

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 473 OF 1998.

CUTTACK, this the 10th day of May, 1999.

SMT. B. DHILLAMMA.

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...

APPLICANT.

- VERSUS -

UNION OF INDIA & 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*,

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Sim.
(SOM NATH SOM)
VICE-CHAIRMAN
10.5.99

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 473 OF 1998.

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C O R A M:

THE HONOURABLE MR. SOM NATH SOM, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

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Smt. B. Dhillamma,
W/o. late Ramayya, Main Road,
At. Kanchili village, Po. Kanchili,
Srikakulam, Dist. Andhra Pradesh.

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Applicant.

By legal Practitioner : Mr. B. P. Yadav, Advocate.

- Versus -

1. Permanent Way Inspector,
S. E. Railway, Sampeta, Kanchli Post,
Srikakulam District AP,
PIN Code No. 532 290.

2. The Divisional Personel Officer, DRM Office,
SE Railway, Khurda Road, Jatni, Orissa.

3. General Manager, East Coast Railway,
Bhubaneswar.

4. The Union of India represented by the
Secretary for the Railway, Railway
Bhawan, New Delhi.

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Respondents.

By legal Practitioner Mr. R. C. Rath, Additional Standing

Counsel (Railways).

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to Respondents to pay the service benefits of the Applicant's Husband such as Provident Fund, Insurance, Family Pension as also compassionate appointment to one of the family members of the applicant's husband.

2. The case of the applicant is that her husband late Ramayya was working as Casual Gangman from 1970 under Permanent way Inspector of Somepeta, Respondent No.1. He served as Casual Gangman continuously from 1970 to 24-7-72 after which he was given temporary status and he got all the service benefits as are allowed to permanent employees. Applicant's husband served as temporary gangman from 24-7-72 upto his death on 7th of October, 1989. During his service career, provident fund was deducted from his salary and his was Provident Fund A/c. No. 522422. The total service of the applicant's husband was 17 years, 02 months and 12 days. After the death of her husband, applicant submitted a petition for payment of Family Pension, Death Cum Retirement Gratuity, Provident Fund, Employees Deposit Link Insurance and for compassionate appointment to one of the family members of the deceased employee through PWI, Sompeta to Divisional Personnel Officer, Khurda Road in November, 1989. In order dt. 28-03-1991 at Annexure-A/2, service gratuity amounting to Rs. 9,641/- was paid to the applicant but other benefits and compassionate appointment were not allowed. Applicant has

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filed representation on 16th of August, 1996 but in order dated 13-11-1996, at Annexure-A/1, applicant was informed that Family Pension was not payable in her case. That is how, she has come up in this original Application with the prayers referred to above.

3. Respondents, in their counter, have stated that applicant's husband late Rammaya expired on 7-10-1989. At the time of his death, he was a CPC Gangman and was not regularised in Railway Service. As such, he was not a regular employee. While applicant's husband was working as CPC Gangman he was called for the screening for preparing the panel for absorption in regular cadre. Accordingly, the husband of the applicant was screened and his name was placed in the panel at Sl. No. 122 but he could not be regularised prior to the of death. The immediate junior/the applicant's husband was in the panel at Sl. No. 123 namely Shri Gummaiah and others were regularised w.e.f. 24.2.1992 by which time, applicant's husband was already dead. Respondents have stated that an amount of Rs. 11,204 towards Provident Fund has been paid to the Applicant. Rs. 9,641/- towards DCRG has been sent to Finance Branch with advice to recover a sum of Rs. 2,229/- from the DCRG. It is stated that for want of vacancy, seniors of the applicant's husband, as well as Juniors were regularised against Permanent posts on 24.2.1992 and as the applicant's husband expired on 7.10.1989, there was no scope for regularising him. As the applicant's husband was not regularised, the applicant is not entitled to Family Pension. It is also stated that the applicant is not entitled for payment of Group Insurance Scheme because no contribution towards Group Insurance Scheme was paid by the applicant's husband

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as he was not a regular/permanent employee. As regards compassionate appointment, it is stated that the applicant has not furnished any particulars/documents regarding her claim for compassionate appointment. Only after a lapse of seven years, she has claimed for compassionate appointment to one of the family members without disclosing any particulars and as such, this prayer is mis-conceived. On the above grounds, Respondents have opposed the prayer of the applicants.

4. We have Heard Mr. B. P. Yadav learned counsel for the applicant and Mr. R. C. Rath, learned Additional Stnaind Counsel, appearing for the Railways and have also perused the records.

