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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 288 OF 1999.
Cuttack, this the 25th day of June, 2001.

Chhaya Mata.

Applicant.

- VRS. -

Union of India & Ors.

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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
25.6.2001.

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 288 OF 1999.
Cuttack, this the 25th day of June, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND
THE HONOURABLE MR. G. NARASIMHAM, MEMBER(JUDICIAL).

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Chhaya Mata, Aged about 60 years,
W/o. Late Meena, retiring as Temporary
Status Store watchman, Office of Sr.
Project Manager, Raipur permanent resident
of Vill. Kandakhal, Po: Ganrei, PS: Bangomunda, Dist. Bolangir.

: Applicant.

By legal practitioner: M/s. DR. D.B. Misra, A.P. Misra, T.K. Sahoo,
P.K. Das, Advocates.

- VERSUS -

1. Union of India represented through its Secretary to Government, Ministry of Railway, Railway Bhawan, New Delhi.
2. General Manager, S. E. Railway, Garden Reach, Calcutta-43.
3. District Engineer(Construction) S. E. Railway, Kakhna, Raipur (M.P.).
4. Senior Project Manager, S. E. Railways, Raipur (M.P.).

: Respondents.

By legal practitioner: M/s. S.L. Patnaik, Additional Standing counsel.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:-

In this Original Application, the applicant has prayed for sanction of pension to her husband from 1.3.1996 to 13.11.1998, unutilised leave salary of her husband and family pension to the applicant from 14.11.1998.

2. The Case of the applicant is that her husband Meena was a temporary status store watchman who superannuated from Railway on 29.2.1996. Service particulars of the husband of the applicant are at Annexure-1. Applicant's husband was sanctioned DCRG of Rs. 34,961/- in order at Annexure-2. In this order at Annexure-2, the net qualifying service of the husband of the applicant was noted at 19 years, 8 months and 11 days say 20 years. In order at Annexure-3, the pay of the husband of the applicant was refixed on 1.1.1996, consequent on the change of his scale from 775-12-955-EB-14-1025/- to the scale of Rs. 775-12-871-EB-14-1025/- in implementation of the 4th pay Commission scales of pay. It is to be noted that both these scales are same. Only the spread of the scale of pay and the rate of increment within the scale were different. The husband of the applicant died on 19.11.1998 without receiving pension and other pensionary benefits. He had issued pleader's notice on 9.6.1997 regarding pension and all other pensionary benefits. In response to which in letter dated 10.7.1997 at Annexure-6, the husband of the applicant was informed through his lawyer that as the total qualifying service comes to 7 years, 15 days applicant's husband is not entitled to pension as he had not completed ten years of qualifying service. Applicant had stated that her husband acquired

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temporary status on 1.1.1982 and had completed 14 years 1 month and 28 days of service after attaining the temporary status. It is stated that the applicant is the widow of late Meena and is the sole claimant and is entitled to receive the Family pension from 14.11.1998 and unpaid pensionary dues of late Meena from 1.3.1996 to 13.11.1998. Applicant has relied on a Full Bench decision of the Calcutta Bench in Gita Rani Santra vrs. Union of India and others in support of her prayer.

3. Respondents in their counter have taken the stand that under the rules, an employee has to complete 10 years of qualifying service to be eligible for pension. Applicant's husband worked on casual basis from 18.6.1976 and got temporary status on 1.1.1982. He retired on 29.2.1996 without being regularised in Railway service and as such, the applicant's husband is not entitled to pension and the applicant is not also entitled to Family pension on the death of her husband.

4. We have heard Dr. D.B. Mishra, learned counsel for the Applicant and Madam S.L. Patnaik, learned Additional Standing Counsel appearing for the Respondents. Learned counsel for the applicant has filed decision of Hyderabad Bench of CAT in the case of Middi Sanyasamma vrs. General Manager, SE Railway and others which has been perused. We had directed the learned ASC to file a verified memo by a responsible officer of the Department indicating therein if by the date of superannuation of the applicant's husband, any casual labourer with temporary status Jr. to him has been regularised in permanent establishment of the Railways. Accordingly, learned ASC has filed a Memo verified by the Deputy Chief Engineer, Construction, SE Railway, Raipur and

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we have taken note of the same. The information given in this verified statement in respect of Meena, deceased husband of the applicant and some other Casual Labourers have been given in a tabular statement which is extracted below:

Sl. No.	Name & Father's name.	Designation.	Dt. of appt. in Casual.	Dt. of attaining Temp. status.	Date of regularisation in PCR.
1.	Late Meena, S/o. Permananda (Retd.w.e.f. 29.2.96.)	SWM	18.6.76	1-1-82.	-
2.	Sri Nayan, S/o. Amar Singh,	KSI	18.6.76	1.1.82	1.12.90
3.	Sri Krishna, S/o. Sanyasi	KSI	28.6.76	1.1.82	1.12.90
4.	Sri U. Dharma Rao, S/o. Loknadhram.	KSI	18.5.83	1.6.84	11.1.91.

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The position of law is well settled that to be entitled for pension a Railway servant has to put in 10 years of qualifying service. It is also well settled that casual labourers even with temporary status are not Railway servants but once they are regularised, the period of service rendered from the date of conferment of temporary status to the date of regularisation is counted for qualifying service for pension to the extent of 50% of that service with temporary status. Needless to say that 100% of service after regularisation till superannuation is taken into account as qualifying service. So far as family pension is concerned, widow of a Railway servant who has put in one year of service which again can be broken up in form of regular service and service with temporary status with stipulation *the* *^* *1/100* that he must have atleast some regular service will be entitled for family pension. In the instant case, applicant's husband

had not been regularised in any post of the Railway till his superannuation on 29.2.1996. Because of this we had directed the Respondents to file a Memo if any casual labourers with temporary status, junior to the applicant's husband had been regularised prior to the superannuation of the applicant's husband. Because in that case, the applicant's husband would also be entitled for regularisation. From the verified Memo filed by the Deputy Chief Engineer (Construction) SE Railway, relevant portions of which have been extracted above, it appears that three employees junior to the husband of the applicant have been regularised prior to the date of superannuation of the husband of applicant. Of the three, one was appointed as casual labour and was given temporary status on the same date as that of applicant's husband. This person Shri Nayan was regularised on 1.12.1990. Two other persons who are appointed as casual labourers after the applicant's husband and was given temporary status one on the same date as the applicant's husband on 1.1.1982 and other was given temporary status more than two years later, were regularised on 1.12.1990 and 11.1.1991. Applicant's husband superannuated on 29.2.1996 without being regularised even though his juniors with temporary status were regularised in 1990 and 1991. In view of this obviously great injustice has been done to the case of applicant's husband and as his heir to the applicant. In view of this we direct the Respondents to regularise the service of applicant's husband from the date on which his immediate junior casual labourer with temporary status had been regularised. This should be done within a period of 90 days from the date of receipt of a copy of this order. Once the