

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 368 OF 1999
Cuttack this the 19th day of January/2001

Debjani Mohapatra ... Applicant(s)

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Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

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Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether be be circulated to all the Benches of the ^{No.} Central Administrative Tribunal or not ?

SOMNATH SOM
VICE-CHAIRMAN

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 368 OF 1999
Cuttack this the 19th day of January/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Debajani Mohapatra, aged about 30 years,
D/o. Late Siba Charan Subudhi Mohapatra
C/o. Smt. Annapurna Mohapatra of Mahavir Bazar
At/PO/PS/Dist : Dhenkanal

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Applicant

By the Advocates

M/s.B.Dash
R.N.Behera
S.K.Nayak

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, 43, Garden Reach, Calcutta (West Bengal)
2. Chief Personal Officer (Recruitment) S.E.Railway, Garden Reach, Calcutta (W.B.)
3. Divisional Railway Manager (P), S.E.Railways, Khurda Road, PO: Jatni, PS/Dist - Khurda

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Respondents

By the Advocates

M/s.Suroth Ray
Adam Ali Khan

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Application for appointment under Rehabilitation Assistance Scheme, the applicant's father Siba Charan Subudhi Mohapatra, while serving as Khalasi under the Respondents (Railways) died on 10.8.1993. By then he had put in 27 years 5 months and 16 days of service and was aged about 55 years and would have retired within 2 and half years thereafter on superannuation. He left behind his widow Annapurna Mohapatra and a married daughter, who is the applicant in this case.

2. The case of the applicant is that the deceased father had no landed property and other ~~assistance~~ barring the salary

from his service. On his death applicant and her widowed mother have no means to maintain themselves. She being a Graduate with Hons. sent representation dated 11.7.1994 under Annexure-4 seeking appointment under Rehabilitation Assistance Scheme. This was followed by some reminders and representations of the widowed mother. Ultimately the Department in letter dated 17.2.1998 (Annexure-6) intimated that the competent authority did not find the case to be a fit case for providing employment assistance to the applicant. Though the applicant is married, inview of serious difference with her husband, she is not staying with him, but with her mother since last several years. Her husband has not been providing any assistance to her or to her mother. Hence this application.

3. The stand of the Department is that married daughter does not come under the definition of dependant and as per the departmental rules, widow, unmarried daughters and sons of the deceased can be termed as dependants of the deceased. Cases of employment assistance to married or widowed requires personal approval of the General Manager, who is the competent authority and this competent authority did not find the case of the applicant to be a fit one for providing such assistance. Moreover, according to Department, appointment under Rehabilitation Assistance Scheme is not a matter of right, but is only a facility to provide immediate rehabilitation to the family in distress for relieving the dependent family of the deceased employee from destitution. Thus, there is nothing wrong in the decision of the Department in not giving rehabilitation assistance to the applicant.

4. In the rejoinder the applicant reiterated the facts mentioned in the Original Application and strongly urged that definition of dependant excluding married daughter is based on no reasonable appreciation. A daughter though married and not permitted to stay ⁱⁿ with her husband's house can come under the expression 'dependant'.

5. This application was listed for hearing on 17.1.2001, on which day the applicant was present in person and prayed for urgent adjudication of her application even in the absence of Advocates. Advocates have abstained from attending Tribunal and in fact they have been abstaining the Tribunal and other Courts since 7.12.2000 on a general boycott on the issue of recent imposition of Professional Tax by the State Government. Hence, in view of the observation of the Apex Court in the case Raymon Services (P) Ltd.. vs. Subhash Kapoor reported in 2000 AIRSCW 4093, we did not adjourn the hearing of the case and accordingly heard the applicant in person and perused the records.