5. In this petition, applicant has claimed Provident Fund, Group Insurance, Gratuity, Family Pension and Compassionate Appointment. As regards Provident Fund and Gratuity, applicant has admitted in para 4.VII of the petition that Service Gratuity of Rs. 9,641/- has been received by her. Respondents have also stated that an amount of Rs. 11,204/- towards Provident Fund has been paid to the Applicant. As regards Group Insurance Scheme, no amount is held payable on that account. Two other claims made by the applicant are Family Pension and Compassionate Appointment.

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Learned Counsel for the Applicant has mentioned that according to Rule 101 of Manual of Railway Pension Rules, 1950 Family Pension is payable to a Govt. servant's widow in case, the Railway Servant dies after one year of regular service. In support of his contention he has relied on the decision of the Hon'ble Supreme Court in the case of PRABHAVATI DEVI VRS. UNION OF INDIA AND OTHERS reported in

1996 AIR SCW 61. In that case, the deceased joined the Railway establishment as a Casual worker on 27-4-1983 and acquired the status of a substitute later. According to the definition given in Rule 2315 of the Terms and conditions applicable to the substitutes in temporary service, they are persons engaged in the Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. In that case, the deceased kept working as a Substitute till 5.1.87 when he died. Their Lordships of the Hon'ble Supreme Court noted that the Widow and minor children of a temporary Railway servant who dies while in service of not less than one year continuous (qualifying) service, shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. In the instant case, Petitioner's husband was not working as a substitute when he passed away. He was only a casual worker who had been granted temporary status. Temporary status is granted not with reference to any Permanent Post. Applicant's husband was not regularised in service. He was screened and was empaneled for regularisation as and when posts became available. His Sl. in the panel was 122. His immediate seniors and Juniors were regularised against Permanent Posts in the Railways only on 24.2.1992 by which time, applicant's husband had passed away on 7.10.1989. As such, it is clear that during his service career, applicant's husband was not regularised against any permanent post in the Railway. Learned counsel for the petitioner has also relied on rule 101 of Manual of Railway Pension Rules, 1950 under which, in case of a Government servant, who has put in one year of service before his death, the widow and the children shall be

entitled to family pension. But a casual worker with temporary status, is not a railway servant. Only after, he is regularised in service, if he passes away, after putting one year of service, then his family will be entitled to family pension. This matter came up before the Hon'ble Supreme Court in the case of UNION OF INDIA VRS. RABIA BIKANER reported in AIR 1997 SC 2843 where the Hon'ble Supreme Court has held that widow of a casual worker who had not been regularised till his death, is not entitled to family pension. In this decision, Their Lordships of the Hon'ble Supreme Court have also taken note of the case of Pravabati Devi (supra) and held that in Prabhavati Devi's case (supra), the applicant's husband was a substitute. In the instant case, the husband of the applicant died while working as a casual worker, with temporary status, before he was absorbed in a regular post and therefore, going by the decision of the Hon'ble Supreme Court and according to Rules, the applicant is not entitled to family pension. This prayer is, therefore, held to be without any merit and is rejected.

6. The last prayer of the applicant is for giving compassionate appointment to one of her family members. Respondents have stated, in their counter that right to compassionate appointment is not a vested right as has been held by the Hon'ble Supreme Court in Umesh Nagpal's case. It has also been stated by the Respondents that the petitioner, before us, has not made any proper application indicating the name and the qualification etc. of the person on whose behalf, compassionate appointment is claimed. In this case we find that the petitioner's husband had put in 17 years of service and had acquired temporary status. He was also screened

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and empanneled for regularisation but because of the want of vacancy and his untimely death, he could not be regularised. In view of this, the prayer for compassionate appointment is disposed of by issuing a direction to the applicant that she should make a proper application to the Departmental Authorities with all the necessary documentation indicating the name of the person on whose behalf compassionate appointment is claimed. His qualifications and details should also be indicated in the application and the person concerned on whose behalf compassionate appointment is claimed, should also join in this representation to be filed before the Departmental Authorities. This representation should be filed by the applicant and the person concerned on whose behalf compassionate appointment is claimed, within a period of thirty days from the date of receipt of a copy of this order. Respondents are directed to consider the said representation, in accordance with rules and dispose of the same within a period of 90 (ninety) days from the date of receipt of such representation.

7. In the result, therefore, the original Application is disposed of in terms of the observations and directions made in paragraph-6 above but in the circumstances, there shall be no order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

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VICE-CHAIRMAN
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