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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.865 OF 1996
Cuttack, this the 16th day of October, 1998

Md.Amjad Applicant

Vrs.

General Manager, S.E.Railway & 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
16.10.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.865 OF 1996

Cuttack, this the 16th day of October, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Md.Amjad, son of late
Abdul Khayum,
Ex-retired Chargeman Fitter,
S.E.Railway, Khurda Road Division,
At-Rajabazar, P.O/PS-Jatni,
District-Khurda
Applicant

By the Advocates - M/s S.K.Sahoo,
R.K.Sahoo,
S.K.Misra &
N.C.Mohanty

Vrs.

1. General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
2. Senior Law Officer, South Eastern
Railway, Garden Reach,
Calcutta.
3. Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division,
At/PO/PS-Jatni, Dist.Khurda.
4. Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division,
At/PO/PS-Jatni, Dist.Khurda Respondents

By the Advocate - Mr.Ashok Mohanty,
Sr.C.G.Standing Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

J.Jm.
In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to disburse the
family pension due and admissible to him from May 1990 after
the death of his father late Abdul Khayum on 4.5.1990. There

is also a further prayer for a direction to the respondents to release the arrear and current family pension on the basis of succession certificate without insisting on any other judgment/order of any court. The third prayer is for compassionate appointment to the applicant under the Rehabilitation Assistance Scheme.

2. Facts of this case, according to the petitioner, are that his father Abdul Khayum was serving as Chargeman Fitter in S.E.Railway, Khurda Road. He retired from service on 18.11.1975 and passed away on 4.5.1990. After the death of his father, the applicant became entitled to receive family pension from the day following the death of his father. He applied to the respondents for sanction of family pension. Divisional Railway Manager, Khurda Road (respondent no. 3) in his letter dated 1.4.1992 called upon the petitioner to obtain and produce a succession certificate from a competent court of law declaring the applicant as successor of late Abdul Khayum, his father. The applicant had by then obtained a legal heir certificate and he submitted all the documents to respondent no.3. This consisted of an affidavit by his father Abdul Khayum sworn on 17.2.1988 (Annexure-1), death certificate showing the date of death of Abdul Khayum on 4.5.1990 (Annexure-2), and the legal heir certificate (Annexure-3) issued by Revenue Officer, Bhubaneswar, showing three married daughters aged 40 years, 37 years and 30 years, and the applicant aged 15 years as the legal heirs of late Abdul Khayum. At Annexure-4 is a birth certificate of the petitioner showing his date of birth on 15.5.1975. This certificate has been issued on 16.1.1991 in which his father's name has been shown as late Abdul Khayum and mother name as Jeebun Nisha. Senior Divisional Personnel Officer (respondent no.4) again advised

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the petitioner in his letter dated 23.10.1992 to obtain and submit a succession certificate from a competent court of law declaring him as the successor of late Abdul Khayum in order to consider his claim for grant of family pension. This is at Annexure-5. Accordingly, the petitioner filed Succession Misc.Case No.10 of 1994 and obtained the succession certificate in his favour along with three elder married sisters declaring them all, by the competent court of law (the learned Civil Judge (Sr.Division), Bhubaneswar) to be the successors-in-interest of late Abdul Khayum. The succession certificate along with its enclosures is at Annexure-6. In this certificate, the name of the debtor has been mentioned as S.E.Railway, Jatni and the debt has been described as monthly pension of the deceased Abdul Khayum for Rs.375/- per month. He submitted the succession certificate dated 2.8.1995 to the departmental authorities. He was advised in letter dated 22.11.1995 (Annexure-7) by Senior Divisional Personnel Officer, Khurda Road, that his case was sent to Senior Law Officer, S.E.Railway, Garden Reach, who has directed that the party may be advised to obtain a certificate from the court of law through a Title Suit to establish his relationship with the deceased Railway employee. The applicant was advised to comply with the above to enable the Railways to process his case for family pension. The petitioner filed a representation (Annexure-8) stating that on the basis of the documents submitted by him, the family pension may be given to him. He was again informed in letter dated 14.3.1996 (Annexure-9) that on a further reference, the Senior Law Officer has reiterated that mere holding of succession certificate does not establish the legal heirship of the deceased person. Therefore, the party may be advised to obtain certificate from the court of law to establish his relationship with the deceased Railway employee. The applicant was advised to

