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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NOS. 1416/2003, 509, 510, 511 and 512 of 2004.

Cuttack, this the 17th day of February, 2006.

BENU BARAL & OTHERS. APPLICANT.

VERSUS

UNION OF INDIA & ORS RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of CAT or not? *yes*

(M.R. MOHANTY)
MEMBER (JUDICIAL)

17/02/06

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

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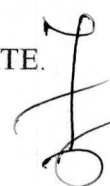
C O R A M:-

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

1. Benu Baral, Aged about 61 years,
Son of Late Bali Baral,
At-Pidhapatna, PO:-Hakapada,
PS: Delanga, Dist:-Puri.
2. Fakir Pradhan,
Aged about 62 years,
Son of Late Krushna Pradhan,
Village: Panchupalla,
PO: Gualilpada, PS: Delang,
Dist: Puri.
3. Netra Nanda Swain, Aged about 62 years,
Son of late Bhima Swain, AT: Jokanadua,
PO:- Beraboi, PS: Delenga, Dist.Puri.
4. Adhikari Pradhan, Aged about 62 years,
Son of Late Giridhari Pradhan,
At: Paikasahi, PO: Hakapada,
PS: Delanga, Dist: Puri.
5. Bhramar Swain, Aged about 61 years,
Son of Late Loka Swain, At/PO: Gualipada, Delanga,
District: Puri.

..... APPLICANTS.

By legal practitioner:- M/s.D.P.DHALSAMANT, ADVOCATE.



-VERSUS-

1. Union of India, through its General Manager,
East Coast Railway, Rail Vihar, Chandrasekharapur,
Bhubaneswar, Orissa.
2. The Divisional Railway Manager, East Coast Railway,
Khurda Road, Jatni, Khurda.
3. The Senior Divisional Personnel Officer,
East Coast Railway, Khurda Road,
Jatni, Khurda.
4. The Permanent Way Inspector,
East Coast Railway, Khurda Road, Khurda.

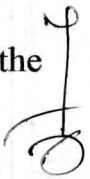
..... RESPONDENTS.

By legal practitioner:- Mr. Trilochan Rath, Counsel for Railways.

ORDER

MR. M.R. MOHANTY, MEMBER (JUDICIAL):

Non payment of the pension/pensionary dues to the five Applicants; on the ground that they had not put in ten years minimum qualifying service, as on the date of retirement; is the subject matter of challenge in the Original Applications filed under section 19 of the



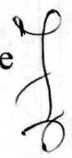
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Administrative Tribunals Act, 1985. For the sake of clarity, particulars of the Applicants are quoted herein under:

<u>Sl.No.</u> (1)	<u>Name & Designation</u> (2)	<u>Date of Temp. Status</u> (3)	<u>Date of regularization</u> (4)	<u>Retirement.</u> (5)
1.	Benu Baral, Jr. Trk. Man	<u>04-07-1987(CPC)</u> 06-07-1988	08-06-1994	31-12-2000
2.	Fakir Pradhan, Jr. Trk. Man	<u>04-07-1987(CPC)</u> 02-07-1988.	25-03-1996	31-07-2000.
3.	Netra Nanda Swain, Jr. TM,	11-05-1990	05-04-1996.	30-06-2000
4.	Adhikari Pradhan, JTM,	<u>05-07-1987(CPC)</u> 11-05-1990.	10-06-1995	30-06-2000.
5.	Bhramar Swain, JTM,	<u>04-07-1987(CPC)</u>	26-07-1995	31-12-2000

2. Respondents, by filing their counter, have stated that under Sub Rule 2(b) of Rule 69 of Railway Services (Pension) Rules, 1993 pension is payable to a Retired Railway Servant; provided he/she has rendered minimum qualifying service of ten years and that after taking into consideration 50% of the temporary status period and 100% of regular services (as per the existing guidelines for determining the period of qualifying service), none of the Applicants had fulfilled the conditions to become eligible for minimum pension. To be more specific, the Respondents have stated that, as per the guidelines, the period of qualifying service of Applicant No.1 comes to only 9 & ½ years; Applicant No.2 comes to 8 years, Applicant No.3 comes to 7 years, Applicant No.4 comes to 7 & ½ years and Applicant No.5 comes to 9 years and, therefore, they are not entitled to the



relief(s) claimed in the present Original Applications. It is, however, stated by the learned counsel for the Railways, at hearing, that, for certain provisions now introduced, the Applicants are to get a lump sum amount as 'gratuity' for the period of services rendered by them on casual basis.

