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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 107 of 2002
Cuttack, this the 20th day of October, 2004

MANORAMA PATI.

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APPLICANT.

-Versus-

UNION OF INDIA & ORS.

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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

Manoranjan Mohanty
20/10/04
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 107 of 2002

Cuttack, this the 20th day of October, 2004

C O R A M:

THE HONOURABLE MR. MAJORANJAN MOHANTY, MEMBER (JUDL.)

Manorama Pati,
Aged about 50 years,
W/o. Late Brahmananda Pati,
Village-Khandatar,
Po:Belada, Ps:Bhadrak,
District-Bhadrak.

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Applicant.

By legal practitioner: M/s. R. Mohapatra, Ashok Das,
Advocate.

-Versus-

1. Union of India represented by the
General Manager, South Eastern Railway,
Garden Reach, Kolkata-43;

2. Divisional Railway Manager(P),
South Eastern Railway,
Khurda Division, At/Po: Jatni,
Dist. Khurda.

3. Divisional Personnel Officer,
South Eastern Railway,
Khurda Division, At/Po: Jatni,
Dist. Khurda.

4. Bridge Inspector,
South Eastern Railway,
Bhadrak.

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Respondents.

By legal practitioner: Mr. C. R. Mishra,
Counsel for the Railways.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Widow of an ex-railway employee, who expired on 01-06-1983 prematurely while in railway service as Ty. Below Man has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondents/Railways for payment of family pension and gratuity from the date of death of her husband. The ex-railway employee entered into Railway service on 24-09-1970 and after putting near about 12 years prematurely expired on 01-06-1983. It is the case of the Applicant that another person (namely Babaji Jena) was also in the Services of the Railway; just like the husband of the Applicant and, upon the death of said Babaji Jena, family pension was allowed to his widow but no such family pension has been allowed in favour of the Applicant discriminatorily. It is also the case of the Applicant that since her miseries were not removed by the Authorities/Railways (by way of granting family pension, as that of the widow of late Babaji Jena) she was compelled to file this Original Application under section 19 of the Administrative

Tribunals Act, 1985 seeking intervention of this Tribunal in the matter of payment of family pension.

2. By filing counter, the Respondents have submitted that the husband of the Applicant was engaged as Ty. Bellowman under the Bridge Inspector/South Eastern Railway/BHC on 24-09-1970, on casual basis with an authorised scale of pay and that he expired on 01.06.1983; that the said husband of the Applicant continued to be a casual labourer(having temporary status)till his death, without being regularised in a regular post and, that, a casual labourer is not entitled to pension nor, in case of his death, his widow is eligible to receive family pension,unless the casual labourer is regularised in a permanent post after due screening and medical test. In this connection, the Respondents have taken the support of the decisions of the Hon'ble Apex Court of India rendered in SLP(Civil)No.334193 and 10951 of 1995 (in the case of Union of India and others -Vrs.- Sukanti and another) and (in case of Union of India and others Vrs. Baldeo Sharma) and so far as the allegation of the Applicant about grant of family pension to another similarly placed widow of an ex-railway employee, it has been stated by the

Respondents that the case of Babaji Jena(ex-railway employee as cited by the Applicant) is different from the case of the Applicant, as Babaji Jena was a regular Khalasi and, after his(Babaji) death, his wife availed family pension as per the Rules. It has been submitted by the Respondents that following the Estt. Sl. No. 130/ 1984 as the ex-Railway servant was a casual employee, his son was rehabilitated as a Casual Labour on compassionate ground. It has been reiterated by the Respondents that since late B.N. Pati(the husband of the Applicant) had neither been medically examined; nor regularised in his service; no pension is liable to be granted to the Applicant and that because Babaji Jena was a regular Khalasi family pension was granted to his widow as per the Rules.

3. Crux of the matter lies with the question (a) as to whether the husband of the Applicant was a regular employee at the time of his death and (b) as to whether family pension was allowed to the widow of Babaji Jena as a favour or he(Babaji) was regularised in services at the time of his death. In order to verify the verasity of the rival stand of the parties on the direction of this Tribunal, the Original Service Book of both the ex-employees were produced by the learned Counsel for the Respondents/Railways, at the time of hearing.

4. Heard the learned Counsel for the parties and perused the materials placed on record; including the service books of both the ex-railway employees.

5. On perusal of the service books, it is seen that the husband of the Applicant was initially appointed as Temporary B/Man in the scale of pay of Rs. 70-85/- and he was allowed incremental pay annually. He was also granted cash award of Rs. 25/- for not participating in the strike. He was allowed to work as such (temporary) till his death on 01-06-1983. It is also seen that he was allowed leave etc.

On perusal of the record it is also seen that Babaji Jena was also appointed as Ty. Khalasi on 01-06-1977 in the pay scale of Rs. 211/-. He was allowed the annual increments periodically till his premature death on 19.3.1993. Nowhere in the service Book of said Babaji Jena there is any indication that he was ever regularised. At page-10 of the Service Book it has been written that the service verified from 24.6.1972 to 18.3.1993 and the same will qualify for pension except the periods indicated therein.

But the distinguishing feature in the case of Babaji Jena is that he was medically examined in the year 1988 and was declared fit in B-1 service of the Railways. Nowhere in the service book of the

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husband of the Applicant, envisages that he was a Casual Worker. There is no endorsement in his Service Book that he was conferred with temporary status. Rather, it is evident that he was appointed as a Ty. B/man in the Railways from 24.09.1970 till his death. As to whether he was ever asked to be examined during all these years or not cannot be questioned now as the Railway employee is no more. Had the ex-Railway employee been a casual labourer with temporary status (without being regularised) certainly on his death, his widow would not have been entitled to family pension; because pension or family pension can only be granted to the casual labourer/his widow, if the employee is regularised as against a regular post.

6. For grant of pension/family pension to a temporary railway servant has been codified in sub-clause-3 of clause-18 of the Railway Servants (Pension) Rules, 1993 which reads as under:-

"18. Pensionary, terminal or death benefits to temporary railway servants -

xx xx xx

(3) In the event of death in harness of a temporary railway servant, his family shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent railway servants under these rules".

Railway Estt. Sl. No. 110/87 which is statutory one, also provides in Clause-11 as under:-

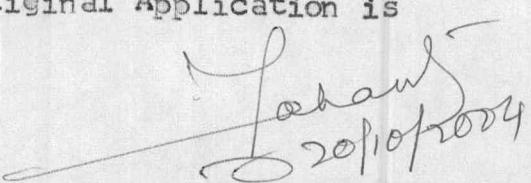
"11. In the event of death in harness of temporary railway servants, their families shall be eligible to family pension and death gratuity on the same scale as admissible to families of permanent railway servants under the Manual of Railway Pension Rules, 1950".

7. It is also seen that though no materials is available on record/service book of Babaji Jena that he was ever regularised before his death, yet family pension has been allowed to his widow. But no ground is found as to why the same has been denied to the Applicant for all these years and, thereby, allowing her to continue in miseries.

8. It is also seen that the decisions rendered by the Honourable Apex Court are with regard to casual employees having temporary status. But here, in the present case, the Applicant's husband was appointed as a Temporary Railway employee and Rule permits her to get pension/family pension as an widow of a Temporary employee of the Railways. Therefore, holding that the action of the Respondents to be bad and that the Applicant is entitled to family

pension, the Respondents are hereby directed to immediately grant the family pension to the Applicant by computing the entire period of service rendered (to the Railways) by her husband. ^{by the Respondents} Entire exercise shall be completed within a period of 120 days from the date of receipt of a copy of this order.

9. In the result, this Original Application is allowed. No costs.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)