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comply with the above requirement before his case for sanction of family pension could be processed. The petitioner states that according to the Railway Services (Pension) Rules, in the event of death of a Railway employee family pension is payable to a son until he attains the age of 25 years. The applicant having been born on 15.5.1975 is entitled to family pension from the date following the date of death of his father. The applicant has also stated that his financial condition is very bad. At the time of death of his father, he was a minor and now that he has become major, compassionate appointment may be provided to him. It is stated that he has approached the respondents time and again for giving him a job in Class III post, but no consideration has been shown to him. Because of this, he has come up with the prayers referred to earlier.

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3. Respondents in their counter have denied that the applicant is the son of late Abdul Khayum. They have stated that Abdul Khayum was working as a Chargeman Fitter. He retired voluntarily on 18.11.1975 and expired on 4.5.1990. It has been submitted by the respondents that from a detailed examination of records available with the competent authority, it was seen that Abdul Khayum gave notice for voluntary retirement on 18.8.1975 and was accordingly retired from service with effect from 18.11.1975 after completion of three months notice period. After voluntary retirement, Abdul Khayum submitted pension papers under his own signature. He submitted Form No.19 on 29.12.1975 (Annexure-R/1). Form No.7 (Annexure-R/2) was also signed and submitted by him. Form No.6 is the application for pension submitted by him on 29.12.1975 and signed by him. This is at Annexure-R/3. At Annexure-4 are three of his specimen signatures. Form No.12 is permanent address and mode of payment. This also bears his signature.

There is also another statement showing the details of members of his family for the purpose of family pension scheme. In this form signed by Abdul Khayum on 29.12.1975, he had mentioned only the name of Zibunnissa, his wife, as the sole member of his family. The name of the applicant Md. Amjad has not been mentioned by him. On the basis of his pension papers, Abdul Khayum was sanctioned Rs.248/- of retiring pension in the order at Annexure-R/7. In the same order, it has been mentioned that family pension at the rate of Rs.200/- is payable to his wife Zibunnissa in the event of his death upto 17.11.1982 and thereafter at the rate of Rs.100/- till the death or remarriage of the widow whichever is earlier. The respondents have stated that while the matter stood as such, the applicant claiming to be the son of late Abdul Khayum submitted application requesting for family pension enclosing an affidavit dated 17.2.1988 sworn before the Executive Magistrate and other documents referred to in the O.a. The respondents have stated that according to this affidavit, the applicant was born on 15.5.1975, much before the signing of the details of the family by Abdul Khayum on 29.12.1975, but he has not mentioned the name of the applicant as a member of his family in the declaration at Annexure-R/6. Secondly, it was noticed that even though the affidavit has been sworn by Abdul Khayum on 17.2.1988, this was not brought to the notice of the departmental authorities during the life time of Abdul Khayum, i.e, till 4.5.1990. The respondents have further stated that the signature of Abdul Khayum in his pension papers enclosed to their counter are markedly different from the signature of Abdul Khayum in the affidavit at Annexure-1 to the O.A. After receipt of the representation from the applicant only on 17.7.1991 the genuineness of the school