3. Heard Mr. D.P.Dhalsamant, learned counsel appearing for the Applicant and Mr. Trilochan Rath, learned counsel appearing for the Respondents and perused the materials placed on record.

4. The facts of the present cases are not in dispute. There is also no dispute that each of the Applicants had dedicated their youths near about three decades in the Railways both on "casual" & "casual with temporary status" basis and on "regular" basis. The only question needs to be answered as to whether the Railways are justified in not sanctioning the pension and pensionary dues in favour of the Applicants ?. Pension/family pension are granted under the statutory rules framed under Article 309 of the Constitution of India, known as "**Railway Services (Pension) Rules, 1993**". Rule- 3(22) of the Rules, 1993 provides as under:-

"qualifying service" means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules.

Rule 3(23) of the Rules, 1993 deals with regard to 'Railway servant' which provides as under:-



“railway servant” means a person who is a member of a railway service or holds a post under the administrative control of the Railway Board and includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board but does not include casual labour or person lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative Control.

Para 1501 of IREM (Vol.1) deals with regard to the definition of

‘Temporary Railway Servants’ which provides as under:-

“Temporary railway servant” means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include “casual labour” including “casual labour with temporary status”, a “contract” or “part time” employee or an “apprentice”.

Paragraph 2511 of the Indian Railway Establishment Manual,

clause (a) provides as under:-

“(a) Casual Labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servant as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to each labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months’ continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regulation service.”

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Rule 69 of the Rules of 1993 deals with regard to amount of pension; which states as under:-

“69. Amount of pension:- (1) In the case of a railway servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of service.

(2)(a) In the case of a railway servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty three years, the amount of pension shall be calculated at fifty per cent of average emoluments subject to a maximum of rupees four thousand five hundred per mensem;

(b) In the case of a railway servant retiring in accordance with the provisions of these rules before completing qualifying service ;of thirty three years, but after completing the qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than rupees three hundred seventy five per mensem;

(C) Notwithstanding anything contained in clause (a) and (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub rule (2) of rule 75.

(3) In calculating the length of qualifying service **fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service**”.

5. Since, as per Respondents the Applicant No.1 served the Railway for nine and half years of period qualifying for pension, he is

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entitled for pension; for the reason of what has been stated in para 3 of the Rules extracted (emphasis given) above.

6. The issue regarding grant of pension/family pension to such type of Railway servants, has been the subject matter of several litigations. Similar issues decided by the Hyderabad Bench of this Tribunal came up for further judicial scrutiny of the Hon'ble High Court of Andhra Pradesh in the case of **GENERAL MANAGER, SOUTH CENTRAL RAILWAY, RAIL NILAYAM SECUNDERABAD, AP AND ANOTHER vrs. SHAIK ABDUL KHADER** (Reported in 2004 (2) ATJ 23) ; wherein while confirming the orders of the Hyderabad Bench of this Tribunal , the Hon'ble High Court directed that the Applicant, therein, to be entitled to count full service period of temporary status till regularization for the purpose of pension and half of the service before the period of temporary status. This Bench of the Tribunal in the case of **GIDU PRATAP vrs. UNION OF INDIA** (OA No. 671 of 2002,, disposed of on 23rd September, 2004) , taking support of the decision of the Hon'ble High Court of Orissa in the case of **SETTLEMENT CLASS IV JOB CONTRACT EMPLOYEES UNION, BALASORE vrs. STATE OF ORISSA AND OTHERS** (rendered in OJC No. 2047 of 1991 disposed of on 24-03-1992) and the decision of the Hon'ble Apex Court of India rendered in the case of



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(reported in 1995 AIR SCW 370) has also directed the Respondents to take such of the periods from the casual service/casual with temporary status service in order to grant the minimum pension to the Applicant in order to see that the applicant after spending his youth in the Railways should not move from pillar to post with begging bowls at the old age. The Ahmedabad Bench of this Tribunal in the case of **Smt. Vallam Badia vs. Union of India and others** (reported in 2003(2) CAT AISLJ 271), after holding that a temporary status employee is entitled to pension, has directed for payment of family pension to the Applicant. Very recently the Principal Bench of this Tribunal in the case of **Smt. Anita Devi Vrs. General Manager, North Central Railway and others** (in OA No. 284 of 2005 disposed of on 17.01.2006), after taking note of the decisions of the Hon'ble Apex Court rendered in the cases of **RAM KUMAR & OTHERS vs. UNION OF INDIA & OTHERS** (reported in 1996 (1) SLJ (CAT) 116); **UNION OF INDIA & OTHERS vs. SUKANTI & ANOTHER etc.**(SLP 3341/93) ; **UNION OF INDIA & OTHERS vs. RABI BIKANER & OTHERS** (1998 (1) SLJ 181 (SC), Full Bench decision of this Tribunal rendered in the case of **GITA RANI SANTRA vs. UNION OF INDIA & OTHERS** (reported in 1997-2001)AT FBJ 295); co-ordinate Bench decision rendered

