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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.810 OF 1996
Cuttack, this the 30th day of December, 1997

Smt.Benguli Ojha alias Maharana Applicant.

Vrs.

General Manager,
South Eastern Railway
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 Jais
(SOMNATH SOM)
VICE-CHAIRMAN
3/12/97

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.810 OF 1996
Cuttack, this the 3rd day of December, 1997

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Smt. Benguli Ojha alias Maharana,
aged about 41 years,
D/o Pathan
At/PO-Marjidapur, PS: Dharmasala,
Dist: Jajpur

Applicant.

Vrs.

1. General Manager, South Eastern Railway,
Garden Reach, Calcutta.
2. Chief Project Manager,
South Eastern Railway,
At-Chandrasekharpur,
Bhubaneswar, Dist: Khurda.
3. Assistant Engineer Regarding
(Construction),
South Eastern Railway,
At/PO-Bhubaneswar,
Chandrasekharpur,
District-Khurda

Respondents.

Advocate for applicant - Mr. Niranjan Panda.

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

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O R D E R

Somnath Som, Vice-Chairman

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed that pension, gratuity, bonus, G.P.F. and other dues payable to her father should be paid to her forthwith. The facts of

Somnath Som.
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this case fall within a small compass and can be briefly stated.

2. Father of the applicant was working as a Bridge Khalasi. He retired on 30.11.1990 as Bridge Khalasi and died in the same year 1990. This would mean that the applicant's father died sometime in December, 1990. The applicant's case is that she is the sole surviving heir of the father and the dues payable to the father should be paid to her. More specifically, the applicant has submitted that her father is entitled to pension and the arrears should be paid to her as she is the sole surviving heir of her father.

3. Respondents in their counter have pointed out that the applicant's father retired on 30.11.1990 and was immediately paid provident fund and the last wages. As such the claim of the applicant for getting the provident fund is without any merit. The respondents in their counter have further pointed out that the applicant's father retired as a casual labourer. He was not regularised in service and was, therefore, not entitled to pension, C.G.E.G.I.S., leave salary and transfer grant. The respondents have stated that the applicant's father was entitled to service gratuity. Before this could be paid, the applicant's father, as already noted, passed away within a month of his retirement. After his death, his widow Charia Bewa submitted a legal heir certificate, according to which the father of the applicant left behind his

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widow and two married daughters. Before the payment of gratuity could be processed, the widow Charia Bewa also expired. According to the respondents, after the death of the widow of the deceased employee, the survivors were two daughters, Sanju Ojha and the present applicant.

4. I have heard the learned lawyer for the applicant and the learned counsel appearing on behalf of the respondents and have also perused the records.

5. According to the legal heir certificate submitted before the authorities and after the death of the widow of the deceased retired employee, the surviving heirs are the two married daughters Sanju Ojha and the applicant. In consideration of the fact that gratuity is payable to the retired employee and after his death, to his survivors, the respondents are directed to call upon the two daughters to come forward jointly and receive gratuity ^{or any other admitted dues.} This process should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

J. Vam 3.12.97

6. The other point to be considered is if the father of the applicant was entitled to pension. It is to be noted that the father of the applicant retired on 30.11.1990 and died sometime in December 1990. Pension, if any, would have been payable to him only for a few days in December,

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1990. If the father of the applicant was entitled to pension, then his two daughters would also be entitled to family pension. But the two daughters, who have been married during the life time of the father, would not be entitled to family pension under the Rules which provide that family pension can be given to an unmarried daughter until she attains the age of 25 years or until she gets married whichever is earlier.

7. In course of hearing, the learned lawyer for the applicant has submitted that the applicant's father was entitled to pension. Respondents, on the other hand, have claimed that the applicant's father retired as a casual labourer. He was not absorbed in regular establishment and therefore, he was not entitled to pension and his widow was also not entitled to family pension. Because of the same reasons, the respondents have claimed that the applicant's father was not entitled to C.G.E.G.I.S. and encashment of leave salary. Learned lawyer for the applicant has submitted that in accordance with the circular dated 26.4.1989 of Senior Personnel Officer (Construction), in the office of Chief Engineer (Construction), S.E.Railway, Garden Reach, P.C.R. posts have been created from 1.4.1973 on the basis of average strength of Group-D posts as on 31.3.1971, 31.3.1972 and 31.3.1973, but the services of casual labourers were regularised on various dates subsequent to 1.4.1973. In this circular, it has been ordered that the date of regularisation

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of casual workers should be put back to 1.4.1973. It has been submitted by the learned lawyer for the applicant that on the basis of this circular, services of the applicant's father should have been regularised from 1.4.1973 and in that event, he would have put in more than 10 years of service as on the date of his retirement on 30.11.1990 and would have been entitled to pension. Learned counsel appearing on behalf of the respondents has rightly pointed out that this plea is beyond the pleadings in the Original Application. No claim has been made for regularisation of the services of the applicant's father from 1.4.1973. Besides that, a bare perusal of this circular shows that this merely orders putting back the date of regularisation of those casual labourers who have been regularised on different dates subsequent to 1.4.1973. The applicant has not pleaded that her father was regularised in service. She has not also pleaded that juniors of her father have been regularised, but his case has not been regularised. In view of this, I hold that the applicant has not been able to make out a case that her father was entitled to pension. He was a casual labourer at the time of his retirement and therefore, he would not be entitled to pension. The claim for pension to the father of the applicant for a few days till his death in December 1990 and family pension to the widow till her death is, therefore, held to be without any merit and is rejected.

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8. In the result, therefore, the application is disposed of in terms of the direction and observation contained in paragraphs 5 and 7 of this order. No costs.

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(SOMNATH SOM)
VICE-CHAIRMAN 12.97

AN/PS