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certificate of the applicant was enquired into from the Headmaster of New Development Railway Colony High School, Khurda Road. The Headmaster in her letter dated 12.10.1991 (Annexure-R/8) indicated that one Md. Amjad, son of Abdul Khayum was a student of the above school and his date of birth is 18.8.1975. The respondents have stated that the date of birth of the applicant, according to the affidavit of Abdul Khayum, is shown as 15.5.1975 whereas according to the school records it is 18.8.1975. It has also been reported by Chief Personnel Inspector that ex-employee Abdul Khayum has never given any pass declaration in the name of Md. Amjad. In view of the above discrepancies, the Railway administration asked the applicant to produce the succession certificate, but the applicant produced the succession certificate from the competent court without making the Railway administration as a party. Therefore, the matter was referred to Senior Law Officer, S.E. Railway, Garden Reach, who gave the opinion that mere holding of succession certificate does not establish the title of legal heirship. Therefore, the party may be advised to obtain a certificate from the court of law to establish his relationship with the deceased Railway employee. This was intimated to the applicant, but the applicant without obtaining the declaration from the competent court has come to the Tribunal with the aforesaid prayers. The respondents have stated that the petitioner is avoiding to file the Title Suit only to suppress the fact that he is not the son of the deceased employee Abdul Khayum. The respondents have further stated that they have rightly asked the applicant to establish his relationship by filing a Title Suit and obtainining a declaration, and as he is not the son of the deceased Railway employee Abdul Khayum, the family pension cannot be sanctioned to him. The respondents have also

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contested the prayer of the petitioner for compassionate appointment. On the above grounds, the respondents have opposed the prayer of the applicant.

4. I have heard Shri S.K.Sahoo, the learned counsel for the petitioner, and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the respondents, and have also perused the records.

5. The prayer for compassionate appointment can be dealt with first. As the applicant's father took voluntary retirement in 1975 by giving three months notice and he did not die while in service or did not retire on invalidation, the scheme for compassionate appointment is not applicable to the petitioner. This prayer is, therefore, held to be without any merit and is rejected.

6. It has been submitted by the learned counsel for the petitioner that according to the Railway Services (Pension) Rules, 1993, the family pension is payable to a son till he attains the age of 25 years. As the applicant was born on 15.5.1975 and as his mother has pre-deceased his father, he is entitled to family pension from the day following the date of death of his father till he attains the age of 25 years in May 2000. It is further submitted by the learned counsel for the petitioner that the relationship of the applicant with Abdul Khayum is established by the legal heir certificate as also the certificate given by the school. Besides this, at the instance of the departmental authorities, he has also obtained a succession certificate along with his three elder married sisters who are not entitled to family pension, from a competent court of law and therefore, the Railway authorities should disburse the arrear and current family pension to him. In support of his contention, the learned

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counsel for the petitioner has relied on a decision of the Hon'ble High Court of Madhya Pradesh in the case of Sharda Chopra and others v. State Bank of India, AIR 1997 MP 196. Learned counsel for the petitioner has also relied on a decision of the Hon'ble Patna High Court reported in AIR 1964 Patna 272, but that relates to payment of compensation payable under Bihar Land Reforms Act and it is not necessary for the present purpose to refer to that decision. In the case of Sharda Chopra (supra) the point at issue was the articles kept in a locker in State Bank of India by one S.L.Chopra. His heirs obtained succession certificate in respect of various items including Fixed Deposit amounts with various Banks. With this certificate the heirs of S.L.Chopra requested State Bank of India to permit them to have access to the Bank's locker, but that was declined. The lower court had also declined to issue succession certificate regarding the articles put in the locker and thereafter the matter went to the Hon'ble High Court of Madhya Pradesh. In this decision, after taking note of various earlier decisions of different High Courts, a view was taken that as the identity of heirs of Shri S.L.Chopra has been fully established, the Bank has to let the heirs have access to the articles lying in Bank's locker. While taking the above view, reliance was placed on a decision of Hon'ble Calcutta High Court reported in AIR 1991 Calcutta 128, Rama Chakravarty v. Manager, Punjab National Bank. In that decision, Hon'ble High Court of Calcutta mentioned that a succession certificate does not decide or confer any title but merely clothes the holder of the certificate with the authority to realise the debts and securities belonging to the deceased and to give valid discharge. The present case is quite different from the case relied upon by the learned counsel for the petitioner. In the instant case, the petitioner is not asking for some property belonging to his

