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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.458 OF 1996
Cuttack, this the 28th day of November, 1997

Poko Mohanty and another Applicants.

Vrs.

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. 97

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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1. Poko Mohanty, aged 55 years,
w/o late Bishnu Mohanty,
At-Tarasa, PO: Jenapur,
PS-Dharmasala,
Dist.Jajpur.
2. Satrughan Mohanty, aged 25 years,
s/o late Bishnu Mohanty,
At-Tarasa, PO: Jenapur,
PS-Dharmasala,
Dist.Jajpur

Applicants.

Vrs.

1. Union of India,
represented by General Manager,
South Eastern Railway,
At-Garden Reach,
Calcutta.
2. Chief Project Manager,
South Eastern Railway,
Bhubaneswar, Dist. Khurda.
3. Divisional Railway Manager,
South Eastern Railway, Khurda,
Dist.Khurda.
4. B.R.I., South Eastern Railway,
Bhadrak, Dist.Balasore ...

Respondents.

Advocate for applicant - Mr.Niranjan Panda.

Advocates for respondents - M/s D.N.Mishra &
S.K.Panda.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the widow and son of
late Bishnu Mohanty, Bridge Khalasi under the respondents,
have prayed for pensionary and other benefits and also

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appointment of applicant no.2, the son, on compassionate ground.

2. Facts of this case are that Bishnu Mohanty, husband of petitioner no.1 and father of petitioner no.2, was working as Bridge Khalasi under the respondents. He joined the service of the Railways on 24.4.1973. According to the applicants, Bishnu Mohanty used to attend his duties accompanied by other Khalasis whose names have been mentioned in paragraph 4.1 of the application. According to the applicants, on 8.2.1984 Bishnu Mohanty did not return to his home after his duties. The other Bridge Khalasis also did not give information about Bishnu Mohanty. The applicants searched for Bishnu Mohanty and having failed in their attempts, lodged an FIR in Bhadrak Police Station stating that Bishnu Mohanty might have died while he was on duty. But the police failed to find out whether Bishnu Mohanty had died while on duty or he had absconded. Even though more than ten years have passed, Bishnu Mohanty has not returned to his home and the applicants stated that he has passed away on 8.2.1984 while he was on duty. The applicants, therefore, made representation for giving compassionate appointment to applicant no.2, but without any result. In the present application, they have prayed for compassionate appointment and also a direction to pay the pensionary benefits to the applicants.

*Samvad Sam
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3. Respondents in their counter have pointed out that Bishnu Mohanty, son of Khetra of village Taransa, P.O-Jenapur, District-Cuttack, was working as temporary Khalasi under the Railways from 24.4.1973 under Bridge Inspector, Bhadrak. According to the respondents, on 8.2.1984 Bishnu Mohanty absconded from his native village. As he remained absent for prolonged period without any intimation, chargesheet was issued against him which could not be served. Enquiry was held on 12.4.1985 in his absence ex parte and he was held guilty of prolonged absence and an order of removal from service was passed against him on 3.5.1985. The removal order also could not be served on Bishnu Mohanty as the order sent through registered post came back undelivered with the remark that the addressee was absent. The removal order thereafter was posted on the Notice Board in the office of Bridge Inspector, Bhadrak, in the presence of three witnesses. Respondents have stated that as Bishnu Mohanty was removed from service, his son petitioner no.2 is not entitled to get compassionate appointment as also pensionary benefits. The widow has been addressed repeatedly for taking the provident fund accumulations standing in the name of Bishnu Mohanty, but there was no response from the widow. Besides the provident fund dues, according to the respondents, the family is not entitled to any other terminal benefits.

*Yours with thanks
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4. I have heard the learned lawyer for the applicants and the learned counsel Shri D.N.Misra appearing on behalf of the respondents and have also looked into the records.

