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O.A.NO. 1186 OF 2004.

Order dated: 20-01-2006.

Narayana, the husband of the Applicant, expired prematurely, while working in the Railways. Neither family pension nor employment, on compassionate ground, were granted to her and, in the said premises, she approached this Tribunal in Original Application No. 809 of 2002; which was heard and disposed of on 23-09-2002 with direction to the Respondents to consider the grievance of the Applicant for grant of family pension and for providing an employment, on compassionate ground, to one of her sons. The said grievance having been rejected by the Respondents (under Annexure-A/1 dated 18-12-2001), she has approached this Tribunal, for the second time, in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985.

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2. In support of the order of rejection (under Annexure-A/1 dated 18-12-2003), the

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Respondents (in sub paragraph 2 of page 2 of their counter) have stated that the husband of the Applicant, while working as a Casual Gangman under the Permanent Way Inspector of Sompeta in the scale of Rs. 70-85/-(AS)/revised scale Rs. 196-232/-(RS) w.e.f. 24-06.1973, died prematurely, on 17-05-1985 without being empanelled and regularized and that, as Late Narayana was not a regular employee of the railway, DCRG amount of Rs.5,070/- was paid to her widow (the Applicant) and, there being no Rules (of the Railway) for payment of any pension & other retrial benefits to the family of a casual employee or of a Casual employee with temporary status, after his death, nothing (except Rs. 5,070/- towards the DCRG of ex employee) was available to be paid to the Applicant. It has further been stated by the Respondents that the ex employee (late Narayana, the husband of the Applicant) expired without being empanelled/regularized. As regards the prayer for providing employment on compassionate ground, it has been submitted in the counter that, in absence of any

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Rules/instructions for providing employment assistance to the ward of a deceased casual employee with temporary status, the prayer (for an employment on compassionate ground) was rightly rejected by the Respondents. That apart, it has also been submitted by the Respondents that appointment under the compassionate ground is a welfare scheme introduced by the Railway with very object to rehabilitate the distress family of an employee who dies in harness and that, appointment on compassionate ground is not a method of recruitment but only a facility to provide for immediate rehabilitation to the family in distress for relieving the dependant family members of the deceased employee from destitution. It has also been urged that, as in the present case, the Applicant has come up after 20 years of the death of her husband, the claim is not maintainable being hit by Section 21 of the Administrative Tribunals Act, 1985. On the above grounds, the Respondents/Railways have prayed for dismissal of this Original Application.

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3. Learned counsel appearing for the respective parties have led emphasis on the averments made in the pleadings during the course of hearing. Having heard them, perused the materials placed on record.

4. In order to determine the very crucial point 'as to whether the husband of the Applicant was a Casual employee <sup>or a</sup> ~~casual~~ employee with temporary status or a temporary/regular employee', as per the direction of this Tribunal dated 27-10-2005, Mr. Ojha, learned Counsel appearing for the Respondents/Railways, produced the Original Service Book of late Narayana and with the necessary aid and assistance of Mr. Ojha, in presence of the learned Counsel appearing for the Applicant, the Service Book of Late Narayana was perused. On perusal of the Service Book, *prima facie*, it is seen that the averments made by the Respondents in their counter and in the oral submissions led by Mr. Ojha are bereft of the entries made in the Service Book, inasmuch as, from the affidavit (available in the service book), produced by Late Narayana, disclosed that he was working as

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Temporary Gangman under the PWI/S.E.

Railway/Somepeta and his age was 35 years as on 03-09-

1974. Reverse page 11 of the service book at Col.1, it has

been disclosed that late Narayana was a Ty. Gangman

with the scale of pay of Rs.200-250/- and his date of

appointment (as available at Col. 7 of the said service

book) has been disclosed to be 24-06-1973. In Col.2 of

the service book (meant for reporting the status of the

Govt. servant) it has been disclosed as "**Temporary**". It

has also revealed from the service book that late

Narayana was enjoying all the benefits viz. revised scale

of pay, increments, crossing of EB etc. like other regular

employees of the Railways. No where in the service book

of the husband of the Applicant there are any entry to

show that he was initially engaged as a casual Gangman.

