

FORM NO. @
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Original Application No. 19/06

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Laxmi Basu

Respondent(s) W.O. 13 ans.

Advocate for the Applicants Mr. H. Das, A.R. Sikdar

J. A. Azad.

Advocate for the Respondent(s) CGSC

Rly St. Counsel

Notes of the Registry Date 24.1.06 Order of the Tribunal

This application is a form
is filed/C.F. S. 50/
d posted 3D
No. 266. 317960
Dated 16.1.06

11e Dy. Registrar
19.1.06.

Seal: Laxmi

The claim of the applicant is that her late husband was working as Safaiwala and temporary status has been conferred on him by order dated 19.1.1994. He died in harness on 13.4.2001. The applicant has sought all the pensionary benefits of his late husband as well as compassionate appointment through this O.A.

When the matter came up for admission, it was pointed out to the counsel for the applicant that multiple reliefs cannot be granted in one O.A. Therefore counsel for the applicant submitted that as far as compassionate appointment in prayer 1 is concerned, he is not pressing the same and he will press it before the appropriate forum. His statement is recorded. Now what remains to be decided is all the retirement benefits. Counsel for the applicant pointed out that in Annexure-A5 the temporary status has been conferred to the applicant w.e.f. 10.6.1994 and he died in harness in 2001 and 7 year's period is there as temporary status employee. If his service is reckoned

Contd.....

O.A. 19/2006

Contd.

24.1.2006 for the purpose of pensionary benefits he is also entitled to the pensionary and other retirement benefits.

P.L. comply order
dated 22.1.06.

NS
25.1.06.

Steps recd
JK Chaudhuri
1/2/06

Notice duly served on
served on
resp nos 1 to 4.

1/2/06

6-3-06.

No written statement
has been filed.

lm

6-4-06

No. wts has been
filed.

3y

3-5-2006

NO AJS filed.

by

7-6-06

no AJS filed so far.

by

bb

7.4.2006 It is submitted that counsel for the respondents is not doing well and hence an adjournment is sought. Let it be done. Post on 4.5.2006.

Vice-Chairman

4.5.2006 Counsel for the respondents wants to file reply statement. Let it be done. Post on 8.6.2006.

Vice-Chairman

3
O.A. 19/2006.

08.06.2006 When the matter came up for hearing, Mr. G. Baishya, learned Sr. C.G.S.C. for the respondents submitted that he has already filed written statement. Learned ~~xxx~~ counsel for the applicant submitted that he will be satisfied if direction is given to the respondents to dispose of the Annexure - 7. Learned counsel for the respondents opposed the same and submitted that since written statement has been filed, the matter ^{has} ~~is~~ to be heard on merit. Learned counsel for the applicant is at liberty to file rejoinder, if any.

Post on 23.06.2006.

12.6.06
We filed by the Respondents.

22-6-06

No rejoinder has been filed.

17.7.06

No rejoinder has been filed.

19.7.06

Rejoinder submitted by the Applicant.

The case is ready for hearing.

18.06.

mb

03.08.2006

Learned counsel for the applicant wanted time to file rejoinder.

Post on 24.08.2006.

Member

Vice-Chairman

mb

O.A. 19/2006

03.08.2006 Present: Hon'ble Sri K.V. Sachidanandan, Vice-Chairman. Hon'ble Sri Gautam Ray, Administrative Member.

Learned counsel for the applicant submitted that he has filed the written statement. Since it is a Sri-Bench matter post on 24.08.2006.

The case is ready for hearing.

23
23.8.06.

mb


Member

Vice-Chairman

24.08.2006 Present : Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

The case is ready for hearing.

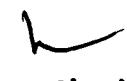
23
11.9.06

Learned Counsel for the Applicant submitted that he has filed rejoinder. Pleadings are over. Post on 12.09.2006 for hearing.


Vice-Chairman

/mb/
12.9.2006

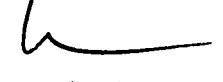
Counsel for the applicant requested for further time. Let the case be posted on 15.9.2006 for hearing.


Vice-Chairman

bb

15.9.06

Post the matter on 19.9.2006


Vice-Chairman

1m

19.09.2006 Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.

When the matter came up for hearing, learned Counsel for the Applicant would like to produce certain documents to prove that the Applicant has got service

0.A.19/2006

6

19.09.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

When the matter came up for hearing, learned Counsel for the Applicant would like to produce certain documents to prove that the Applicant has got service earlier. Let it be done.

Post on 06.11.2006.

Vice-Chairman

3.11.06

/mb/

As per order
Dtd 19.09.06. The
applicant has filed
the rejoinder at
flag 'A'.

✓

6.11.2006 At the request made on behalf of the learned counsel for the applicant the case is adjourned and posted on 14.11.2006.

✓

Vice-Chairman

bb

14.11.2006 Present: Hon'ble Sri K.V. Sachidanandan
Vice-Chairman.

The case is ready
for hearing.

20.11.06.

Learned Counsel for the Applicant has now filed rejoinder in which learned Counsel for the Respondents wanted time to go through the same. Post on 21.11.2006 in the hearing list.

✓

Vice-Chairman

/mb/

21.11.06.

After hearing the learned counsel for the parties, the counsel for the respondents has submitted that the applicant has filed two rejoinders and incorporated additional pleadings and also documents mentioned in the rejoinders, which has not been mentioned in the O.A. The counsel for the respondents has submitted that these facts are not borne out originally in the O.A. The counsel for the respondents wants to file additional affidavit in reply to the rejoinders. Post the matter on 13.12.06.

The case is ready for hearing.

22
12.12.06.

lm

Vice-Chairman

13.12.06.

Post the matter on 11.1.07.

The case is ready for hearing.

23
16.1.07

lm

Vice-Chairman

11.1.07

Counsel for the respondents prayed for adjournment due to his personal difficulty. Post the matter on 17.2.07.

The case is ready for hearing.

23
16.1.07.

lm

Vice-Chairman

17.1.07.

Post the matter for hearing on
24.1.07.

The case is ready for hearing.

23
16.1.07.

