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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 954/2003
Cuttack, this the 8th of October, 2004

Premalata Patra.

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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? *Yes.*

Manoranjan Mohanty
(MANORANJAN MOHANTY)
Member (Judicial) 08/10/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 954 of 2003
Cuttack, this the 8th day of October, 2004

CORAM:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL).

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PREMALATA PATRA, aged about 54 years,
W/o. Late Rupei Patra,
Resident of Village: Barapada,
PO: Tarabai, PS: Jatni, Dist. Khurda. Applicant.

BY LEGAL PRACTITIONER: M/s. R. K. Samant Singh, Sanjeet Das,
Advocates.

: Vrs. :

1. Union of India
represented through General Manager,
East Coast Railway, Railway Vihar,
Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager (P),
Khurda Road Division,
East Coast Railway,
Khurda Road,
At/Po/PS: Jatni,
Dist. Khurda.
3. Senior Divisional Personnel Officer,
East Coast Railway, Khurda Road,
At/Po: Jatni, Dist. Khurda.
4. Senior Divisional Engineer,
East Coast Railway, Khurda Road,
At/Po/PS: Jatni, Dist. Khurda.
5. Bridge Inspector (S), East Coast Railway,
Khurda Road, At/Po/PS: Jatni, Dist. Khurda.

... Respondents.

By legal practitioner: Ms. S. L. Patnaik, Addl. Standing Counsel.

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O R D E R

MR. MANORAN JAN MOHANTY, MEMBER (JUDICIAL):

Applicant's husband (Late Rupei Patra) was serving the Railways as Painting Khalasi. He died prematurely, on 05-04-1985; while serving the Railways (under the Bridge Inspector (South) of Khurda Road Railway Division) and, in the said premises, the Applicant (the widow) raised her grievances for payment of family pension and other dues payable to her husband/Late Rupei Patra (who entered the Railways Services w.e.f. 02-03-1972 and, after whose death, the family was only paid the PF settlement dues amounting to Rs. 1,815/- and gratuity amounting to Rs. 4,939/-) and, when her grievances did not yield any fruitful result (for payment of monthly family pension and other dues) she has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking for a direction to the Railways/Respondents to pay her the Family pension and other dues.

2. Respondents by filing a counter, have disclosed that the Applicant was engaged as a Temporary Gangman in an authorised scale of pay of Rs. 70-85/- on 02-03-1972 and, thereafter, he was working as a Temporary Painting Khalasi (under the Bridge Inspector (South) Khurda Road Division) w.e.f. 02-12-1972 till his death in an accident (on 05-04-1985) which he met while on duty and that the said deceased employee was working

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as temporary painting Khalasi at the time of his death and that he was neither medically examined nor absorbed in any particular permanent post on regular measure on or prior to the date of his death and that, therefore, after his death, as per the Rules, the family was paid an amount of Rs.1,815/- towards P.F. settlement dues and Rs.4,939/- towards the service gratuity of late Rupei. It is the case of the Respondents that, as the deceased employee was neither a permanent employee nor was holding a permanent post, her request for sanction and payment of family pension (being against the Rules) was turned down and, therefore, the Applicant having got no legal enforceable right, this Original Application is liable to be dismissed.

3. Having heard Mr. R. K. Samantsinghar, Learned Counsel appearing for the Applicant and Ms. S. L. Patnaik, Learned Counsel appearing for the Respondents/Railways; the materials placed on record were perused. Pursuant to the direction of this Tribunal, learned counsel appearing for the Respondents has also produced the service book of the deceased employee on 29.9.2004; which has also been perused.

4. The key question for consideration in this Original Application is as to whether the Applicant's husband, at the time of his death, was an employee of the Railways having the status of permanent staff or was a casual labourer with temporary status.

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5. On perusal of the service book of the husband of the Applicant it is seen that the Applicant was appointed as a Temporary Gangman (with the pay scale of Rs. 70-85/-) on 02-03-1972 in a pensionable establishment and, that thereafter, he was absorbed as a Temporary Painting Khalasi w.e.f. 2.12.1972 and that he earned Annual increments periodically and was also sanctioned with the revised scales of pay as was granted to other employees. It appears from the Service Book that he was also granted Rs. 25/- cash award for he did not participate in the strike during May, 1974. Therefore, on perusal of the Service books/ records, it is evident that the deceased employee was a regular employee of the Railways pensionable establishment. He was working as Temporary Painting Khalasi and, therefore, the Respondents cannot deprive his family to get the family pension on his premature death. The submission of the Respondents (that the husband of the Applicant was neither medically examined nor absorbed) is not acceptable; especially when records show that the deceased employee was absorbed w.e.f. 2.12.1972 and therefore, it is presumed that he was absorbed only after being medically examined and found fit and since the Railway employee is no more, it cannot be said that he was absorbed without being medically examined. It is known that all initial appointments in Government service are shown temporary as against sanctioned posts and they are made permanent

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confirmed by the administration on a later date; when absorption takes place against a permanent post. Therefore, it can safely be concluded that the deceased employee (husband of the Applicant) was a permanent employee of the Railways for all purposes and on his death his family members are entitled to all dues like family pension etc.

6. That apart, even if the deceased employee is held to have died when he was a temporary Painting Khalasi, then also his family/widow is entitled to family pension as per sub clause (3) of clause 18 of Rule 71 of Railways Service (Pension) Rules, 1993 which reads as under:-

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

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(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, has 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. Viewed from all angles, it can safely be concluded that the Applicant/the family of the deceased Railway employee is entitled to family pension and the

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ought to have been granted to her right from the date following the death of death of the Railway servant. Rejection of her claim shows a non-application of mind of the Railways and, for such action, the widow/Applicant has suffered a lot.

8. The Respondents are, hereby, directed to sanction and pay the family pension to the Applicant without any further delay from the date of death of her husband.

9. In the result, this Original Application is allowed. Parties to bear their own costs.

Manoranjan Mohanty
(MANORAN JAN MOHANTY) 08/10/04
MEMBER (JUDICIAL)