5. The case of the two applicants is based on their assertion that Bishnu Mohanty, husband of petitioner no.1 and father of petitioner no.2, died while on duty on 8.2.1984. The respondents have, on the other hand, taken the stand that Bishnu Mohanty absconded from his home and because of his prolonged unauthorised absence, proceeding was drawn up against him and he was removed from service. The applicants in the petition have stated that Bishnu Mohanty did not return from duty on 8.2.1984. They have also stated that he was attending his duties accompanied by other Khalasis whose names have also been mentioned in the application. If Bishnu Mohanty had died while on duty, it is only reasonable to assume that the other Bridge Khalasis attending duties along with him would have come and reported the fact of his death to the applicants. But according to the applicants themselves, the other Bridge Khalasis on their return from duty on 8.2.1984 did not give any information about Bishnu Mohanty. This casts doubt on the assertion of the applicants that Bishnu Mohanty died on 8.2.1984 while he was on duty. The applicants have lodged an

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FIR in Bhadrak Police Station, but it has been pointed out by the respondents that the FIR was lodged only on 27.3.1988, i.e., more than four years after his supposed date of death or absconding. This FIR was dealt with in Bhadrak P.S. Case No.107 dated 27.3.1988 and the report of the police authorities, after investigation, is at Annexure-R/III in which it has been certified that Bishnu Mohanty absconded from home on 8.2.1984 and after all efforts, no trace of present whereabouts of Bishnu Mohanty could be found. This report of the police also does not support the version of the applicants that Bishnu Mohanty died on 8.2.1984 while he was on duty. Because of his prolonged absence from duty unauthorisedly, Bishnu Mohanty has been removed from service and no fault can be found with the respondents for initiating disciplinary proceeding which was conducted ex parte and after conclusion of the disciplinary proceeding, removing Bishnu Mohanty from service. It has been submitted by the learned lawyer for the applicant that according to the applicants, Bishnu Mohanty died on 8.2.1984 and initiation of departmental proceedings after his death is ab initio void. As I have already noted, there is no proof of death of Bishnu Mohanty on 8.2.1984. On the contrary, the police report speaks of Bishnu Mohanty absconding from his home. The legal presumption would arise only after seven years. Therefore, action of the respondents

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in initiating departmental proceeding for his continued unauthorised absence since 1984 and the order of removal from service cannot be questioned on this ground. It is also to be noted that in this application, the petitioners have not challenged the order of removal of Bishnu Mohanty from service. In view of the above, the claim for compassionate appointment of applicant no.2, the son of Bishnu Mohanty must be held to be without any merit and the same is, therefore, rejected.

6. The second prayer is for payment of pensionary benefits. Respondents have contested the prayer on the ground that because Bishnu Mohanty has been removed from service, no pensionary benefits apart from payment of provident fund accumulation, are payable. Learned lawyer for the applicants has submitted that Bishnu Mohanty got appointment as casual Khalasi in 1967 and he got C.P.C.Scale in 1972 but there was no order to this effect. It has been further alleged that he was given regular post in 1981. But according to the instructions, he should have been given regular post from 1974 and in that event, he would have been entitled to pension for his services till 1984. Learned lawyer for the applicants has further submitted that in O.A.No.363 of 1993 (Kailash Chandra Barik v. Union of India and others) a direction has been issued to the Railways to regularise the services of the applicant from 1974 and the

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same direction should be issued in this case. Learned counsel for the respondents has produced the Service Book and the file relating to Settlement Case of Bishnu Mohanty, son of Khetra Mohanty, ex-temporary Khalasi. From the Service Book it appears that the date of his initial appointment is 24.4.1973 and not 1967, as has been alleged by the learned lawyer for the applicants. As his initial appointment was on 24.4.1973, he could not have got C.P.C.Scale in 1972. In the Service Book, there is no endorsement that he was brought over to regular establishment before he was removed from service. As such, only half of his service from 1974 to 1985 would count towards his pension only after he has been absorbed in regular establishment. As there is no endorsement to that effect, it must be held that he had not been absorbed in regular establishment and therefore, he is not entitled to pension, moreso on the ground that he has been rightly removed from service. Learned lawyer for the applicants has referred to the decision of the Tribunal in Kailash Chandra Barik's case. But the decision has not been given by him and it is not known if the facts of that case are similar to this one and what order was passed in that case. In view of the above, I hold that the prayer for getting family pension is without any merit and the same is rejected.

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7. In the result, therefore, the application is rejected, but, under the circumstances, without any order as to costs.

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