24.01.07

None for the applicant.

Post the matter on 13.2.07.

The case is ready for hearing.

23
12.2.07.

lm

Vice-Chairman

13.2.07 The counsel for the parties has got some personal difficulty and prays for adjournment. Post the matter on 23.2.07.

Vice-Chairman

lm

23.2.2007

As a matter of last chance the matter is posted on 16.3.2007.

The case is ready for hearing.

23
22.2.07 Vice-Chairman

bb

6.3.07

None for the applicant. Post the matter on 28.3.07.

The case is ready for hearing.

23
5.3.07 Vice-Chairman

lm

28.3.2007

Post on 5.4.2007.

The case is ready for hearing.

23
29.3.07 Vice-Chairman

bb

The case is ready for hearing.

10.05.2007

Mr.G.Baishya, learned Sr. C.G.S.C.

is present. None for the Applicant.

Let the case be posted on 15.05.2007. Respondents Counsel will inform the learned counsel for the Applicant about the posting.

The case is ready for hearing.

23
17.5.07 Vice-Chairman

/bb/

O.A. 19/06

17.05.2007 Mr.G.Baishya, learned Sr.C.G.S.C. is present for the Respondents. On 11.01.2007 & 17.01.2007 certain clarifications were sought from the counsel for the Applicant. But learned counsel for the Applicant is not present to clarify the position. But having heard the matter at length on earlier occasions the case is reserved for orders.


Vice-Chairman

/bb/

5.6.2007 Judgment pronounced in open Court, kept in separate sheets.


The O.A. is dismissed in terms of the order. No costs.

Vice-Chairman

/bb/

13.6.07
Copy of the
order has been
sent to the office
for issuing the
same to the applicant
by post.
et

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

.....
O.A. No. 19/2006

DATE OF DECISION : 05-06-2007

Smt Laxmi Basfore Applicant/s

Sri A.K. Sikdar Advocate for the
..... Applicant/s

-Versus -

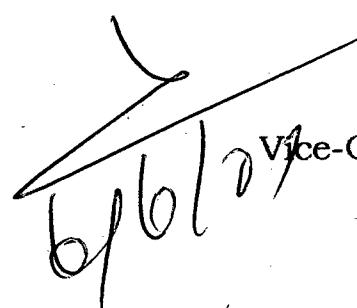
Union of India & Ors. Respondent/s

Shri G. Baishya, Sr.C.G.S.C Advocate for the
..... Respondent/s

CORAM

THE HON'BLE MR K.V.SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the judgment ? Yes/No
2. Whether to be referred to the Reporter or not ? Yes/No
3. Whether to be forwarded for including in the Digest being compiled at Jodhpur Bench & other Benches ? Yes/No
4. Whether their Lordships wise to see the fair copy of the judgment ? Yes/No.


Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.19 of 2006.

Date of Order : This the 5th Day of June, 2007.

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN

Smt Laxmi Basfore,
W/o Late Kanai Lal Basfore,
Kanaklata Road, Ward No. 1,
Bongaigaon Town,
P.O. & Dist. Bongaigaon,
Assam.

.....Applicant

By Advocate Sri A.K.Sikdar

Versus –

1. Union of India
through the Secretary,
Ministry of Excise & Customs,
Government of India,
New Delhi-110 001.
2. The Commissioner,
Central Excise, Morallow Complex,
Shillong, Meghalaya.
3. The Deputy Commissioner,
Central Excise, Dhubri Division,
P.O. & Dist. Dhubri, Assam.
4. The Superintendent of Central Excise,
Bongaigaon Range,
Bongaigaon,
P.O. & Dist. Bongaigaon, Assam

.....Respondents

By Shri Gautam Baishya, Sr.C.G.S.C.

ORDER

SACHIDANANDAN K.V. (V.C)

The applicant has been working as Safaiwala for more than 10 years and got temporary status on 19.1.94 and died in harness on 13.4.01. The claim of the applicant is for grant of all post death benefits

✓

on the death of her husband including pension and a job under compassionate ground. She has made number of representations but did not get the attention of the respondents and therefore this O.A has been filed seeking the following reliefs.

i) That this Hon'ble Tribunal may kindly be pleased to pass an directing the authority to grant all the post death benefits i.e. family pension and a regular job (appointment) on compassionate ground in the interest of justice.

2. The respondents have filed a detailed written statement xcontending that late Kanai Lal Basfore was not a regular employee. He was a casual worker and as per CCS (Pension) Rules, 1972, Pensionary benefit is admissible only to a regular Government servant. Since the grant of temporary status to the casual employee/workers is without availability of a regular post, such workers are entitled to only those benefits as are specified in the Scheme for grant of temporary status. Otherwise the family of the deceased temporary status casual employee/worker is not entitled to the benefits of family pension/death gratuity. He was granted temporary status as per DOPT's OM dated 10.9.1993 and he is only entitled to those benefits as specified in the scheme. As per the scheme GPF and CGEGIS were paid to wife of late Kanai Lal Basfore. The applicant is not entitled to family pension/death gratuity like other regular employees.

3. Heard A.K.Sikdar, learned counsel for the applicant and Mr G.Baishya, learned Sr.C.G.S.C for the respondents. The learned counsel appearing for the parties has taken me to the various pleadings, evidence and materials placed on record. Counsel for the

applicant has argued that since temporary status has already been conferred to the applicant he is entitled to all benefits. The applicant has also filed two rejoinders on 17.7.06 and 3.11.06 and further contended that the deceased was getting lump sum salary of Rs.970/- per month from the office of the Central Excise, Bongaigaon. The payment of GPF and CGEGIS does not preclude the entitlement of other pensionary benefits as per provisions of law. Learned counsel for the respondents on the other hand persuasively argued that the benefit scheduled in the scheme alone are entitled to the wife of the deceased employee and grant of family pension and compassionate appointment are not within the purview of the scheme.

