in Group-D category is 18 to 28 years and therefore, her husband could not have been appointed as a casual labourer after 13.11.1963. It has been further submitted that the applicant's husband was conferred temporary status with effect from 24.8.1966 after completion of 2839½ days of continuous service. The applicant has further submitted that the death of her husband was because of accident in 20-Down Konark Express Train at Sompeta Railway Station Yard as is evidenced from a certificate which is at Annexure-IV to the rejoinder. It has been further submitted that even though the applicant's service was not regularised by taking him in the permanent establishment, persons junior to him were regularised. In support of this, the applicant has produced an order dated 2.2.1987 at Annexure-V to the Rejoinder, which is the order of

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retirement of one Bairagi. In this order, it has been mentioned that the date of appointment of Bairagi is 24.10.1973 and his date of confirmation is 19.11.1985. Therefore, the applicant has claimed that persons junior to her husband have been brought over to regular establishment, but this facility was denied to her husband. In any case the applicant has stated that under clause (b) of sub-rule (2) of Rule 101 of Manual of Railway Pension Rules, 1950, she is entitled to family pension. As regards compassionate appointment, it has been submitted that even though the respondents have mentioned in their counter that the case is pending consideration of the Head Office, no orders have been passed although seven years have passed.

5. I have heard the learned lawyer for the applicant and Shri B.Pal, the learned counsel appearing for the respondents and have also perused the records.

6. Learned lawyer for the petitioner has submitted that even though persons who had joined the service of the Railways after the applicant's husband have been confirmed, the case of the applicant's husband has been overlooked. In support of this, he has relied on Annexure-V in which, as earlier noted, service of one Bairagi, Gangman under Permanent Way Inspector, Cuttack, has been confirmed from 19.11.1985. This order at Annexure-V is the order of superannuation of Shri Bairagi and from this order, it appears that Shri Bairagi was confirmed on 19.11.1985. As the applicant's husband had not challenged the confirmation of Shri Bairagi after 1985, it is not open for the applicant, the widow of Shri Appalaswamy to make a grievance of this after such a long period of time. In the resultant situation, the case of

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the applicant for family pension and service gratuity will have to be considered taking into account the fact that her husband was never regularised in the permanent establishment. The settled legal position is that a casual labourer can count 50% of his service after temporary status has been conferred on him towards pension only after his services have been regularised. 100% of his service under regular establishment count towards pension. As in this case, the service of husband of the applicant was never regularised in permanent establishment, the service rendered by him is not qualifying service for the purpose of pension. The applicant has asked for family pension basing on Rule 101 of Manual of Railway Pension Rules, 1950. The relevant portion of the Rule is quoted below:

"(2) In the case of a temporary Railway servant the benefits comprise -

- (a) if he quits service on account of superannuation, invalidation or reduction of establishment - a terminal gratuity;
- (b) if he dies while in service -

- (i) a death-gratuity to his family; and
- (ii) a family pension if, at the time of death, the employee had completed one year's continuous (qualifying) service."

From the above, it is clear that if the temporary Railway servant dies while in service, the family is entitled to death gratuity and family pension if at the time of his death, the employee had completed one year's continuous (qualifying) service. In the instant case, the death gratuity has been paid to the applicant. She is not

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entitled to family pension because her husband had not completed one year's continuous (qualifying) service. As earlier noted, 50% of temporary service qualifies as pensionable service only after the employee has been absorbed in regular establishment. As in this case, the husband of the applicant had not been absorbed in regular establishment, his temporary service is not qualifying service for the purpose of family pension to the applicant. Learned lawyer 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 case of substitute and the decision in that case is not applicable to the case of the petitioner. A similar point had come up before this Hon'ble Supreme Court in the case of Union of India and others v. Rabia Bikaner and others, 1997 SCC (L&S) 1524. The relevant portion of the judgment of the Hon'ble Supreme Court is quoted below:

"....Every casual labourer employed in railway administration for six months, is entitled to temporary status. They are then empanelled and thereafter, they are required to be screened by the competent authority. They are appointed in the order of merit as and when vacancies for temporary posts in the regular establishment are available. On their appointment, they are also required to put in minimum service of one year in the temporary post. If any of those employees who had put in the required minimum service of one year, that too after the appointment to the temporary post, died while in service, his widow would be eligible for pension."

From the above, it is clear that only after an employee has been absorbed in regular establishment, 50% of his temporary service will count as qualifying service towards

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pension and if such qualifying service is one year, then under Rule 101 of Railway Pension Rules, 1950, family pension is payable in case the employee dies while in service. In view of the above decision of the Hon'ble Supreme Court, it is clear that in this case, as the applicant's husband has died without being absorbed in regular establishment, the applicant is not entitled to family pension. As earlier noted, terminal gratuity has already been paid to her.

7. The last point is regarding compassionate appointment to her son. The instructions in this regard provide that while giving compassionate appointment, priority has to be given to wards of Railway employees who have died in accident in course of duty. From Annexure-IV to the rejoinder, it does appear that the applicant's husband died on 3.7.1990 in the accident of 20-Down Konark Express at Sompeta Railway Station Yard and the case was treated as accidental death. In view of this, under the instructions applicable to the casual employees, the son of the deceased employee and the applicant is entitled to be considered for compassionate appointment. The respondents in their counter have stated that the matter has been referred to Head Office. There is no further report available if any view has been taken on the request for compassionate appointment to the applicant's son. It has to be noted that in this case, the deceased Railway employee had put in more than two decades of service under the Railways. But in spite of that the widow is not getting family pension because service of her husband was not regularised in permanent establishment during his life time. In view of the above, the prayer for compassionate appointment has to be considered with greater degree of sympathy. In consideration of this, the respondents are directed to take a view on the prayer of

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the applicant for providing compassionate appointment to her son on account of death of his father in the accident while in service and communicate their decision to the applicant within a period of 60(sixty) days from the date of receipt of copy of this order.

8. In the result, the Original Application is disposed of in terms of the observations and direction contained in paragraphs 6 and 7 of this order. No costs.

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(SOMNATH SOM)

VICE-CHAIRMAN

19.7.99

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