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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

O.A.Nos.266, 267, 287, 288, 292 & 303 of 2001
Cuttack this the 10th day of December/2002

IN O.A.266/2001

Smt. Ichhabati Bhutia ... Applicant(s)

IN O.A.267/2001

Jhati Parida ... Applicant(s)

IN O.A.No.287/2001

Smt.Dulani Mallik & Ors. ... Applicants

IN O.A. No.288/2001

Smt.Y.Yarramma & Ors. ... Applicants

IN O.A. No.292/2001

Smt.Rama Moharana & Ors. ... Applicants

IN O.A. No.303/2001

Smt.Kanchanabala Rout & Ors. Applicants

-VERSUS-

Union of India & Others ... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

10/12/2002
(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

O.A.Nos.266, 267, 287, 288, 292 & 303 of 2001

Cuttack this the 10th day of December/2002

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR.M.R. MOHANTY, MEMBER(JUDICIAL)

...

IN O.A.No.266/2001

Smt.Ichhabati Bhutia, aged about 36 years, Wife of Late Hari Bhutia, Vill-Brundadeipur, PO-Jenapur, P.S. Dharmasala, Dist-Jajpur

... Applicant

By the Advocates M/s.N.R.Routray
S.N.Mishra

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal

2. Chief Engineer, Construction, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda

3. Deputy C.P.O. Construction, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda

4. Chief Administrative Officer(Cons) Personnel Department, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda

5. Chief Accounts Officer, S.E.Rly., Chandrasekharpur, Bhubaneswar, Dist-Khurda

... Respondents

By the Advocates Mr.P.Ku.Mishra
Mr.B. Pal

IN O.A.No.267/2001

Smt.Jhati Parida, W/o. Late Bhankar, aged about 50 years, Vill/PO- Marjitapur, Via: Jenapur, PS. Dharmasala, Dist-Jajpur

... Applicant

By the Advocates M/s.N.R.Routray
S.N.Mishra

-VERSUS-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal

2. Chief Engineer, Construction, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town: Bhubaneswar, Dist-Khurda

3. Deputy C.P.O. Construction, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town-Bhubaneswar, Dist-Khurda

4. Chief Administrative Officer(Cons), Personnel Department, South Eastern Railway, At/PO/PS-Chandrasekharpur, Town : Bhubaneswar, Dist-Khurda

5. Chief Accounts Officer, S.E.Rly., Chandrasekharpur Bhubaneswar, Dist-Khurda

... Respondents

By the Advocates Ms.S.L.Patnaik
Mr.D.N.Mishra

IN O.A. No.287/2001

1. Dulani Mallick, aged about 40 years, Wife of Late Bauria

2. Kumar Jhuna Mallick, aged about 20 years, D/o. Late Bauria

3. Hrudananda Mallick, aged about 19 years, S/o. Late Bauria

4. Smt. Binati Mallick, aged 22 years @ Bina Mallick, W/o. Nityananda Mallick and D/o. Late Bauria, Vill-Barasailo, PO/PS-Gobindapur, Dist-Cuttack

... Applicants

By the Advocates M/s.Dhaneswar Mohanty
B.Ray Mohapatra

-VERSUS-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, Orissa
3. The Senior Divisional Personal Officer, South Eastern Railway, Khurda Road, Orissa
4. The Chief Engineer (Construction) M.Q. S.E.Railway Bhubaneswar-23
5. Chief Administrative Officer(P), S.E.Rly, Chandrasekharpur, Bhubaneswar - 23

... Respondents

By the Advocates M/s.D.N. Mishra
S.K. Parida
S.Swain

IN O.A.No.288/2001

1. Smt.W. Yarramma aged 45 years, W/o.Late Chalamayya
2. Keshav Rao, aged about 25 years, S/o.Late Chalamayya
3. Kumari Ysodha aged 17 years, D/o.Late Chalamayya, minor, represented through her mother guardian Smt.W.Yarramma, applicant No.1

All of at Qr.No.F/26/F, Rail Vihar, S.E.Rly Project Complex, Chandrasekharpur, Bhubaneswar-23