4. I have given due consideration to the arguments advanced by learned counsel appearing for the parties. Admittedly the applicant was granted temporary status on 19.1.94 after his long years of casual worker service and died in harness on 13.4.01. When the matter came up for hearing it was pointed out that in the application the applicant has prayed two major benefits/reliefs, one of which is pension and the other is compassionate appointment. Both are not consequential to each other and distinctive and as per provisions of the CAT rules it is not maintainable. Two prayers cannot be clubbed together in a single application. Learned counsel for the applicant submitted that in that event he is not pressing compassionate appointment and he may be given liberty to approach appropriate forum. Now we are confined only to the question whether the applicant is entitled to pensionary benefits. According to the applicant he was in service from 1984 onwards and

after completion of 10 years of service he was granted temporary status on 19.1.94. The applicant also submitted representation on 8.1.04 and 19.7.05 (Annexures 6 and 7) for granting family pension. The pleading of the applicant is that since the deceased employee was served on casual basis and was granted temporary status and regularization by Annexure 5, who died in harness on 13.4.01 and he also served as Casual worker prior to 19.1.94 for long 10 years and the wife of the deceased is entitled to get family pension as per CCS (Pension) Rules 1972. The applicant is relied on Swamy's Hand Book 2005, which is reproduced below :

- “1. Persons employed continuously for 2-3 years cannot be said to be working on casual basis and there is a presumption that there is regular work.
2. Employees appointed by way of stop gap arrangement and are continued for more than 2 years who are processing the requisite qualification become entitled for regularization and they should be regularized.
3. Despite non-regularisation of a casual labourer with temporary status against a regular post who has been working continuously for a long period, shall be deemed to have been regularized on the date of death of such an employee for the purpose of sanction of family pension.”

The relevant portion of Annexure 5 order dated 19.1.94 granting temporary status to the husband of the applicant is also reproduced below :

“Please refer to your office letter C.No.II(3)/1/ST/DE//444 dated 21.12.93 on the above subject.

The following casual workers (names as forwarded by the respective officer-in-charge) are hereby granted temporary status in terms of Ministry's letter No.51016/2/90/Estt(C) dated 10.9.93. This Scheme will come into force w.e.f. 1.9.93.

Note : The procedure/guidelines for granting temporary status to the Casual workers as laid down in Ministry's instruction mentioned above is to be followed strictly."

The pleading and contention of the respondents is that the grant of temporary status to the casual workers is without availability of a regular post, such workers are entitled to only those benefits as are specified in the Scheme. The applicant was paid GPF and CGEGIS amounting to Rs.18319/- and Rs.15707/- respectively which are the only entitlements to the applicant. Annexure P-I which includes certain conditions as stipulated therein. The relevant portion of those conditions are reproduced below :

- i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M and who have rendered a continuous service of at least one year which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- iv) Such casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group D' posts.
- 5.(v) 50% of the service rendered under Temporary status would be counted for the purpose of retirement benefits after their regularization.
- 6. No benefits other than those specified above will be admissible to casual labourer with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Dispute Act, they shall continue to be admissible to such casual labourers."

The applicant has produced documents to show that he was working in 1991 and 1992 etc. as a casual worker which is not under dispute. He also cited the order dated 1.8.2006 of the Tribunal in O.A.28/06 for

granting pensionary benefits to a Railway employee. The distinction between that case and the present case is that the said railway employee was regular in service but running a short deficit period for completion of 10 years of service for granting family pension. As per the Railway Establishment Manual 50% of the service rendered as casual labourers prior to absorption in the Railway service could be considered for calculating pensionary benefits. Here in the given case the deceased employee was not a regular employee. He was an employee to whom temporary status was conferred as per O.M. dated 10.9.93. This was on the strength of a judgment of the Central Administrative Tribunal, Principal Bench dated 16.2.1990 in the case of Raj Kamal and others vs. Union of India, wherein the Government has been directed to formulate a scheme and which came into force from 1.9.1993. In the said scheme it is made clear that such a temporary status attained employee, will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts. In other words they are not Group 'D' employee. In case of temporary status conferred employee as per the scheme if the employee is selected through a regular selection process for Group 'D' posts, 50% of the service rendered would be counted for retirement benefit after their regularization under Indian Railway Establishment Manual. Obviously the applicant had not been selected through a regular selection for Group 'D' post and even at the time of death he was only a temporary status attained employee as per the scheme. It is also made clear that if he is not a regular employee

obviously he will not come under the CCS (Pension) Rules. Mere conferment of temporary status as per the scheme does not ipso facto entitle an employee to get pensionary benefit. Had he been a regular employee and if there was some short fall for completion of tenure for entitlement of pensionary benefits 50% service rendered as casual worker could have been considered for pensionary benefits. The service rendered after conferment of temporary status by an employee will not entitle him for getting pensionary benefit, since he was not a regular employee.

5. The learned counsel for the applicant has relied on the decisions in (i) State of Haryana vs. Pyara Singh, AIR 1991 SC 2130 and (ii) Jaco M. Puthuparambil vs. Kerala State Water Authority and others, AIR 1990 SC 2228 wherein those applicants were appointed by way of stop gap arrangement and continued for more than 2 years in service. The facts given in those cases are different and as per the scheme there is no provision to regularize the service of the employee holding temporary status after 2 years. On the other hand it is made clear that such employee could be regularized only through due process of selection. It is not done in this case. Therefore the decisions are not squarely applicable in this case and this cannot be relied.

6. In the conspectus facts and circumstances of the case I am of the considered view that the claim for pensionary benefit on the death of her husband in harness cannot be acceded to since he was not a regular employee as contemplated in the rules. Therefore, the O.A

does not merit and the same be dismissed and accordingly O.A is dismissed.

In the circumstances no order as to costs.