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in the case of **SMT. URMILA DEVI vs. UNION OF INDIA AND OTHERS** (O.A. No. 1257/2004 decided on 26.08.2005), in the case of **SMT. VALLAM BADIA vs. UNION OF INDIA AND OTHERS** (reported in 2003(2)CAT 271) and taking into consideration the provisions of the Rules in paragraph 33 has held as under:-

“If one has regard to the above, having regard to the law laid down in Ram Kumar’s case and more particularly when Railway Services Pension Manual do not stipulate continuous service as a temporary government servant on extension of benefit at par with temporary govt. servant to those casual labourers, who had acquired temporary status, the widow of a deceased casual labour is certainly entitled to the family pension which is implicit in the rules and clarified by the law laid down by the Apex Court”.

7. This Bench of the Tribunal while confronting with this situation, in earlier occasion also, had directed the Respondents to bend/frame the Rules akin to the situation so as to enable the Government Servant, like nature, to get the pension after retirement, as pension is not a bounty to be paid by the Government and pension is being paid for maintenance of the Government servant and his family members during the rainy days of life.

8. In the case of **Sachi Prusty VRS. Union of India and others** rendered in O.A. No. 501 of 1996 disposed of on 24th April, 2002, this Bench of the Tribunal had also directed the Respondents that for the

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purpose of calculating the minimum period of qualifying service for grant of pension and pensinoary benefits, his earlier temporary/casual period of service should be reckoned.

9. The Hon'ble Apex Court of India (in the case of **SI Rooplal and others vrs. Lt. Governor through Chief Secretary Delhi and others** - reported in (2000) 1 SCC 644) have laid down that decision of the co ordinate Bench is binding o another Bench; unless, on disagreement, matter is referred to a Larger Bench for proper adjudication.

10. One earns pension at early days for his sustenance during old age when he is crippled and unable to discharge any duties. Therefore, It is not the basic question as to whether one is entitled pension; the question of sustenance of livelihood is the actual consideration. If on technical grounds one is debarred of such right, it would certainly be an injustice caused to an employee who had spent his youth for the nation; which is not the intention of the rule making authority. Rules/Regulations/Instructions are framed/issued for maintaining an orderly society. If, Rules framed by Government is opposed to public policy or is against the very object to be achieved, the same needs to be interfered with to meet the social justice to the people. Regularization, after conferment of temporary status is not within the control of the employee. A temporary status employee has been

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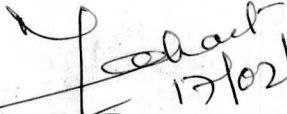
allowed to enjoy all the benefits like the regular employee. Therefore, the decision of the Railway Board to take only 50% of the temporary status period for calculating the qualifying service is against the common conscience. That apart, in the rules it has been made clear that "qualifying service" means service rendered; while on duty or otherwise; which shall be taken into account for the purpose of pensions and gratuities admissible under these Rules. The Applicants have been deprived of their livelihood during old age due to short fall of qualifying period of service, either by six months, one year or two years etc. With relaxation, the Applicant No.1 is entitled to get minimum pension even if there are shortage of six months.

11. Right to 'life' is not merely confined to mere physical existence; but it includes within its ambit the right to live with human dignity. Right to live is also not restricted to mere animal existence. It means something more than just physical survivals. The right to live is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with outside world but it also includes the right to live with human dignity and all that goes along with it for bare necessities of life; such as adequate nutrition, clothing and shelter. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a

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part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. Therefore, nonpayment of pension to the Applicant on technical ground is an way of interfering with the constitutional mandate as provided under Article 21 of the Constitution of India.

12. For the foregoing discussions, it is held that not only the Applicant No.1 but also all the Applicants are entitled to the minimum pension; for which Respondents are hereby directed to grant the Applicants minimum pension by taking into computation so much of their earlier service period as required, in order to make good of the deficiency of the period of qualifying service of ten years and grant them minimum pensionary benefits from the date of their retirement, within a period of 180 days from the date of receipt of a copy of this order. In the result, these Original Applications stand allowed. There shall be, however, no order as to costs.


(M.R. MOHANTY)
MEMBER(JUDICIAL)
17/02/06