There is also no endorsement available in the Service

book to show that he was conferred with temporary

status. Casually engaged employee, after putting codified

days of work, is conferred with temporary status

irrespective of availability of vacancy and, thereafter, on

availability of vacancy, straightaway he/she is regularized in the post; whereas one is appointed temporarily against a regular vacancy and at that relevant time i.e. in the year 1973 all initial appointments in the Railways are temporary followed by confirmation subject to satisfactory work. Therefore, on perusal of the materials/service book of late Narayana, at no stretch of imagination it can be said that he was a casual gangman with temporary status. Rather, the irresistible conclusion is that he was a temporary Gangman.

5. Now the question for consideration is as to whether, on the death of a Temporary Employee of the Railway, the widow is entitled to family pension ?. For grant of pension/family pension to a temporary Railway Servant, the issue has been crystallized 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 servant:-

xxxx        xxxx        xxxx

(3) In the event of death of 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".

Clause-11 of Railway Estt. Sl. No.110/87,

also takes care of such situation and envisages as under:-

"11. In the event of death of 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".

Therefore, the rejection of the claim of the Applicant for payment of family pension under Annexure-A/1 dated 18.12.2001 is not sustainable in the eye of law and, as a consequence, the Respondents/Railways are hereby directed to pay the Applicant family pension from the date of death of her husband within a period of 90 days from the date of receipt of a copy of this order.

6. As regards providing employment on compassionate ground, it is the case of the Respondents that the deceased being a casual employee in the Railway and scheme for providing employment

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assistance to one of the dependant members of such casual employee on his death, having come into effect only from 31.12.1986, there is no force in the grievance of the Applicant.. It is seen that the son, for whom the Applicant has sought for employment on compassionate ground, was a minor; his date of birth being 01-06-1972 as seen from Annexure-A/11. The son of the deceased got majority only in the year 1990 and, at that relevant time, provision for providing employment to one of the dependant members of the casual employee was in existence, if it is treated that the deceased was working in the Railway on casual basis. Now, that it is clear that the husband of the Applicant was a temporary employee of the Railway at the time of his death, there is no dispute at the bar that such a scheme for providing employment to a dependant member of a deceased temporary Gangman was in existence prior to the death of the husband of the Applicant. Circulars of the Railways have also been produced by the learned counsel for the Applicant to show that the General Manager has been vested with the

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powers to condone delay even up to 20 years. It is the case of the Applicant that the family is still in distress/indigent conditions.

5. In the above view of the matter, there is no iota of doubt that the grounds of rejection (of the prayer of the Applicant, for employment assistance on compassionate ground) are not sustainable in the touch stone of judicial scrutiny and, as a consequence, the rejection order under Annexure-A/1 dated 18.12.2002 is hereby quashed.

8. As a consequence, the Respondents are directed to reconsider the grievance of the Applicant for providing employment assistance, on compassionate ground, within a period of 90 (ninety) days from the date of receipt of a copy of this order.

9. In the result, this Original Application stands allowed. There shall be no order as to costs.

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20/01/04  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)

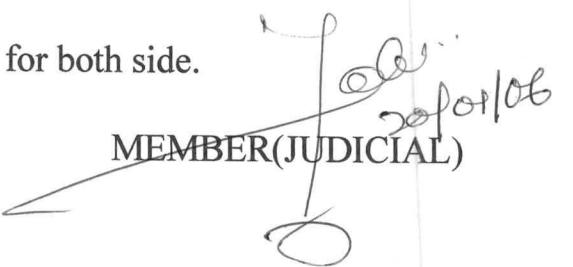
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Order dated 20.01.2006.

Service Book of Late Narayana, Ex  
employee of the Railway as produced by Mr. Ojha,  
Learned counsel appearing for the Railways be returned  
to Mr. Ojha. The Court Officer is directed to return the  
Original Service Book to Mr. Ojha, Learned counsel  
appearing for the Respondents by retaining due  
acknowledgement.

Copies of the final orders dated 20-01-2006  
be sent to the Applicant, by Regd. Post, in the address  
given in the O.A. and free copies of this order be given to  
learned counsel appearing for both side.

  
MEMBER(JUDICIAL)