(K.V.SACHIDANANDAN)
VICE CHAIRMAN

pg

18

6 days year Vans
1993 tag Bob
1992 BB
13/4/01 died in hole
8 years
2 Reproductive
Since 1984 as Camel Wader
8/8 to 2001 54
10/9/93 No spread
by 2nd day 1981
7 yr 7 month Bob 54
3 yr 4 month Bob 54
Mama 5 month ~~Bob 54~~

19/06

Schedule Carl

twice 8th floor 19-01-94

twice 8th floor 10-9-93 later

Schmitz
died on 13-4-01

8-1-0 Monk
Cecilie Carl Rev Berlin (9) 2

not registered
Rev (2)

W: Schmitz is independent one

20

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:**

Original Application No. 19/06

a) Name of the Applicant :- L, Basfone

b) Respondents:-Union of India & Ors.

c) No. of Applicant(s) :- one

Is the application in the proper form:- Yes / No.

Whether name & description and address of the all the papers been furnished in cause title :- Yes / No.

Has the application been duly signed and verified :- Yes / No.

Have the copies duly signed :- Yes / No.

Have sufficient number of copies of the application been filed : Yes / No.

Whether all the annexure parties are impleaded :- Yes / No.

Whether English translation of documents in the Language:- Yes / No.

Has the application is in time :- Yes / No.

Has the Vokatlatnama/Memo of appearance /Authorisation is filed: Yes / No.

Is the application by IPO/BD/for Rs.50/- 26 G 317960 dtld 16.1.06

Has the application is maintainable : Yes / No.

Has the Impugned order original duly attested been filed:- Yes / No.

Has the legible copies of the annexurea duly attested filed: Yes / No.

Has the Index of the documents been filed all available :- Yes / No.

Has the required number of enveloped bearing full address of the respondents been filed:- Yes / No.

Has the declaration as required by item 17 of the form: Yes / No.

Whether the relief sough for arises out of the Single: Yes / No.

Whether interim relief is prayed for :- Yes / No.

Is case of Condonation of delay is filed is it Supported :- Yes / No.

Whether this Case can be heard by Single Bench/Division Bench:

Any other pointd :-

Result of the Scrutiny with initial of the Scrutiny Clerk:
This application is in form. *✓* 19/06

1/e DEPUTY REGISTRAR

SECTION OFFICER(J)

19 JUN 06

गुवाहाटी ब्याबणी

W. B. Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH :: GUWAHATI.

(An application under Section 19 of the Central Adminis-
trative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 19/2006.

Laxmi Basfore

.... Applicant.

-Vs.-

The Union of India & Ors.

.... Respondents.

: S Y N O P S I S :

Applicant's husband was working as Safaiwala for more than 10(ten) years and got temporary status by order dated 19.1.1994 and died-in-harness on 13.4.01. The applicant seeking a direction for grant of all post death benefits on the death of husband including pension and job under compassionate ground. She made number of representation vide Annexure No. 3, 6 and 7 in connection of her claim but no order has been passed disposing of her claim. Hence this application.

Prepared by.

X. R. Selsdar
Advocate

✓
✓

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI.

(An application under Sec.19 of the Central Administrative
Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 19 /2006

Laxmi Basfore - Vs. - The Union of India and Ors.

LIST OF DATES WITH INDEX.

<u>S1. No.</u>	<u>Date</u>	<u>Particulars</u>	<u>Ax. No.</u>	<u>Page No.</u>
1.		Petition with verification.		17-18
2.	24.4.01	Date of Death	1.	12
3.	30.5.2001	List of Family dependents.	2.	13
4.	26.8.2004/ 18.3.04	Date of representation	3 & 4	14-16
5.	19.1.94	Date of granting tem- porary status from casual stage.	5	17-19
6.	8.1.04/ 19.7.05	Date of representation	6, 7.	20-21
7.	5.10.05	Letter dated 5.10.05	8.	22
8.	-	Vakalatnama.		

Filed by

Date of filing. 17.01.06.

✓
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

GUWAHATI BENCH :: GUWAHATI

(An application under Section 19 of the Central Administrative Tribunal Act, 1985)

ORIGINAL APPLICATION NO. 19 /2006

Laxmi Basfore

... Applicant.

-VS.-

The Union of India & ors. ... Respondents.

DETAILS OF THE APPLICANT :

1. Name and Address of the Applicant. : Laxmi Basfore.
W/o. Late Kanai Lal Basfore.
Kanaklata Road, Ward No. 1,
Bongaigaon Town,
P.O. & Dist. Bongaigaon,
Assam.

2. Designation : Safaiwala.

3. Particulars of the Respondents. : 1. The Union of India through the Secretary, Ministry of Excise, Government of India, New Delhi - 110 001.
2. The Commissioner, Central Excise, Morallow Complex, Shillong.
3. The..

3. The ..

J N
R T P
Guru Basore

: 2 :

3. The Deputy Commissioner,
Central Excise, Dhubri Division,
P.O. & Dist. Dhubri in Assam.

4. The Superintendent of Central
Excise, Bongaigaon Range,
Bongaigaon,
P.O. & Dist. Bongaigaon, Assam.

Particulars of order against which the application is
made. :-

1. Against the impugned in action and callous
attitude of the Respondent authority in not
granting Family pension and other post death
benefit whatsoever occurred on the death of the
applicant's husband late Kanaiyal Basfore Ex.
Safaiwala (Temporary Status) of Central Excise,
Bongaigaon Range on 13.4.01 and also against
impugned in action in providing a service on
compassionate ground in the post of cleaning
and sweeping.

2. Jurisdiction of the Tribunal :

The applicant declares that the cause of
action has arisen within the jurisdiction of
this Hon'ble Tribunal.

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S.T. 9
X
Danim Basfore

: 3 :

3. Limitation :

The applicant declares that the application is filed before this Hon'ble Tribunal within the time limit prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the case :

4.1. That the applicant is a Citizen of India and a permanent resident of Kanaklata Road, Bongaigaon, P.O. P.S. and District Bongaigaon, Assam. The applicant's husband Late Kanai Lal Basfore was serving as Safaiwala (temporary status) at the Office of the Central Excise, Bongaigaon who suddenly breathed his last on 13.4.2002.

The photocopy of a Death Certificate dated 24.4.2001 is annexed as a Annexure No. 1.

4.2. That the applicant begs to state that after the death of her husband she is facing extreme financial hardships as because service of her husband was the only source of income for her family. Her husband died-in-harness leaving old ailing mother viz. Smt. Anjariya Basfore, daughter Smt. Sushila Basfore.