... Applicants

By the Advocates M/s.D. Mohanty
B.Ray Mohapatra

-VERSUS-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager, S.E.Rly, Khurda Road, Jatni, Orissa
3. The Senior Divisional Personal Officer, S.E.Rly, Khurda Road, Jatani, Orissa
4. The Chief Engineer(Construction), M.Q. S.E.Rly, Bhubaneswar-23
5. Chief Administrative Officer(P), S.E.Rly, Chandrasekharpur, Bhubaneswar-23
6. Dy.Chief Personnel Officer(Construction) S.E.Rly, Chandrasekharpur, Bhubaneswar-23

... Respondents

By the Advocates Mrs.R.Sikdar
Mr. A.Sikdar

IN O.A.NO.292/2001

1. Smt.Rama Moharana, aged about 41 years, Wife of late Jayakrushna Moharana
2. Santosh Kumar Moharana, aged about 22 years, Son of Late Jayakrushna Moharana
3. Basanta Kumar Moharana, aged about 20 years, S/o. Late Jayakrushna Moharana
4. Kumari Mita Moharana, aged about 16 years, D/o. late Jayakrushna Moharana, Minor, represented through her mother guardian Smt.Rama Moharana, W/o. Late Jayakrushna Moharana

All are of Vill-Delanga, PO-Beraboi, Dist-Puri

... Applicants

By theAdvocates M/s.D.Mohanty
B.Ray Mohapatra

-VERSUS-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, Orissa
3. The Senior Divisional Personal Officer, South Eastern Railway, Khurda Road, Orissa
4. The Chief Engineer(Construction) M.Q. S.E.Railway Bhubaneswar-23
5. Chief Administrative Officer(P) S.E.Rly, Chandrasekharpur, Bhubaneswar-23

... Respondents

By the Advocates Mr.S. Roy, A.S.C.
(Res. 2 and 3)

IN O.A.NO.303 /2001

1. Smt.Kanchanabala Rout, aged about 43 years, Wife of Late Satyananda Rout
2. Debendra Rout, aged about 21 years, Son of late Satyananda Rout
3. Susanta Rout, aged about 15 years D/o. Late Satyananda Rout, Minor, represented through her mother guardian Smt.Kanchanabala Rout, W/w. Late Satyananda Rout, all are of Vill-Baghua, PO-Darpanidal, Via-Chandikhol, P.S.-Badachana, Dist-Jajpur

...

By the Advocates M/s.Dhaneswar Mohanty
B.Ray Mohapatra

-VERSUS-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Calcutta-43
2. The Divisional Railway Manager, South Eastern Railway, Khurda Road, Jatni, Orissa
3. The Senior Divisional Personal Officer, South Eastern Railway, Khurda Road, Orissa
4. The Chief Engineer (Construction) M.Q. S.E.Railway, Bhubaneswar-23
5. Chief Administrative Officer(P), S.E.Rly., Chandrasekharpur, Bhubaneswar-23

... Respondents

By the Advocates Mr.R.C.Rath(Rs.2, 3 & 4)
Mr.B.Pal

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: The cause of action and the points for adjudication by this Tribunal in all the six cases being similar, this common order is being passed. Though we have heard the learned counsels for the applicants and the learned counsels for the Respondents in all the six cases separately, for the sake of reference, we may as well deal with O.A. No.287/2001, which should be treated as the guiding factor for other five Original Applications.

2. Original Application No.287/2001 has been filed by Smt.Dulani Mallick, Mrudananda Mallick, Ku.Jhunu Mallick and Smt.Binati Mallick, wife, son and daughters, respectively of late Bauria, who was working as Trollyman with temporary status under CBRI/REG/BIRUPA. In this application, the applicants have sought direction of the Tribunal to the Respondents declaring the service of late Bauria deemed to have been regularised w.e.f. 1.4.1973; to quash Office Order No.10 dated 22.3.2001 (Annexure-R/1); for release of arrear pensions and arrear differential salary together

with interest at the rate of 18% per annum and to take into account the period of actual service of late Bauria for computation of pensionable service.

3.(i) Shorn of details, the facts of the case are as follows.

