

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 170/2001

Friday this the 23rd day of November, 2001.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

M. Sarojini
W/o Late M. Ramadas
Residing at Mangathara House
Beach Road, Kadalundi P.O.
Calicut District-673 302.

Applicant.

[By advocate Mr.V.R.Ramachandran Nair]

• Versus

1. Union of India represented by
the General Manager
South Eastern Railway
Calcutta.
2. The Chief Engineer (CON) H.Q.
South Eastern Railway
Bhubaneswar.
3. The Deputy Chief Engineer/DII
South Eastern Railway
Bhubaneswar.
4. The Deputy Chief Personnel Officer(C)
South Eastern Railway
Bhubaneswar.
5. The Senior Divisional Accounts Officer (Pension)
South Eastern Railway
Kurdha Road.

[By advocate Mr. James Kurian]

The application having been heard on 23rd November, 2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

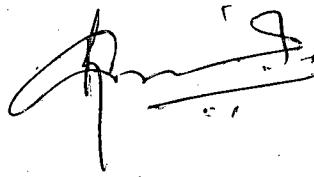
Applicant who is the widow of late M.Ramadas who was working as highly skilled Serang under the Assistant Engineer (regirdering), South Eastern Railway, Cuttack, has approached this Tribunal seeking the following reliefs:

i. To issue a direction to the respondents to fully comply with A-5 order by grant of all consequential benefits thereon.



- ii. To issue a direction to the respondents to continue to pay the family pension monthly without any further delay.
- iii. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- iv. To call for the records leading up to order No.DCPO/CON/P/BBS/CE-HQ/66/02255 dated 21.3.2001 (R2) issued by the 4th respondent and quash the same.

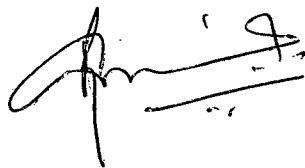
2. The applicant avers in the OA that her husband had worked in Mahanadi, Kaukhai, Kathojodi projects under the Khurda Division. He was initially appointed as highly skilled Serang on 18.3.76 and he continued uninterruptedly up to 6.1.89 and died while in service on 7.1.89, in support of which she annexed A-1 certificate dated 29.3.91 issued by the Assistant Engineer (regirdering), South Eastern Railway, Cuttak. In 1991 the applicant received provident fund, death-cum-retirement gratuity, leave salary etc. On 26.7.92 her son was appointed as a casual labourer on daily wage basis on compassionate ground. The applicant met the third respondent and requested to materialize the family pension. On 26.6.95 the applicant represented to the 1st respondent for grant of family pension in her favour by A-2 representation. According to her, in cases of similarly situated persons, the Cuttack Bench of this Tribunal had allowed OAs and in those cases, the pension, family pension and all other consequential benefits were paid by the Railways. She approached the Cuttack Bench of the Tribunal by filing OA No.651/96. During the pendency of the OA, A4 office order regularizing one Baban Panda who expired on 3.10.89, with effect from 3.10.89 was issued. In that order it was also stated that pension and consequential benefits to the widow of late Baban Panda, viz. Smt. Malati Panda would be made. In view of the settled principle of regularization in similar cases, A-5 office order dated 10.2.2000 was issued by the 2nd respondent regularizing the husband of the applicant



Late M.Ramadas against 40% PCR post of Khalasi with effect from 7.1.89 thereby entitling the applicant to get pensionary and all other consequential benefits. While so, OA 651/96 was taken before a larger bench along with other similar cases. In view of the fact that order of regularization and eligibility for family pension had already been done and the case was likely to be delayed and the question of implementation only remained, the applicant submitted A-6 memo dated 14.11.2000 seeking permission to withdraw the original application. Cuttack Bench of the Tribunal by A-7 order dated 28.11.2000 took note of the above memo and the OA was disposed of as not being pressed. Since no further action was taken by respondents 3, 4 and 5 in pursuant to A-5 order and consequently the payment of the pension benefits was delayed, the applicant filed this OA seeking the above reliefs.

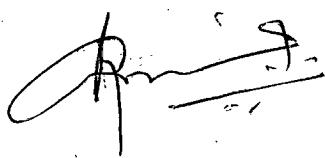
3. When the application came up for admission on 14.2.2001, learned counsel for the respondents took notice and sought time to get instructions and file a statement. On receipt of the statement, the applicant amended the OA adding the 4th relief since in the meanwhile respondent No.1 had issued R-2 order dated 21.3.2001.