R.T.9.9
Doxanir Banerjee
26

: 4 :

A list of family dependents
certificate dated 30.5.01 is annexed
as Annexure No. 2.

4.3. That the applicant begs to state that she submitted application to the Commissioner through the Superintendent of Central Excise and Customs, Bongaigaon seeking job. In her representation dated 26.8.03 it is stated that after the death of husband her family is in acute financial hardships and unable ^{to} maintain her family although she has been engaged as 'Safaiwala' on temporary basis by the Superintendent of Central Excise, Bongaigaon. She has been engaged on daily wage and hardly receiving monthly of Rs. 700/- and therefore she is seeking job by submitting representation. Before her representation dated 26.8.03 she made earlier a representation dated 18.4.01 and the same was forwarded vide No. C No.II(29) 11/ET/PL/DD/2000/3493 dated 18.4.01 by Assistant Commissioner, Central Excise, Dhubri. But no consideration has been paid in this connection. She made her last representation dated 18.3.2004 along with an application on standard form.

A photocopy of representation dated 26.8.03 is annexed as Annexure No. 3.

A copy of Standard form of application dated 18.3.04 is annexed as Annexure No. 4.

4.4. That..

RT&D
Jaswant Singh
27

: 5 :

4.4. That the applicant begs to state that she also prayed for granting pensionary benefit on the death of her husband. The applicant submitted her representation dated 8.1.04 and 19.7.05 making prayer for Family pension contending inter-alia that her husband was granted temporary status by a letter No. C.No. II(7)4/ET-II/91/1096-103(B) dated 19.1.94 with other casual workers and since her husband got that status she is entitled to get the benefits of family pension and other post death benefits.

A photocopy of order C.No. II (7)4/ET.II/91/1096-103(B) dated 19.01.04 granting temporary status to the applicant is annexed as
Annexure No. 5.

A Photocopies of the representation dated 8.1.04 and 19.7.05 are annexed as Annexure Nos 6 and 7 respectively.

4.5. That the applicant begs to state despite of repeated persuasion by making aforesaid representation, the respondent authority have not paid any consideration in granting either pensionary benefit or a regular appointment on compassionate ground. The applicant finding no alternative served a pleader's notice dated 28.9.05

with....

RTI 9

28

Darren Banerjee

: 6 :

with a last request to get all the post death benefits along with pension benefit and a job on compassionate ground on the death of her husband. Receipt of the said notice was acknowledged by a letter V C No.II (17) I/RT/DD/94/5581 dated 5.10.05 was issued by C.D. Baidya, Asstt. Commissioner, Central Excise, Dhubri and stated that benefits admissible to temporary status employee like the applicant has already ~~been~~ granted. The applicant crave the leave of not annexing the Pleader's Notice dated 28.9.05 but the letter dated 5.10.05 acknowledging the receipt ~~xxxxxx~~ of Pleader's notice but nothing has been done till date despite of all pursuasion.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

I. For that the learned authority have not paid any consideration upon the prayer of the applicant and their such callous and indifferent attitude has amounted violation of principles of Natural Justice, Rules ~~or~~ or provisions of law, legal and constitutional rights of the applicant.

II. For that the applicant begs to submit that he ~~was~~ was appointed as Safaiwala on casual basis and was granted ~~a~~ temporary status and regularisation of casual workers by notification No. C. No. II(7)4/ET.II/ 91/1096-103(B) dated 19.1.94 (vide Annexure No. 5).

The...

RTA

Janani Bharathi

29

: 7 :

The applicant's husband died-in-harness on 13.4.01 and he also served as Casual worker prior to 19.1.94 for long 10 (Ten) years. Thus the applicant being wife of said employee is entitled get family pension and denial of pension benefit and death-cum retirement gratuity and family pension under the central Civil Service (Pension) Rules, 1972 is not justified.

III. For that the applicant submits that under Swamy's Hand book, 2005 referred at Page No. 39 it is provided the following compilation :-

- " 1. Persons employed continuously for 2-3 years cannot be said to be working on casual basis and there is a presumption that there is regular work.
- 2. Employees appointed by way of stopgap arrangement and are continued for more than 2 years who were possessing the requisite qualification become entitled for regularisation and they should be regularised.
- 3. Despite non-regularisation of a casual labourer with temporary status against a regular post who has been working continuously for a long period, shall be deemed to have been regularised on the date of death of such an employee for the purpose of sanction of family pension."

The ..

30

R T & D
Government of India
Ministry of Home Affairs
Central Board of Excise and
Customs
Circular No. 100/2005
Dated: 10/10/2005

: 8 :

The aforesaid proposition of law is fortified with the observations of the Apex court in reported case of State of Haryana Vs. Pyara Singh (AIR 1991 SC 2130). The points of law is further supported by another decision of the Hon'ble Apex Court in Jaco M. Puthparambil Vs. Kerala State Water Authority and others (AIR 1990 SC 2228), wherein their Lordships have held that employees appointed by way of stop gap arrangement and are continued for more than 2 years who were possessing the requisite qualification became entitled for regularisation ~~because entititled~~ and they should be regularised.

IV. For that the applicant has not received appropriate retirement benefits as per provisions of law. The contention of authority as made in letter C.No. II(17)1/ET/DB/94/5581 dated 5.10.05 issued by the Asstt. Commissioner, Central Excise Dhubri giving the applicant benefits admissible is not true and justified.

V. For that the applicant begs to state and submits that she had been working as Safaiwala since July, 2001 and seeking regular employment on compassionate grounds as her husband died-in-harness. She made number of representations vide Annexure Nos 3, 6 and 7. But no order has been passed disposing of the claim although authority during this period appointed many persons on compassionate ground. As such the action of the respondent authority has caused discrimination and injustice to the applicant.

VI. For....

RT 98

Jasmin Banjan

81

: 9 :

VI. For that the applicant submits that the Hon'ble Apex Courts and various High Courts opined that relief prayed for under compassionate ground shall be disposed of expeditiously. The applicant with her old ailing mother in-law and minor facing extreme hardships to maintain her family. The authority instead of giving her speedy relief treating her with extreme callousness and indifferent attitude.