4.3(ii) The applicants have submitted that late Bauria joined S.E.Railway as Casual Labour on 30.12.1969; got temporary status on 1.1.1983 and he died on 27.3.1987, before being regularised on permanent basis against any P.C.R. post. However, they stated that Respondent No.4 by his Office Order dated 8.3.2000(Annexure-5) declared late Bauria 'deemed' to have been regularised against 40% P.C.R. posts of Khalasi in the scale of Rs.196-232/RP/ Rs.730-940/- in Group D category w.e.f. 24.8.1990. In the said Office Order it was also stated that as a result of this regularisation order, the widow/legal heirs of late Bauria would be entitled to pensionary and other consequential benefits. However, as no action was taken by the concerned authorities for sometime, the applicant No.1 approached the Deputy Chief Engineer(Con), D-II, Bhubaneswar to issue necessary orders for drawal of pension etc. A copy of this letter dated 28.9.2000 was also sent to Respondent No.4. Later on, the applicant No.1 came to know on receipt of Respondent No.5's letter No.DCPO/CON/P/BBS/WF/202/04447 dated 1.6.2001(Annexure-R/1) that the Respondents had cancelled the Office Order dated 8.3.2000, by another order bearing No.10 dated 22.3.2001, issued by the Deputy Chief Personnel Officer(Con), S.E. Rai

Railway, intimating her that the regularisation order dated 8.3.2000 stood cancelled, implying interalia that she would not be getting any pensionary benefits. Aggrieved by the said order, the applicant No.1 joined by others have filed the present application.

4. It has been submitted by the applicants that even though Shri Bauria had died on 28.3.1987 his services should be deemed to be regularised on permanent basis w.e.f. 1.4.1973 and his total period of service under the Railways should be treated as more than 14 years entitling his LRs to all pensionary benefits. They also cited the case of one Bahan Panda, who had also died before regularisation, but the Respondents had paid family pension and other benefits to the LRs of the said Bahan Panda. It is also averred that not only the order regularising late Bauria from 24.8.1990 should not have been cancelled, but his period of regularisation should have been ante-dated to 1.4.1973. In their petition the applicants have referred to the judgment of this Tribunal in O.A.No.390/97 and also the decision of the Ernakulam Bench of this Tribunal in O.A.170/2001 disposed of on 23.11.2002 (M.Sarojini Vs. Union of India).

5. The Respondents have refuted the allegations of the applicants and prayed that the application being devoid of merit should be dismissed. While they have not disputed that late Bauria was engaged on casual basis by the Railways, they have averred that he was engaged on daily rate wage basis only from 28.1.1974 and not from 1969, as claimed by the applicants, under the Bridge Inspector

(Regirdering) Unit and Construction Units of erstwhile DEN(CONSTRUCTION)/CUTTACK and DEN(Regirdering)Ctc. A Screening Committee was appointed for regularisation of eligible casual labourers. This Committee conducted its proceedings during January-February,1992. As late Bauria was not alive in 1992, the question of screening him for regularisation by this Committee did not arise. In their counter, Respondents have statedthat Indian Railway Establishment Manual(Vol-II) clearly lays down the procedure for regularisation of casual labourers. The system prescribes setting up of a Screening Committee for considering regularisation of casual labourers, after taking into consideration three aspects of each candidate, viz., eligibility, suitability and seniority in the respective Unit. For this purpose, personal appearance of the candidates with the requisite documents has also been prescribed. As late Bauria had expired in 1987, long before the Screening Committee met in January-February, 1992, the said Committee did not have any opportunity to assess his suitability and eligibility conditions, as laid down in the Manual. They have, therefore, stated that the order of regularisation dated 8.3.2000, issued by the then Asst.Personnel Officer(Con) Bhubaneswar was irregular. Once the matter came to the notice of the higher authorities, the said order was rescinded. They have thus rejected the plea for deemed regularisation in view of the fact that conferment of P. C. R. status to a casual labour cannot be demanded either as an automatic process or as a matter of right; but subject to fulfilment of the conditions as laid down in Para-2006 of the Indian Railway Establishment Manual (Vol-II). The Respondents have also cited the decision of