4. Respondents resist the claim of the applicant. In the reply statement, accepting the facts as stated by the applicant in the OA, it was submitted that since A-4 order was issued in contravention of para 2005 and 2006 of the Indian Railway Establishment Manual Vol.II and also Railway Service (Pension) Rules 1993, the said office order had been cancelled with the approval of the competent authority i.e. the Chief

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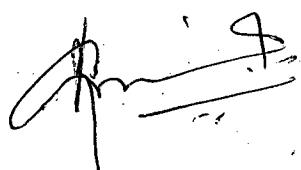
Administrative Officer, South Eastern Railway by R-2 order dated on 21.3.2001 and in the light of the cancellation of the office order the applicant had no locus standi to agitate her grievance.

5.. Heard Sri V.R.Ramachandran Nair for the applicant and Sri James Kurian for the respondents. Learned counsel for the applicant submitted that since A-5 order had been issued regularizing the late husband of the applicant, the family pension due to the applicant from 7.1.89 with arrears should have been sanctioned and paid to the applicant, and denial of the same was opposed to the principles of natural justice, fair play and violative of the fundamental rights guaranteed under Articles 14, 16, and 21 of the Constitution of India. He also submitted that the respondents were following a discriminatory policy in that the family pension and other benefits had been sanctioned to Malati Panda. Even though the respondents submitted that the family pension sanctioned to Malati Panda was being reconsidered, even in July 2001, when the additional reply statement was filed, it had not been revised and Malati Panda continued to get the benefit of the family pension. The cancellation of the office order issued in February 2000 itself was not legal. When A-5 order had been sought for implementation, cancelling the said order, was subjudice. Further R-2 had been communicated to her by A-12 letter dated 17-5-2001 i.e. after filing of the reply statement. A-5 had been produced before the Cuttack Bench of this Tribunal when OA 651/96 was permitted to be withdrawn. But for the issuance of the order, the applicant would have pursued her case in the



Tribunal and would have possibly got orders in her favour as in A-10 and A-11 orders in OA 379/92 and OA 390/97 dated 29.9.92 and 19.1.2000 respectively. He also referred to the judgement of this Bench of the Tribunal in OA 527/96 and 590/96 dated 23.7.96 (A-9). He relied on the portion of the A-11 order and submitted that the respondents had regularized the casual labourers working under them with retrospective effect from 1.4.73, 1.4.84, 1.4.88 etc. According to him those who are on roll on the relevant date should have been eligible and the applicant's husband having been posted as highly skilled Serang in 1976 it should be deemed that he had already been screened. He relied on para 2007 of the IREM Vol.II for his above submissions.

6.. Learned counsel for the respondents reiterated the points made in the reply statement and the additional reply statement. According to him, as per the directions in OA 651/96 pending in the Cuttack Bench of the Tribunal, the General Manager, South Eastern Railway had disposed of the representation of the applicant by R1 order dated 2.1.97 rejecting the claim for family pension. By mistake, A-5 order dated 10.2.2000 had been issued in violation of the provisions of the IREM. There cannot be any regularization without screening and since the applicant's husband had died on 7.1.89, no screening was possible and without screening there could not be any regularization and hence the order had been cancelled and applicant is not entitled for any reliefs.

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7. I have given careful consideration to the rival submissions, the rival pleadings as well as the documents brought on record. I find that there is no dispute between the parties that A-5 office order dated 10.2.2000 had been issued by the second respondent when the OA 651/96 was pending before the Cuttack Bench of this Tribunal. I find from A-3 that through OA 651/96 the applicant had approached the Cuttack Bench of the Tribunal seeking the following reliefs:

- (i) Direction/Directions be issued to the respondents to make payment of family pension to the applicant along with all arrears to which she is entitled to;
- (ii) Direction/Directions be issued as would deem fit and proper so as to give complete relief to the applicant.

8. The office order dated 10.2.2000 issued by the the Chief Engineer (CON) HQ. South Eastern Railway, Bhubaneswar, 2nd respondent herein reads as follows:

" Office Order

The following orders are issued with the approval of CE(Con) HQ/BBS.

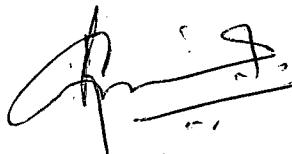
Late M.Ramadas Ex.Serang under DEN(Reg)/JEN is deemed to have been regularized against 40% PCR post of Khalasi in scale Rs. 195-232/- / Rs. 750-940/- in Gr. 'D' category w.e.f. 7.1.89.