VII. For that in any view of the matter, the impugned callous and indifferent action of the respondent authority is not sustainable in law.

6. DETAILS OF REMEDIES EXHAUSTED :-

The humble applicant submitted representations vide Annexure No. 3, 6 and 7 but the same are not considered.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT/TRIBUNAL :-

The applicant declares that she has not filed any application, writ petition or suit regarding the present matter in any court of law or Tribunal and no case is pending before any court.

8. Relief....

82

R. T. D
Jaswan Banjre

: 10 :

8.

Relief prayed for :-

Under the above circumstances of the case as stated above, the humble applicant most respectfully prays for following reliefs :-

- 1) That this Hon'ble Tribunal may kindly be pleased to pass an directing the authority to grant all the post death benefits i.e. Family Pension and a regular job (appointment) on compassionate ground in the interest of justice.
- ii) To pass any other order or orders as deemed fit and proper by the Hon'ble Tribunal in the interest of justice.

9.

Interim Relief prayed for :-

In the interim, applicant prayed for - direction of granting Family pension and a job on regular basis in the interest of justice.

10.

Details of Postal Order :-

1. Postal Order No. : 26G 317960
2. Date of Issue : 16-01-2006
3. Issued from : Guwahati
4. Payable at : Guwahati

11.

List of Particulars :-

As per Index.

Verification..

37
: 11 :

VERIFICATION

I, Laxmi Basfore W/o. Late Kanai Lal Basfore, resident of Kanaklata Road, Ward No. 1, Bongaigaon Town, P.O. and Dist. Bongaigaon, Assam, presently working as Safaiwala on daily wage basis and being wife of employee died-in-harness seeking post death benefit, and do hereby verify that the contents in 1,2,3,4,5,6 and 7 are true to my knowledge and paragraphs 8 and 9 are believed to be true and I have not suppressed any materials facts.

And I sign this verification on this 16th day of January, 2006 at Guwahati.

Place : Guwahati.

Signature of the Applicant.

Date : 16th January

R.I. S.F.
Laxmi Basfore



Sl. No.
ক্ষমিক নং 0040149



Form No. 6



GOVERNMENT OF ASSAM
(অসম চৰকাৰ)
DIRECTORATE OF HEALTH SERVICES
(স্বাস্থ্য সেবা সঞ্চালকালয়)
CERTIFICATE OF DEATH
(মৃত্যু প্রমাণ পত্র)

ISSUED UNDER SECTION 12/17 of the Registration of Births and Deaths Act, 1969.
অসম স্বাস্থ্য মৃত্যু পঞ্জীয়ন আইন ১৯৬৯ ব। ১২/১৭ অংশত লিপিবদ্ধ।

This is to Certify that the following information has been taken from the original record of Death which is in the register for..... Death/ 2001..... Registration unit of D.H.S. of District. Dibrugarh, Assam the State of Assam.
ইহাৰ ধাৰা প্ৰমাণিত কৰা হয় যে নিয়ন্ত্ৰিত তথ্য অসম/বাজুল জিলাৰ খণ্ড/পৌৰসভাৰ মৌজাৰ অস্তৰ্গত পঞ্জীয়ন গোটোৰ পঞ্জীৰ মূল অভিলেখে তাৰ সংগৃহীত কৰা হৈছে।

Name/নাম : --- Kanailal Basu ---

Sex/লিঙ্গ : --- Male ---

Date of Death/মৃত্যু তাৰিখ --- 13/4/2001 ---

Place of Death/মৃত্যু ঘণ্টা --- Kanaklata Road, Dibrugarh ---

Registration No./পঞ্জীয়ন নং --- 44/2001 ---

Date of Registration/পঞ্জীয়ন তাৰিখ --- 26/4/2001 ---

Issuing authority/পত্ৰ কৰা দণ্ডনৰ চৰী

Chief Registrar
Dibrugarh

মুকুট পত্ৰ

Stamp Sig. of Chief Registrar/পুঁজি পঞ্জীয়ন চৰী

Such disclosure shall be made of particulars regarding the cause of death as entered in the Register. See proviso to Section 17 (1)

Certified
Advocate
S. K. Basu

GOVT. OF ASSAM.

ALLURE

23

TO WHOM IT MAY CONCERN.

Certify that the following are surviving family member of
late Kanailal Baruah age 33 Years
died 13-4-2001 of Village/Town Bongaigaon P.O. Bongaigaon
within Bongaigaon/Sitali/Saitamari/Srijangram circle in
the district of Bongaigaon (Assam).

Sl. No.	Name of the family members	age Yrs	Relationship	Remarks.
			with the deceased.	
1.	Smt. Laxmy Barfere	25	Wife.	
2.	Smt. Sushila Barfere	05	Daughter.	
3.	Smt. Ajneja Barfere	65	Mother.	
4.				
5.				
6.				
7.				
8.				
9.				

Sd/-
Extra Asstt. Commissioner,
For Deputy Commissioner,
Bongaigaon.

Mem No. EMJ-10/99/pt4/380 Dated Bongaigaon, the 30th May/2001.
Copy to. Smt. Laxmi Prasad
Village. Bongaigaon P.O. Bongaigaon
District Bongaigaon for information & necessary action.

Extra Asstt. Commissioner,
Deputy Commissioner,
Bongaigaon.

Certainly be true
Advocate

To,

The Commissioner,
Central Excise, Shillong.

(Through K. Supt. of Central Excise & Customs, Bongaigaon)

Dated - Bongaigaon the 26th August '03.

Ref:- Letter No. C.No.II(3)2/EDB/2000/9318-42 dtd. 20th
Nov./2000 issued from Deputy Commissioner, Dhubri.Sub:- Appeal.

Sir,

I have the honour to submit the following few lines for your kind perusal and immediate sympathetic action.