the Larger Bench constituted by this Tribunal and its order delivered on 11.10.2001 in the case of Shri Basudev Sahoo & Ors. v. Union of India & Ors. in O.A.Nos.200/94, 388/94, 216/96, 622/94 and 623/94 and of the Supreme Court's order in the case of Union of India v. Rabia Bikaner & Ors (reported in AIR 1997 SC 2843). The Respondents have denied that the applicants could get relief on the basis of the case of Smt.Malati Panda, widow of late Baban Panda as that was wrongly processed. The same order was being reviewed, they averred, and that actions have been taken for withdrawal of the benefit with the consent of the President of India. They have, therefore, stated that by citing an earlier case which was processed on a wrong notion, the applicants could not have claimed any benefit out of that matter.

6. We have also heard Shri D.Mohanty, learned counsel for the applicants and Shri D.N.Mishra, learned Standing Counsel for the Railways. We also refer to the submission made by Shri B.Pal, Senior Advocate in O.A.266/2001 both oral and written. In his oral pleading, Shri D. Mohanty, the learned counsel for the applicants emphatically argued that the action of the Respondents in cancelling Officer Order dated 8.3.2000, without serving notice on the applicant No. 1, i.e., widow of Late Bauria was violative of the principles of natural justice and on this count alone, the action of the Respondents should be declared arbitrary and illegal and full relief should be granted to the applicants. In support of his plea Shri Mohanty relied on the decision in the case of Baban Panda. His plea was also that in the face of the decision of the Ernakulam

Bench of this Tribunal in O.A.170/2001(Mrs.M.Sarojini vs. Union of India & Ors) and the decision of this Tribunal in O.A. No.390/97 (Purna Ch.Mallick & Ors. vs. Union of India and Ors.) the present application should succeed. He also drew our attention to the judgment of the Supreme Court in Robert D' Souza vs. The Executive Engineer, Southern Railway & another 1982(1) SLR 864 and the following other cases.

a) Union of India & Others vs. Basant Lal & Ors. (AIR 1993 SC 188)

b) Prabhavati Devi vs. Union of India & Ors. (1996) 7 Supreme Court Cases 27)

c) Union of India v. K.G.Radhakrishana Panickar (AIR 1998 SC 2073)

d) Yashwant Hari Katakkar vs. Union of India (1995 SIR SCW 37)

e) Sridhar v. Nagar Palika, Jaunpur (AIR 1990 SC 307)

f) O.A.Nos.843/94, 844/94, 853/94 & 854/94 disposed of on 30.01.1995 by the Ernakulam Bench of the C.A.T.; and

g) Railway Board's Order No.E(NG)II/96/CL/61 dated 11.12.1996

7. Shri D.N.Mishra, learned Standing Counsel for the Respondents denied that the action of the Respondents in cancelling the impugned order of regularisation dated 8.3.2000 could be assailed either as arbitrary or bad in law, as the Respondents revoked an order which was patently irregular as that was running contrary to the provisions contained in the Indian Railway Establishment Manual, Vol-II for regularisation of casual labours. It was a genuine mistake and that the Railway Administration was within its right to rectify the same. In support of his plea, Shri Mishra also referred to Para-2005(B) of Indian

Railway Establishment Manual, Vol.II (1989 Edn.), which lays down the law that casual labours who acquire temporary status will not be brought on to the permanent/regular establishment or treated as in regular employment in Railways "until and unless" they are selected through regular Selection Board for Group D posts in the manner laid down in this regard from time to time. In other words, those who are not selected by the Screening Committee cannot be be inducted in the regular establishment of the Railways and therefore, order dated 8.3.2000 had to be rescinded.

8. We have perused all the records placed before us, considered the pleadings submitted by both the parties including their written submissions and also have perused the leading cases referred to by the learned counsels. We have also given our anxious throughts over the matter. In the overall, we find that the matter revolves around the following issues.

i) Whether the Office order dated 8.3.2000 (Annexure-5) couldhave been cancelled without observing the principles of natural justice;

ii) Whether in the Scheme of regularisation of casual labour as framed by the Railways, there is provision for deemed regularisation of casual labour who had attained temporary status, but he was not physically available to face the Selection Board/Screening Test, as he had died before the selection took place;

iii) Whether the legal representatives of the deceased casual labour could seek redressal/adjudication of their grievances before this Tribunal in an application under Section 19 of the Administrative Tribunals Act, 1985; and

iv) Whether pension is payable to a temporary status holder employee of the Railways

We now propose to examine all these issues one by one to come to the logical end.