Sri M.Ramadas had passed the requisite medical examination. He expired on 7.1.89.

As a result of this PCR regularization, the widow of Late Ramadas will be entitled for pensionary and other consequential benefits.

The pension case of late Ramadas may be prepared and the arrears of pension may be drawn expeditiously.

Sd/-
APO(Con) BBS
For Chief Engineer (Con) HQ
Bhubaneswar
Dated 10.2.2000"



9. On receipt of this order the applicant had filed A-6 memo before the Cuttack Bench of this Tribunal praying that the OA may be treated as withdrawn. The Cuttack Bench of this Tribunal took note of the memo and after hearing the learned counsel on both sides, disposed of the OA as not being pressed. The grievance of the applicant stood settled with the issuance of A5 order dated 10.2.2000 and judicial notice of the same having been taken note of by the Cuttack Bench of this Tribunal, A-6 order became a binding order of this Tribunal between the parties. In my view the respondents cannot unilaterally withdraw that order especially when the present OA had been filed for implementation of A-5 order. The respondents by R-2 have unilaterally cancelled A-5 order. In this view of the matter, I am unable to sustain R-2 order dated 21.3.2001 issued by the respondents. Therefore, without going to the other aspects I set-aside and quash R-2 order dated 21.3.2001.

10. Since R2 order dated 21.3.2001 is set aside, A-5 order is a subsisting order between the parties. According to the said order, which is reproduced above, the widow of late Ramadas would be entitled to the pensionary and other consequential benefits. Accordingly, respondents are directed

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to comply with the A-5 order by grant of monthly family pension and consequential benefits thereof. Respondents shall disburse the consequential monetary benefits to the applicant within a period of 4 months from the date of receipt of copy of this order.

11. The OA stands allowed as above with no order as to costs.

Dated 23rd November 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: True copy of service certificate issued by the Assistant Engineer(Regirdering) South Eastern Railway, Cuttack dated 29.3.91 showing the service of the applicant's husband.
2. Annexure A2: True copy of representation dated 26.6.95 submitted by the applicant to the 1st respondent.
3. Annexure A3: True copy of Original Application No.651/96 filed by the applicant before the Hon'ble Central Administrative Tribunal, Cuttack Bench.
4. Annexure A4: True copy of Office order No.CE(OIN/HQ/BBS/PCR/ 1.4.73/02346 dated 22.4.99 issued from the 2nd respondent's office.
5. Annexure A5: True copy of office order No.CE(C)/HQ/BBS/PCR/ 1.4.73/00807 dated 10.2.2000 issued from the 2nd respondent's office.
6. Annexure A6: True copy of memo dated 14.11.2000 submitted by the applicant before the Hon'ble Central Administrative Tribunal Cuttack Bench.
7. Annexure A7: True copy of order dated 28.11.2000 passed by the Hon'ble Central Administrative Tribunal, Cuttack Bench.

8. Annexure A8: True copy of representation dated 4.10.2000 submitted by the applicant to the 3rd respondent.
9. Annexure A9: True copy of judgement dated 23rd day of July, 1996 of the Hon'ble Central Administrative Tribunal, Ernakulam Bench in O.A.No.527/96 etc.
10. Annexure A10: True copy of judgement dated 29.9.92 of the Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.397/92.
11. Annexure A11: True copy of judgement dated 19.1.2000 of the Hon'ble Central Administrative Tribunal, Cuttack Bench in O.A.390/97.
12. Annexure A12: True copy of letter No.DCPO/Con/P/88S/W.P./160/03894 dated 17.5.2001 issued by the 4th respondent to the applicant.

RESPONDENT'S ANNEXURE

1. Annexure R1: True copy of General Manager/S.E. Railway/ Garden Reach's SPEAKING ORDER dt.2.1.1997, disposing of the representation of Smt. M. Sarojini (dt.26.6.1995) as per Hon'ble CAT/Cuttack's directive in O.A. No.651/96.
2. Annexure R2: True copy of Dy.Chief Personnel Officer/ (Construction)/S.E. Railway/ Bhubaneswar's Office Order dt. 21.3.2001.
3. Annexure R3: True copy of letter No.DCPO/Con/P/88S/W.F./160/03894 dated 17.5.2001 issued by the Dy. Chief Personnel Office(Con), S.E. Railway, Bhubaneswar to the applicant.

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