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father which on the death of his father has devolved on him. It is not the case that the pension which his father was getting would be given to him on the death of his father. On the death of Abdul Khayum, the petitioner, if he is the son of Abdul Khayum, would be entitled to family pension which is totally different from the retirement pension which Abdul Khayum was getting. Thus, the family pension is not a debt or security which belongs to deceased Railway employee which the petitioner would be entitled to get by virtue of the succession certificate. In view of this, the indemnity provided under Section 381 of Indian Succession Act is also of no relevance to this case. Under Section 381 of Indian Succession Act, the certificate given by District Judge (in this case, Civil Judge (Sr.Division), Bhubaneswar) shall, with respect to the debts and securities specified therein, be conclusive as against the persons owing such debts or liable on such securities, and shall, notwithstanding any contravention of Section 370, or other defect, afford full indemnity to all such persons as regards all payments made, or dealings had, in good faith in respect of such debts or securities to or with the person to whom the certificate was granted. As I have already noted, family pension on the death of a pensioner which would be due to a son who is below age of 25 years, is not a debt or security payable by the Department to the deceased Government employee. Family pension is solely based on the relationship between the applicant and the deceased Government employee. In the instant case, the respondents have categorically denied that the petitioner is the son of Abdul Khayum. They have pointed out that even though according to the petitioner, he was born on 15.5.1975, in the details of the family signed by Abdul Khayum on 29.12.1975, i.e., seven months after the

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birth of the petitioner, Abdul Khayum has not mentioned the petitioner as a member of his family. Secondly, Abdul Khayum has not mentioned the petitioner as a member of his family in his pass declaration in which the details of family have to be given. Thirdly, the respondents have stated that the signature of Abdul Khayum in his pension papers, copies of which have been given as Annexures to the counter, is totally different from the signature of Abdul Khayum in the affidavit dated 17.2.1988 at Annexure-1 to the O.A. Fourthly, it has been stated that even though this affidavit was sworn on 17.2.1988 and it mentions that Abdul Khayum has been blessed with one son named Mohammad Amzad on 15.5.1975, this affidavit was not brought to the notice of the Railways during the life time of Abdul Khayum who expired on 4.5.1990. Lastly, it has been mentioned that according to the affidavit, the petitioner was born on 15.5.1975 whereas according to the school records, his date of birth is 18.8.1975. On the basis of all the above, the respondents have raised doubts about the claim of the petitioner that he is the son of Abdul Khayum. That is how they have asked the applicant to file a Title Suit and establish his relationship with Abdul Khayum. As the applicant has not done so, in the counter they have categorically denied that the applicant is the son of Abdul Khayum. Thus, the crux of the controversy in this case is whether the petitioner is the son of Abdul Khayum or not. The respondents have denied it on the grounds mentioned above. On a bare perusal of Annexure-1, the affidavit sworn by Abdul Khayum and the pension papers signed by him and specimen signatures given by him, it appears that the signature of Abdul Khayum in the affidavit at Annexure-1 and the signature in the pension papers enclosed as Annexures to the counter are totally different. It is no doubt true that the pension papers were

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signed in December 1975 and the affidavit has been sworn thirteen years later in February 1988. But this passage of 13 years cannot account for such a change in the signature. The respondents cannot, therefore, be faulted in doubting the signature of Abdul Khayum in the affidavit. The fact that Abdul Khayum has not mentioned the name of the petitioner in his pension papers as a member of his family as also in his pass declaration is also a relevant aspect which cannot be ignored. Thus, it cannot be held that the doubt of the respondents with regard to the relationship of the petitioner that Abdul Khayum is not based on adequate grounds. Because of such doubt, the respondents have asked the applicant to establish his relationship with Abdul Khayum by filing a Title Suit. This Tribunal is not competent authority to decide the relationship of the applicant with Abdul Khayum, and because of this, it is not possible for the Tribunal to issue a direction to the respondents to sanction family pension in favour of the applicant. The applicant, if he is so advised, has to establish his relationship with Abdul Khayum before competent court of law and claim family pension on that basis. In view of this, it is held that the applicant has not been able to make out a case for any of the reliefs asked for by him.

7. In the result, therefore, the Original Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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