9. The impugned Office Order dated 8.3.2000 regularising four deceased casual workers issued by the then Assistant Personnel Officer(Con)/BBS, Office of the Chief Engineer, with his approval, declaring late Bauria, S/o. Agni along with three others as "deemed to have been regularised" against 40% P.C.R. Posts of Khalasi in Group D category w.e.f. 24.8.1990 (Annexure-5). By virtue of a 'NOTE' incorporated below this order, the condition of medical examination before regular appointment was waived. It was stated therein that as a result of this regularisation order, the widow/legal heirs would be entitled for pensionary and other consequential benefits and lastly that the pension papers in respect of the said deceased officials be prepared and arrears of pension bd drawn expeditiously. This Office Order was forwarded for information to the seven functionaries (as mentioned therein). No copy was endorsed to any of the family members of the four deceased officials, who were deemed to have been regularised by dint of that order. It was on 28.9.2000 applicant No.1 herself sent Annexure-6 to the Deputy Chief Engineer(Con) D-II, S.E.Railway, enclosing a copy of Annexure-5 and requested that she be paid the settlement dues and family pension at the earliest. Respondents vide letter No. DCPO/CON/P/BBS/WF/202/04447 dated 1.6.2001 informed Applicant No.1, Smt. Dulhani Mallick, widow of late Bauria that

Office Order dated 8.3.2000 (Annexure-5) had been annulled by their Office Order dated 22.3.2001 (enclosing a copy of the order dated 22.3.2001) and requested her to acknowledge the receipt of their letter dated 1.6.2001 with the enclosure. The letter dated 22.3.2001 reads as follows :

> " With the approval of CAO(Con)/S.E. Railways/BBS the following orders are issued which will take immediate effect.
>
> The regularisation order against PCR Gr.D post issued retrospectively in favour of late Bauria, S/o. Agni ex.T/Man under CE(Con)/HQ/BBS vide CE(Con)/HQ/BBS's Office Order No.CE/Con/HQ/BBS/PCR/1.4.73/99/0153(i) dated 8.3.2000 being issued irregularly is hereby treated as cancelled".

10.1. The learned counsel for the applicants during the oral argument submitted that before annulling the Office Order (Annexure-5) of the O.A., Smt.Dulani Mallick(Applicant No.1) should have been given an opportunity to present her objection to the said action of the Respondents. It was unfair that they had simply informed her after annulling Annexure-5 by virtue of their Office Order dated 22.3.2001 (Annexure-1 series). Shri Mishra, the learned Standing Counsel for the Railways in the present case and Shri B.Pal, learned Senior counsel in O.A.266/2001 submitted that no useful purpose would have been served had notice been issued to the widow of late Bauria as she could not have raised any point which could have satisfied the concerned authorities for not cancelling Annexure-5. It is stated that Annexure-5 was considered as an erroneous act committed by the then Asst.Personnel Officer overriding or breaching the procedure of regularisation of casual labour, as laid down in Paras 2005(B) and 2006 of the Indian Railway Establishment Manual,

Vol-II.

10.2. On the above submissions of the parties, the point that arises here for consideration is whether this Tribunal is bound to declare an order passed in breach of the principles of natural justice as void or whether this Tribunal can hold that the facts of this case do not justify exercising discretion to interfere in the matter as de facto prejudice has not been shown. These are exactly the questions which were raised by the Apex Court in the case of N.C. Meheta vs. Union of India and Others. In this case the undisputed fact of the matter is that late Bauria, S/o. Agni died in the year 1987 as casual labour holding temporary status. By that time the Railways had framed a scheme for regularisation of casual labourers with the approval of the Apex Court and actions were on for implementation of the said scheme. For regularisation of casual labours from temporary status to Group D posts in the Department, the procedures are laid down in Paras-2005(B) and 2006 of the Indian Railway Establishment Manual. In the said Paras, the following conditions have been clearly laid down :

i) Casual labours who acquire temporary status will not be brought on to the permanent/regular establishment <u>until and unless</u> they are selected through regular Selection Board for Group D;

ii) Absorption of casual labours against regular vacancies is <u>not automatic</u>, but <u>subject to fulfilment of three conditions</u>; viz.(a) availability of vacancies;(b) suitability and eligibility of individual casual labour and (c) the individual is senior enough to come in his turn for absorption: (emphasis ours)

Further, the method of induction also is to be decided by the Railway Administration from time to time.