6. Facts are not in dispute. It is also not in dispute that a married daughter even though estranged from her husband will not and is remaining separately/come under the definition of dependant of a deceased employee under the Railway Rules. Since the Rule in force is statutory in nature, it cannot be ignored. Hence on this ground, under normal circumstances, the applicant is not entitled to be appointed under Rehabilitation Assistance Scheme by the Railway Department under Rehabilitation Assistance Scheme. It is true that the General Manager has some discretion in the matter. Since under normal circumstance, case of married daughter is not considered for such appointment, the General

Manager can exercise discretion only in rare and exceptional cases. Law is well settled by a catena of decisions of the Apex Court that appointment under Rehabilitation Assistance Scheme is not a matter of right. The main object of providing appointment under Rehabilitation Assistance Scheme is to render immediate rehabilitation of the family in distress for relieving the dependant family members of the deceased employee from destitution. In other words unless the authority competent is convinced that dependant family members of the deceased employee are without any means of sustenance he is ~~not~~ obliged to provide appointment under Rehabilitation Assistance Scheme nor ~~to~~ consider the case of any of the dependant members of the family for such appointment.

7. Hence it has to be determined whether the applicant, a married daughter has made out any strong case to be considered for appointment under Rehabilitation Assistance Scheme.

8. There is no doubt that the deceased employee, after rendering more than 27 years of service died while in service at the age of 55. Hence, as per rules, his widow is entitled to family pension. There is no averment in the application as to non receipt of family pension by the widow. In fact while making submissions in person, the applicant stated that her widowed mother is receiving pension, total amount of which ~~which~~ comes to Rs.1700/- per month. Thus with that pension amount, the widow, who according to applicant is aged can easily maintain herself. Then the question of maintenance of the applicant on the family pension of her widowed mother comes up for consideration. It is true that the applicant is not remaining with her husband due to some estrangement and remaining with her widowed mother. This does not necessarily mean that she

would be entitled to maintained, under law, out of the pension received by her widowed mother. Hence the question whether the pension amount received is adequate or inadequate for maintenance of the widowed mother and the daughter, the present applicant does not arise. So long as marriage is subsisting the applicant, under law, has a right to claim monthly maintenance from her husband. It is not her case in the pleadings that her husband has no means to maintain her.

On the other hand, in course of hearing ^{her} the submissions, she gave us to understand that her husband is an employee serving in the Police Department of the State, which would mean that he is quite capable of maintaining the applicant. If indeed he is not providing maintenance for no fault of her, as contended, without pursuing the remedy, ^{under appointment law} the applicant cannot claim to be the dependant on the deceased employee. Viewed from this angle, there is no justification for the Respondents (Railways) to provide her appointment under Rehabilitation Assistance Scheme.

¶. In course of hearing her submissions the applicant took pains to bring to our notice the decision of the Apex Court in the case of Balbir Kaur vs. Steel Authority of India Ltd. reported in 2000 SCC(L&S) 767 in support of her contention that despite receipt of family pension by her widowed mother she has a claim for appointment under Rehabilitation Assistance Scheme. We have carefully gone through this decision, where the dispute is between Steel Authority of India and the widow of the deceased employee of the Steel Authority. Whether a married daughter, who is remaining separate from her husband and without claiming maintenance from him can be termed as

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 dependant of the deceased was not the issue for decision in this particular case. The issue in that case was whether family benefits scheme as introduced in the N.J.S.C.Tripartite Agreement of 1989, through which the dependents of a deceased employee, while in service would receive ~~4 sum~~^{all} (monthly payments) after the death of the employee or on account of permanent disablement, or the widow/employee the deposit P.F. amount and gratuity dues with the Company's separate ~~trustees~~ ^{Trust} constituted for this purpose would ~~be~~ replace the benefit of ~~appointment~~^{payment} under compassionate appointment scheme as provided under the rules. The Apex Court, while discussing the object of providing compassionate appointment under rehabilitation scheme answered 'no' to this question. Question whether a dependant widow receiving monthly pension is adequate to maintain herself can be considered for appointment under rehabilitation scheme was not the issue involved in that case. Hence this decision, in our view will not be of any help to the applicant.

10. For the reasons discussed above we are of the view that no strong case of exceptional and rare nature has been made out by the applicant to be considered for appointment under Rehabilitation Assistance Scheme. The application is held to be without any merit and is, therefore, dismissed, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 M.C.P. ~~CHAIHAN~~

19.2.2001
 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

B.K.SAHOO//