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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 373 OF 2001
Cuttack this the 5th day of Nov. 2004

Smt. Premalata Sahoo @ Bewa ... Applicant(s)

- VERSUS -

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

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 ? *yes*

S. Som
(B.N. SOM)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 373 OF 2001
Cuttack this the 5th day of November, 2004

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN

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Smt. Premalata Sahoo @ Bewa, aged about 65 years,
W/o. Late Madan Sundar Sahu of Vill-Handidhua,
P.O.-Deulabera, Dist-Dhenkanal

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Applicant

By the Advocates

Mr. T.K. Mehta

VERSUS

1. Union of India represented through Secretary, Ministry of Railway, Rail Bhawan, New Delhi-1
2. General Manager, South Eastern Railway, Garden Reach, Calcutta-43, West Bengal
3. Divisional Railway Manager, South Eastern Railway, Khurda Road, P.O./P.S.-Jatani, Dist-Khurda, Orissa
4. Divisional Personal Officer, South Eastern Railway, Khurda Road, P.O./P.S.-Jatni, Dist-Khurda
5. Divisional Accounts Officer, South Eastern Railway, Khurda Road, P.O./P.S.-Jatani, Dist-Khurda

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Respondents

By the Advocates

M/s. B. Pal
D.N. Mishra

O R D E R
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MR. B.N. SOM, VICE-CHAIRMAN: This Original Application, under Section 19 of the Administrative Tribunals Act, 1985, has been filed by Smt. Premalata Sahu, Wife of late Madan Sundar Sahu, claiming payment of family pension and death-cum-retirement dues of her deceased husband.

2. The facts in brief, according to applicant, are that her husband, while working as Substitute Token Porter at Talcher in erstwhile S.E.Railways died on 5.5.1978. But the Respondents-Railways did not sanction

family pension and other death benefits to the family of the deceased although the applicant had represented to them time and again. Her grievance is that she is an old lady without any means and the delay in getting positive response from the Respondents is causing her mental depression and financial hardship. She has, therefore, approached this Tribunal seeking direction to be issued to the Respondents-Railways to sanction family pension in her favour with effect from 5.5.1978, and to pay penal interest on the arrear amount of family pension with cost of litigation.

3. Respondents-Railways have opposed the prayer of the applicant by filing a detailed counter. Their stand is that the deceased husband of the applicant was working as substitute Token Porter, which is not a pensionable appointment/post. Referring to Rule 2315 of Indian Railway Establishment Manual (in short Manual) Respondents have submitted that "Substitutes" are persons engaged in the Respondents-Department on regular scales of pay and allowances applicable to posts against which they are employed and that unless and until a substitute is absorbed/appointed against a regular post, he is not treated as railway servant nor is he entitled to pension or family pension. They have also denied that the substitutes are regular/temporary railway servants. They have also brought to the notice of the Tribunal ^{the fact} that after the death of her husband, the applicant was appointed as Shes Khalasi on 29.8.1979. Later on, she was promoted as Khalasi Helper with effect from 1.9.1988. Thus it is the

case of the Respondents that they have offered whatever benefit is available to the family of a substitute on account of death in service. More than that, the family of the substitute is not entitled any other benefit. Citing the decision rendered by the Hon'ble Supreme Court in the case of Ram Kumar & Ors. vs. Union of India & Ors. (reported in 1988(2) SCR 138, the Respondents have submitted that no retiral benefit is available to casual labour under the Railways.

4. The applicant, by submitting a rejoinder has replied that in terms of Rule-2318 of the Railway Establishment Manual, substitutes are to be afforded "all the rights and privileges" as may be admissible to the temporary railway servants on completion of more than six months of continuous service. The late husband of the applicant passed away while working as substitute Token Porter and therefore, he should be afforded all the rights and privileges as admissible to temporary railway servants when he had served more than six months of continuous service.

5. I have heard Shri T.K.Mohanty, learned counsel appearing for the applicant and Shri B.Pal, learned senior counsel (assisted by Shri D.N.Mishra) appearing on behalf of the Respondents-Railways and also perused the materials placed before me. During the oral submissions the learned counsel of both the sides have strenuously argued for and against the matter.