That Sir, I was/am the widow wife of Late Kanai Lal Basfore - an Ex-Safaiwala(Temporary Status) at the office of the Central Excise, Bongaigaon who suddenly breathed his last on 13th April, 2001.

That Sir, at the time of his death, my deceased husband was left survived by his old ailing mother viz. Smt. Anjariya Basfore(aged about 65 Years), his sole daughter viz. Smt. Sushila Basfore(aged about 6 Years as well as myself).

That Sir, after his death, at present all of us have been suffering from starvation due to pitiable economic condition. Of course, the Superintendent of Central Excise, Bongaigaon has pleased to allow me to work as 'Safaiwala' temporary basis at his office immediately after the death of my said husband and has been paying a very meagre amount within the range of Rs. 700/- (Rupees Seven Hundred) only per month.

That Sir, I have already applied for seeking job before you through the Asstt. Commissioner, CEX, Dhubri and the same was duly forwarded to you vide their letter No. C.No.II (29)11/ET/PL/2000/3493 dtd. 18.4.01.

But Sir, until now I have been in a dark about the fate of my said appeal.

Contd....P/2.

Certified to be true
✓ Advocate

- 15 -
(Page - 2)

Be it relevant to mention here that a copy of the above referred letter was/is my hand through your Bongaigaon office wherefrom I came to know that my name has been enlisted as 'Safaiwala' since the month of July, 2001. But to my utter surprise, until now, no formal letter was/is issued in my favour confirming my service as listed the reasons best known to the office.

Under the facts and circumstances, I, therefore, fervently pray that your Goodself be pleased enough to consider my prayer and further be pleased to allow me to resume in services as Safaiwala paying due salaries as per norms and forms in your department else, I alongwith all the other dependant members of the family shall have no alternative but to die shortly.

And for this act of your kindness, I shall ever pray.

Yours faithfully,

(227)

(LAXMI BASFORE)
Kanaklata Road, Bongaigaon,
P.O., P.S. & Dist. Bongaigaon,
(Assam)
Pin - 783380.

COPY TO : -

1. The Additional Commissioner (P & V), Central Excise & Customs, Shillong.
2. The Administrative Officer, Central Excise, Dhubri. In addition their appointment/engagement should be governed by existing instructions which may be continued as usual showing break in services etc.

Certified to be true
✓
Advocate.

RECEIVED
15/7/2001
CENTRAL EXCISE &
CUSTOMS
DIVISION
BONGAIGAON

- 16 -

B6
Annexure 4

To,

The Hon'ble Superintendent Central Excercise,
Bongaigaon Range, Bongaigaon.

Dt. 18th March 2004

Ref:- Your notice vide C.No. II(20) 1 /BGN/2003/143.

Sub:- Prayer for providing service for cleaning and
sweeping the office premises.

Respected Sir,

With reference to the subject above I have the
honor to submit my intention to provide for work of
cleaning and sweeping of office premises of central
Exercise Bongaigaon Range as per your norms and provisions.
Necessary testimonials are annexed herewith. The rate of
wage against Eight hours service may be paid to me at
least Rs,75/- (Rupees seventy five) only.

I hope that your goodself would be pleased enough
to admit this petition for allowing me to provide service
under you.

Thanking you.

Yours faithfully

Sd/- Illegible

R.T.I of

(Lashminiya Basfore)

Certified to be true
Advocate

18

39

CUSTOMS AND CENTRAL EXCISE :: SHILLONG.

C.NO.II(7)4/ET.II/91/1096-103(B)

Dated:- 19.01.94

To
 The Assistant Collector
 Customs and Central Excise,
 Dhubri, Dibrugarh.

2. Office-in-Charge,
 Customs and Central Excise,
 Dawki, Shillabazar.

Subject:- Grant temporary status and regularisation
 of Casual Workers - Formulation of a Scheme
 in pursuance of the C.A.T. principal Bench,
 New Delhi, judgement dated 16.2.90 in the case
 of Hari Raj Kamal & others Vs. U.O.I.

Please refer to your office letter C.NO.II(3)1/ET/DE/3
 444 dated 21.12.93 on the above subject.

The following Casual Workers (names as forwarded by
 the respective officer-in-charge) are hereby granted temporary status
 in terms of Ministry's letter No.51016/2/90/Estt(C) dated 10.9.93.
 This Scheme will come into force w.e.f. 1.9.93.

Note : The procedure/guidelines for granting temporary status to the Casual Workers as laid down
 in Ministry's Instruction mentioned above is to
 be followed strictly.

SL.NO. / NAME OF THE CASUAL WORKER

Dawki Customs Station

S/Ghri

- 1. Dilip Ch. Nath --- Farash
- 2. Ashit Das --- Mali
- 3. Surjan Singh --- Sweeper

Dibrugarh

- 1. Durga Prasad Rai --- Safaiwala
- 2. Smti. Kushilla Devi --- do---
- 3. Smti Basanti Basfer --- do---

Dhubri

- 1. Pritam Basfer --- Safaiwala
- 2. Tapan Kr. Mawel --- Farash
- 3. H. Bin Ch. Das --- do---
- 4. Roshan Aliqone --- do---
- 5. Tisha Raiji Raiji --- Safaiwala

19-93

Sr No 9

Certified to be true
 Advocate

Contd....P/2...

18' 40
 SL.NO. NAME OF THE CASUAL WORKER

S/Shri.

16. Dhanu Ram Saha	--- Farash
7. Ms. Maya Teor	-----Farash
8. Tanudhar Lahakar	--do--
9. Kanailal Basfore	-- Safaiwala
10. Banswar Roy	-- Farash
11. Ramu Teor	--do--
12. Gutung Basfore	-Safaiwala
13. Banbasa Basfore	--do--
14. Achok Balmiki	--do--
15. -- Basfore	--do--
16. Bishak Ram Das	--do--

Shellabazar

1. Duni Jema --- Farash.

Sd/- (EVA M.R. HYNNEWTA)
 DEPUTY COLLECTOR (P&V)

CESTRMS & CENTRAL EXCISE: SHILLONG

C.NO.II(7)W/Z/.../94/ 124-26

Dated:- 10/6/94

Copy forwarded for information and necessary action to :-

1. The Superintendent, Tech./Anti-Evasion/Anti-Smugg./Customs,
 Central Excise/Customs, (all).

2. The Inspector, Central Excise/Customs, Kokrajhar sector

3. The A.P.R.O. Central Excise Divisional Office, Dhansbari

(J. K. ACHARJEE)
 ADMINISTRATIVE OFFICER
 CENTRAL EXCISE :: DHUBRI DIVN.
 D H U B R I

Certified to be true
 Advocate

19
No. 51016/2/90-Estt(C)

Government of India
Min. of Per, P.G. and pensions,
Dept. of Per & Trg.