The methods of recruitment include the conditions that the appointment of an empanelled candidate will be subject to his passing the prescribed medical examination for the category for which he is selected, he shall have to produce the requisite birth certificate from the competent authority and sanction of the competent authority is to be obtained for relaxation of age in case the candidate would be overaged.

10.3. In this case the selection/screening for regularisation of casual labourers working under the Office of the Chief Engineer(Construction) held its meeting only during January-February, 1992 and this is an undisputed fact that this Screening Committee meeting tookplace almost five years after the demise of late Bauria and therefore, screening and selection of late Bauria along with three other colleagues of his, as mentioned in Annexure-5, could not have been done through this Screening Committee. In other words, it was not possible to fulfil the necessary conditions, as laid down in Para-2005(B) and Para-2006 of the Indian Railway Establishment Manual, Vol.II in respect of the deceased employees. In the face of the above facts and circumstances of the case it is clear that Annexure-5 was issued in clear violation of the rules/provisions governing regularisation of casual labours in the Railways. If the widow was given notice by the Railways before annulling Annexure-5, she could not have fulfiled any of the conditions laid down for regularisation of casual labours, as contained in the Indian Railway Establishment Manual. In the circumstances,

the situation is, if we quash the Office Order dated 22.3.2001, it will result in restoration of an illegal order (Annexure-5) and nothing more. It is also to be noted here that in this case the determination of status of an employee was contingent upon fulfilment of certain conditions by that individual alone, because the individual concerned alone could be the recipient of that status. In view of the above facts of the case it is not necessary for us to strike down the order dated 22.3.2001, even if the same was passed in breach of the principles of natural justice. We would like to quote again from the decision of the Apex Court that the Court can refuse to exercise its discretion in striking down an order if such striking down will result in restoration of another order passed earlier not in accordance with law. In coming to this conclusion, we are backed by the observation of the Apex Court in the case of S.L.Kapoor v. Jagmohan (1980) 4 SCC 379 that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. We, therefore, allow the order dated 22.3.2001 to stand on its legs.

11.1. The second point is not very difficult to answer in view of our finding on the first point. The learned counsel for the applicants has repeatedly stated that it was for no fault of late Bauria that the Selection/ Screening Committee meeting was not held earlier than 1992 and argued, had the meeting taken place earlier not only late Bauria would have been regularised, he would have obtained the benefit of regularisation from 1973. It is difficult to buy such an arguement. If this proposition

is accepted, the Railways will have to find out all the cases of death of casual labourers holding temporary status which occurred before January-February, 1992, and regularise all of them. Surely this is a tall order and not amenable to reason. He has also claimed that since late Bauria was not regularised because of the fact that the Screening Committee met only in 1992, the deceased should be deemed to have been regularised. The Respondents have stoutly refuted this claim. To answer this issue 'deemed regularisation' raised by the Applicants, it is for us to decide whether there is any provision of 'deemed regularisation' in the scheme framed by the Railways for this category of workforce. For getting answer to this question, we need to refer to Para-2005(B), which reads as follows :

> "Casual labours who acquire temporary status will not, however, be brought on to the permanent/regular establishment or treated as in a regular employment of Railways until and unless they are selected through regular Selection Board for Group D posts in the manner laid down from time to time".

11.2. The scheme, therefore, clearly lays down that without the intervention of a regular Selection Board, no casual labourer would ever acquire permanent status or will be brought on to the regular establishment. In the face of this clear provision in the Manual, it was clearly not within anybody's competence, far less within the competence of the functionary, who approved Office Order at Annexure-5 declaring some deceased workers as deemed to have been regularised from certain date(s). But the rule position is that it is only the prerogative of

Selection Board to recommend screened candidates for regular employment and no other body has been vested with the authority under the Establishment Manual to play any role whatsoever in this regard. In the face of the above rule/ provision of the scheme, we hold that there is no provision for deemed regularisation of casual labourers in the Schemes as laid down in the Indian Railway Establishment Manual. The application, therefore, fails on this point.