6. The learned senior counsel Shri Pal submitted that in terms of Rule-2318 of the Manual a substitute is entitled to count his ~~service~~^{for pension} provided his substitute service is followed by regularisation. In the instant case

as the husband of the applicant died before he was regularised, the applicant is not eligible for family pension, more so, when her husband was not borne on the pensionable establishment of the Railways. To make it more conspicuous, Shri Pal added that family pension is only payable to the families of those railway servants who are entitled to pension and no railway servant, who does not hold a pensionable post is entitled to pension - far less to grant of family pension, which is an ancillary to pension. In the instant case, as the job of a substitute token porter does not come within the scope and meaning of pensionable establishment, the applicant cannot claim the benefit of family pension. On the other hand, the learned counsel for the applicant Shri T.K.Mohanty, relying on the decision of the Hon'ble Supreme Court in the case of Pravabati Devi v. Union of India & Ors. (reported in AIR 1996 SC 752) emphasized that the issue has already been examined by their Lordships wherein it has been held that in terms of Rule 2318 of the Manual, a substitute employee on completion of six months is to be afforded all rights and privileges as may be admissible to temporary railway servants (emphasis supplied) and the word 'all rights' having been interpreted by the Apex Court as including the right of pension and family pension. He further submitted that the Apex Court had decided that matter in an appeal against the judgment of the C.A.T., Patna Bench, which had rejected the petition of the family of a substitute for grant of family pension, but held that because of provision of Rule 2318, the substitutes are entitled to pension.

7. I have gone through the provisions of Rules-2315 and 2318 of the Manual, 1969 of the Railway and the case laws referred to by the applicant and the Respondents.

I have also gone through Para 801 of Pension Manual, 1950.

8. There is no dispute about the matter that pension is payable in terms of the Rules made under Railway Pension Rules, 1973. However, Rule-2318 postulates that a substitute is entitled to all the rights and privileges as may be admissible to temporary railway servants as soon as he completes six months continuous service. Normally, no substitute, by the very nature of such employment, is likely to have such a long spell of continuous service. Under Rule 2319 of the Manual, absence of a substitute on duty except on account of medical treatment in connection with injury sustained on duty is not to be counted as continuous service. Nonetheless, if under certain extraordinary circumstances, any substitute is continued for six months at a stretch, he shall have to be granted all the rights and privileges as that of a temporary railway servant.

There is no doubt that this provision made in the Railway Manual gives the substitute a superior position than the casual worker, who are recruited through a regular process of selection, medically screened and work continuously in temporary status for long years before they are absorbed against Group D posts in their turn. Fifty per cent of their temporary status service is added to the period of regular service for the purpose of pension. On the other hand, there is no rule laying down/procedure for recruitment of substitutes, who are supposed to work as and when needed.

basis. In the circumstances, it is a matter for the Respondents-Department to examine whether the substitutes should get superior privileges than that of the casual labourers, who constitute the bulk of their manpower resource and constitute their vital life line. The casual labourer is not entitled to pension and therefore, in case of death of a casual labourer, the family is not entitled to pension. This creates an unreasonable discrimination between the categories of casual labourers and substitutes employed under the Railways. It is high time if this apparent discrimination in the terms and conditions of service between the substitutes and casual labourers is looked into and this apparent contradiction made in the provisions of Rule 2318 of the Manual and Para-801 of Manual of the Pension Rule is ironed out at the earliest possible opportunity.

9. So far as the present application is concerned, the applicant has not submitted the record of service in respect of her husband before me to know as to whether he had completed six months continuous service as substitute T.P. to be entitled to all the rights of a temporary railway servant. The Respondents in their counter have stated that no record in respect of the engagement of the applicant's husband is available at this distant date except his name and designation in the service record. I had also given an opportunity to the learned counsel for the applicant to produce materials in support of the service period claimed in respect of the deceased railway servant, but he could not supply any material

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to that effect. In the circumstances, it could not be proved that the applicant's husband had completed six months continuous service as substitute T.P., Talcher, F.C.I. As this vital fact of the case regarding the exact length of service/could not be proved by the applicant by producing the relevant material, she could hardly claim the benefit available under the Rule 2318 of the Railway Estt. Manual. On the other hand, the learned senior counsel for the Respondents by producing the Attendance Register of T.P. Talcher F.C.I. Shed in the counter which was inspected by the learned counsel for the applicant proved that the husband of the applicant had never been engaged continuously for more than six months. Accordingly, this O.A. fails. No costs.


(B.N. SOM)
VICE-CHAIRMAN

BJY