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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.


OA No. 212 of 2007


Cuttack, this the 12<sup>th</sup> day of November, 2008

Malati Panda ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

FOR INSTRUCTIONS

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

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)

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CUTTACK BENCH: CUTTACK

O.A.No.212 of 2007

Cuttack, this the 12<sup>th</sup> day of November, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)  
A N D  
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Malati Panda, aged about     years,  
Widow of Late Baban Panda  
Village Jamuna Patana,  
Po.Dulakha Patna, Ps-Korai,  
Dist. Jajpur.

Legal practitioner     : M/s. N.R.Routray, S.Mishra, Counsel  
.....Applicant

- Versus -

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Chief Administrative Officer (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
4. Senior Personnel Officer (Con.), Coordination, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
5. FA & CAO (Con.), East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
6. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po. Jatni, Dist. Khurda.
7. Senior Divisional Financial Manager, East Coast Railway, Khurda Road Division, At/Po. Jatni, Dist. Khurda.
8. Designated FA & CAO, South Eastern Railway, Garden Reach, Kolkata-43, West Bengal.

....Respondents

Legal Practitioner     : Mr. Ashok Mohanty, Sr. Counsel  
Mr. M.K. Das, Counsel.

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ORDERMR. C.R. MOHAPATRA, MEMBER (A):-

The case of the Applicant is that by the order of posthumous regularization of the service of the husband of the Applicant in Group-‘D’ category vide order dated 22-04-1999/01.08.1999 with effect from 03.10.1989, family pension was sanctioned in her favour with effect from the date of death of her husband i.e. 03.10.1989 vide order under Annexure-A/4 dated 01.08.1999. While the Applicant was in receipt of monthly pension, she was informed that the competent authority has decided to cancel the order of regularization of her husband as he was never screened for the purpose of judging his suitability nor empanelled for regular absorption in PCR post as provided in the Rules; as a result of which the PPO issued in favour of the Applicant will have to be cancelled. Accordingly, she was called upon to explain vide order under Annexure-A/5 dated 04.06.2007 why the PPO shall not be cancelled. By filing representation under Annexure-A/6 dated 18-06-2007, she contested the notice under Annexure-A/5 by specifically stating that it is completely false to state that her husband was not screened for the purpose of determining his suitability for regular absorption in PCR post; that, Railway Service (Pension) Rules, 1993 does not envisage cancellation of the PPO granted in her favour by Railway Board and that such cancellation would be against the order passed in similar matter by the Ernakulam Bench of this Tribunal in OA No. 170 of 2001 (M.Sarojini) which was ultimately confirmed by the Hon’ble Apex Court in SLP No.8279 of 2005. Notwithstanding the above, order under Annexure-A/7 dated 28.06.2007 the family pension granted under PPO No.0702000452000/836/4559 dated 01.06.2000 was cancelled.

Being aggrieved by the above action, the Applicant in this OA assails the order under Annexure-A/5 dated 04.06.2007 and the order under Annexure-A/7

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dated 28.06.2007 with prayer to quash the impugned order under Annexure-A/5 & A/7 and as a consequence to direct the Respondents to continue paying her monthly pension.

2. Respondents by filing counter opposed the prayer of the Applicant *inter alia* re-iterating that medical screening is a pre-requisite condition before a casual employee is taken to regular establishment or regularization. As the husband of the Applicant was not screened during his life time, question of posthumous regularization ought not to have been resorted to. Further stand of the Respondents is that neither the Pension Rules relied upon by the Applicant is applicable to her nor the decision of the Ernakulam Bench subsequently confirmed by the Hon'ble Apex Court have any application to the present case. They have accordingly, averred that there being no illegality in cancelling the order of family pension, this OA needs to be dismissed.

3. By filing rejoinder, the Applicant, while reiterating some of the stand taken in the OA has also controverted the stand taken in the counter filed by the Respondents and we have taken note of the same. Learned Counsel for the Applicant by filing some of the documents through Memo dated 08-09-2008 has stated that since counter part employees of the husband of the Applicant was regularized, non-regularization of the service of her husband is against the mandate provided under Article 14 and 16 of the Constitution.

4. Learned Counsel appearing for the parties have reiterated their stand taken in the pleadings and having heard them, perused the materials placed on record. The impugned order under Annexure-A/7 dated 28.06.2007 cancelling the family pension granted to the Applicant reads as under:

"It is to inform you that your representation dated 18.06.2007 was put up to the competent authority after careful examination of the point raised by you the following orders are passed:

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1. The available document does not indicate that late Baban Panda, S/o. Raghu Panda had been screened for regularization against Gr.D post nor Malati Panda has submitted any documents to substantiate her averments in this regard. Thus, late Baban Panda's status in railway was only casual labour at the time of the death;
  2. SPO/Con/Co-Ord/BBS is the communicating authority of the administrative decision of the competent authority;
  3. Railway Services (Pension) Rule, 1993 is not applicable to the casual labour;
  4. The Court's judgment cited by you is a judgment in personam. Hence, it is not applicable in your case.

In view of the above facts/rules position your representation has no merit.

The following administrative orders are passed.

"the family pension of Smt.Malati Panda, W/o.Late Baban Panda may be cancelled."

Accordingly, the family pension granted to you under PPO No.0702000452000/836/4559 dated 01.06.2000 is hereby cancelled with immediate effect.

Kindly acknowledge the receipt."

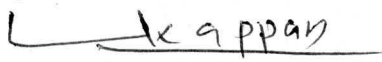
5. It is the specific contention of the Applicant that under the Railway Service (Pension) Rule, 1993, the President alone is empowered to withdraw full or part pension or gratuity granted to the retired Railway Employee and none other than the President can exercise such power in absence of express provision in that regard. Her contention is that as the present order of cancellation has been made by an authority other than the President the same is not sustainable. As against the above, the Learned Counsel appearing for the Respondents has stated that the rule relied upon by the Learned Counsel for Applicant is not applicable to the casual employee and as such, cancellation of family pension order is in no way illegal. Further he has argued that widow of a retired employee is entitled to family pension provided the employee is entitled to pension. Since the husband of the Applicant was not entitled and the order regularizing the husband of the Applicant after his death was irregular necessarily, the Applicant is not entitled to family pension and as such, the same was rightly cancelled. None of the parties produced the decision of the Ernakulam Bench confirmed by the Hon'ble Apex Court and, therefore, there is no occasion for us to go through the same to find out as to whether the present case is covered by the said decision.


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6. Neither in the pleadings nor during hearing any document has been produced before us showing cancellation of the order of regularization of the husband of the Applicant made with the approval of the Chief Engineer (Construction/HQ/SERailway/Bhubaneswar with specific mentioning that the husband of the applicant passed the requisite medical examination (in Bee One category) in 1989. Applicant was granted family pension pursuant to the order of posthumous regularization of the husband of the Applicant and as long as it stands, the Applicant cannot be denied the benefits of family pension granted to her. In view of the above, the cancellation of the family pension granted to her under Annexure-A/7 dated 28.06.2007 is certainly not sustainable and the same is hereby quashed giving liberty to the Respondents to first consider the sustainability of the order of regularization after giving full opportunity to the Applicant and keeping in mind that the employee is no more alive and thereafter, pass appropriate orders in accordance with Rules. Till then, the Applicant is entitled to get the benefit what she was getting prior to the impugned order under Annexure-A/7 dated 28.06.2007.

7. With the aforesaid observations and direction, this OA stands allowed by leaving the parties to bear their own costs.

  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)