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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No. 78 OF 2002  
Cuttack, this the 08<sup>th</sup> day of July, 2004.

Malli Mahanta.

....

Applicant.


-Vs.-

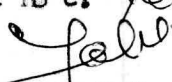
Union of India & Others. ....

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.

  
(B.N. SOM)  
Vice-Chairman

  
( M. R. MOHANTY )  
Member (Judicial)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A. NO. 73 OF 2002

Present: THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (J)

Malli Mahanta. .... Applicant.

-Vrs.-

U?O.I. & Ors. .... Respondents.

For the Applicant : Mr. K. B. Panda, Counsel.

for the Respondents: Mr. D. N. Mishra, Counsel.

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Date of decision: 08/07/2004.  
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O R D E R

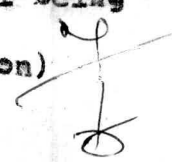
MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Udia Mahanta was working as a Railway Gangman under the Administrative control of Respondents since 30.05.1970 and he, having been declared permanently incapacitated (by the Railway Divisional Medical Officer on 21.08.1989) was removed from service with effect from the said date i.e. 11.08.1989 and expired, prematurely, on 22-11-1989. Thereafter, his widow (the present Applicant) filed a petition for sanction of family pension to her and the same was also forwarded to the Divisional Personnel Officer at Kharagpur on 8.12.1993. As no action was taken, she again made a representation, on 1.1.2000, to the Divisional Manager of South Eastern Railway stationed at Kharagpur for release of Family Pension to her. Being

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frustrated with the callousness of the Authorities, she moved before Balasore District Consumer Disputes Redressal Forum in Consumer Dispute Case No.36 of 2000 which was dismissed (on 18th June, 2001) on the ground of being not maintainable. But, however, it was indicated that family pension, as due and admissible under the Rules, should be paid to the Applicant by the Respondents 1, 3 and 4 therein within a period of sixty days. No heed having been paid to the grievance of the Applicant, despite the observation of the District Consumer Forum; the Applicant has filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985 with prayers; (a) to direct the Respondents to pay her (Applicant) family pension dues with effect from the month of October, 1989 (including all other Post retirement benefits that her husband was entitled to) with Provident Fund, Gratuity and arrears of salary, if any, and (b) to direct the Respondents to grant her interest (over the settlement dues of the Applicant) at the rate of 18% per annum.

2. By filing a counter, the Respondents have taken the plea that as the Applicant's husband was under temporary employment and was not absorbed in regular establishment, he was entitled neither for pension nor family pension for his family in the event of his death. Farther, it was submitted by them that as the husband of the Applicant expired, after being terminated (due to his permanent incapacitation)




payment of family pension to his widow was out of question; but, considering the hardship of the family, compassionate appointment has been provided to one of his family members. As regards, the other dues, it has been clarified by the Respondents in the counter, that all the dues have already been paid soon after the death. In the above premises, it has been prayed (by the Respondents) that this Original Application is liable to be dismissed.

3. Applicant, by filing a rejoinder, has disclosed that no opportunity was given to her husband, before terminating his services, to have his say in the matter and that, her husband was a permanent employee as per the declaration form submitted to the Medical authorities, while asking him to go for medical certification. A copy of such document has been annexed to the rejoinder as Annexure-3.

4. We have heard learned counsel for both sides and perused the materials placed on record. It is seen that the Respondents, by filing their counter, stoutly denied the assertions made by the Applicant that her husband was not a permanent employee and that, therefore, pension/family pension was not payable. No documentary evidence (viz. service book/ personal file of the official) to show that the husband of the Applicant was a temporary railway servant, has been produced by the Respondents in order to substantiate

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their stand in the counter. That apart, no materials have been placed on record to show that opportunities were ever given to the husband of the Applicant (to have his say in the matter) before terminating his services. In the said premises, we are to accept the Annexure-3 (filed to the rejoinder) which prima facie shows that the husband of the Applicant was a permanent employee of the Railways, before termination of his service. In absence of any denial to this document under Annexure-3 to the rejoinder and the stand of the Applicant that no opportunity were given to her husband to have his say in the matter, before terminating his services, we would have taken adverse inference against the Respondents to hold that the husband of the Applicant was a regular Railway employee and faced termination from service in gross violation of the principles of natural justice but for the reason of justice, equity, and fairplay we would like to give an opportunity to the Respondents to act in the manner directed below:

- (a) The DRM (SE Railways) Kharagpur Rly. Division and the Sr. Divisional Personnel Officer (South Eastern Railways) Kharagpur (Respondents 3 and 4) should collect all the documents (viz; service book, personal file of the official and all other connected documents) pertaining to the service of the Applicant within a period of 30 days hence;
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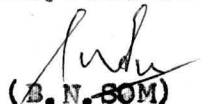
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(b) Thereafter, within a period of seven days, a date be intimated to the Applicant to be present alongwith a nominated person (allowing them TA & DA) and, in their presence, documents be verified (alongwith the present document under Annexure-3 to the rejoinder) to find out as to whether the Applicant's husband was a regular employee and as to whether opportunities were given to him to have his say in the matter, before terminating his services; service rendered by

(c) in case it is found that the husband of the Applicant was a permanent one and no adequate opportunities were given to him (to have his say in the matter) before terminating his services, then within a period of another 60 days, the family pension should be granted to the Applicant from the date of the death of her husband; and

(d) A speaking order may be passed after the stage (b) above by the Respondents in case it is found that the Applicant is not entitled to any of the reliefs;

5. In the result, this Original Application is disposed of with the above directions. No costs.

  
(B.N. SOM)  
Vice-Chairman

  
(M.R. MOHANTY) 08/07/04  
Member (Judicial)