12. With regard to the question(Issue No.iii) as to whether legal representatives of the deceased casual labour can seek redressal/adjudication before this Tribunal concerning service status of the deceased employee, as in the instant case, the applicants have submitted in their application that they have been denied the benefit of the principles of natural justice by the Respondents. This issue was examined by the Full Bench of this Tribunal in the case of Bidhata v. Union of India & Ors., in O.A.159/93 decided on 30.4.1999. The question decided by the Full Bench was "whether the present application filed by the legal heirs is maintainable". After going through the facts of the case, the Full Bench observed that there is much difference between right to file and right to continue an application/appeal by the legal representatives/heirs of a deceased employee. As they observed in that case, in the present case also, this application under Section 19 of the A.T.Act, 1985, was not filed by the deceased but was filed by the legal heirs, i.e., wife and children (both married and unmarried). Section 19 (1) of the A.T. Act, 1985 says, "subject to other

provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of the grievance". The point at issue ~~in this case~~ is who is claiming what relief and who has been denied what right, to which one was entitled. In this case, the whole issue has arisen out of non-regularisation of late Bauria in Group D category of Railways before his death. Late Bauria was entitled to be considered for regularisation along with other similarly placed casual labourers , but he did not have any vested right to claim any regularisation. Thus the main relief claimed in this application, i.e., regularisation of late Bauria, was personal in nature to the deceased whereas other reliefs as claimed in this application are consequential or dependent on the main relief, i.e., regularisation of the deceased before his death. The Apex Court in catena of judgments have said that claim personal in nature to the deceased is hit by the maxim "Actio Personalia Moriter cum Persona" and therefore, could not be pursued by the legal heirs of the deceased.

13. In the light of our discussion aforesaid, we are of the view that legal representatives of the deceased have no legal standing to agitate the issue regarding regularisation of the deceased before this Tribunal.

14. The last point that we need to answer before we close the discussion is whether pension is payable to a temporary status holder worker of the Railways. This question has already been answered negatively by

the Full Bench of the Tribunal in O.A.Nos.200/94, 388/94, 212/96, 622/94 and 623/94. In giving answer to the question, this Bench, while disposing of the aforesaid O.As had also referred to the case of Malati Kar (Smt.) and others v. Union of India and Others (1992) 21 ATC 583, Rebert D' Souza v. Executive Engineer, Southern Railway (AIR 1982 SC 54), Union of India & Others v. Rabia Bikaner and others (1997 SCC (L&S) 1524, Yashwant Hari Katakar v. Union of India & Others (1995 SIRSCW 370) and it was held by the Full Bench that decision of the Calcutta Bench of the Tribunal in Malati Kar case and the decision of this Bench of the Tribunal in Sumati Patra and Manaka Bijili's case do not lay down the correct law and directed that the dependant of a casual labour with temporary status, who dies in harness without having his service regularised is only entitled to consideration for compassionate appointment strictly in terms of Establishment Serial No. 18 of 1987. We would also like to refer to the decision of the Supreme Court in the case of Ram Kumar vs. Union of India reported in 1988 SC 390 sanctioning the scheme of benefits prescribed by the Railways for the casual labours during service and for their families in case of death. While disposing of that case the Apex Court upheld the previous Para 2511 of the Indian Railway Establishment Manual conferring various rights and privileges to the casual labours and pension was not one of the service privileges offered nor the Apex Court found that faulty. The conclusion, therefore, is the temporary status holders are not entitled to

pension and hence there could be no question of granting family pension to the legal heirs of such deceased workers. This matter is now well settled in law and all thoughts and anxieties should come to an end in this regard.

15. In view of our above discussions and findings, we see no merit in these six Original Applications and accordingly, we dismiss the same, being devoid of merit. We, however, pass no order as to costs.

10/12/2002

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN

Bjy/