New Delhi, the 10th Sep. 1993

OFFICE MEMORANDUM

Subject:- Grant of Temporary status and regularisation of Casual Workers - formulation of a scheme in pursuance of the CAT, Principal Bench, New Delhi, judgement dated 10th Feb. 1990 in the case of Shri Raj Kamal & others Vs. U.O.I.

The guidelines in the matter of recruitment of person on daily wages basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86-Estt(C) dated 7.6.1988. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi, delivered on 16.2.1990 in the writ petition filed by Shri Raj Kamal and others Vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 7.6.1988 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Government offices other than Department of Telecom, Posts and Railways, will be regulated by the scheme as appended.

2. Ministry of Finance etc. are to bring the scheme to the notice of appointing authority and ensure that recruitment is done in accordance with the guidelines contained in the scheme. Cases of negligence should be viewed and brought to the notice of appropriate authorities for taking prompt and suitable action.

Sd/-

(Y.G. PARANDE)
DIRECTOR

Ministry of Finance
Govt. of India

APPENDIX

Department of Personnel & Training, Casual Labourers (Grant of temporary Status and Regularisation) Scheme.

This scheme shall be called "casual labourers (Grant of temporary status and Regularisation) Scheme of Govt. of India, 93.

This scheme will come into force w.e.f. 1.9.1993.

This scheme is applicable to casual labourers in employment in the Ministries/Departments of Govt. of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Deptt. of Posts who already have their own schemes.

Contd... P/2....

Certified to be true
Advocate

- 8 JAN 2004

The Deputy Commissioner,
Central Excise, Dhubri Division.
Dated, Dhubri the 8th Jan./04.

Subject :- Prayor for supplying information in connection with pensionary benefit money due to Lt. Kanai Lal Basforo, Sweeper Bongaigaon range.

SIR,

With due respect and humble submission I have the honour to state that I am the widow of Lt. Kanai Lal Basfor who died on 13-4-2001 due to illness who was serving as Sweeper in your Bongaigaon Range of excise office. My deceased husband left behind him myself and one minor daughter and mother. Now it is not known to me that amount will be sanctioned by the department, including pensionary benefit arrears if any, gratuity, leave salary etc. The information regarding above thing is highly needed for obtaining Succession Certificate.

Under the above facts and circumstances it is prayed that you would be kind enough to supply information respectively as to what amount my husband shall yet after his death, and for their act of kindness I shall remain grateful to you.

Yours faithfully,

(LAXMI BASFOR)
W/O. Lt. Kanai Lal
Basfor.

Certified to be true
Advocate

To,
The Commissioner
Central Excise
Morello Compound
Shillong.

Date: 30/8/2005

Ref: My earlier letter dtd. 19.7.05

Sub: Appeal(Reminder).

Respected Sir,

With due respect and humble submission, I beg to inform you that my husband Late Kanai Lal Basfore, Ex-Safaiwala (Temporary status) of Central Excise, Bongaigaon Range suddenly expired on 13.4.2001 at 1-00 A.M.. As such, I would like to lay the following few lines for your perusal and sympathetic consideration.

That Sir, my said husband viz. Kanai Lal Basfore (since deceased) who was a Safaiwala worked under you temporarily for many a years till his death. It is pertinent to mention here that in the letter address to the Asstt. Collector, Customs and Central Excise, Dhubri vide No. C. No. II(7)4/ET-II/91/1096-103(B) dtd. 19.01.94 wherefrom it is revealed that my said husband had also got the temporary status alongwith other casual workers.

That Sir, I am finding hardship to maintain my family consisting of one little daughter and old aged mother-in-law as I have no source of income.

That Sir, my husband had to maintain his entire family with his poor income and as a result he could not have any savings other then his G.P.F. contribution.

That Sir, as I have no alternative source of income the amount of CPF contribution and CGEG's of my husband (since deceased) has already been exhausted. And now I alongwith my other family members are living almost in starvation.

That Sir, I have already applied to you through the Asstt. Commissioner, CEX. Dhubri and the same to as forwarded to you vide letter No. II(29)II/ET/PL/2000/3493 dtd. 18.1.04. But inspite of receiving of my representation you did not response the same which cause colossal loss and injury to me.

That Sir, I come to know from reliable sources that persons employed continuously for 2-3 years can not be working on casual basis and there is a presumption that there is regular work, in that event my husband had got the temporary and regular worker status in the year 1994 vide your said Office Memorandum dtd. 19.1.94. For which I am entitled to get all the benefits such Family Pension and other Post-death benefits whatsoever accrued due to the death of my said husband.

I, therefore, fervently pray your Honour would be pleased enough to consider my case ~~xxx~~ on humanitarian ground so that I may get all the benefits mentioned above as early as possible & oblige.

Thankin, you,

Yours faithfully,

Certified to be true
Advocate

(LAXMI BASFORE)
W/O Late Kanai Lal Basfore
Kanaklata Road, Ward No. 11
Bongaigaon Town,
P.O. & Dist. Bongaigaon, Assam
Pin-783380.

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE
DHUBRI DIVISION :: DHUBRI :: ASSAM

C.NO. III(17)I/ET/DB/94/5581

Dated :- 5/10/05

TO,

Sri Ratan Debnath
 B.A. (Hons) L.L.B
 Advocate
 Bongaigaon, Court

Sub :- Notice under section 80 of Civil Procedure Code, 1908.

Sir,

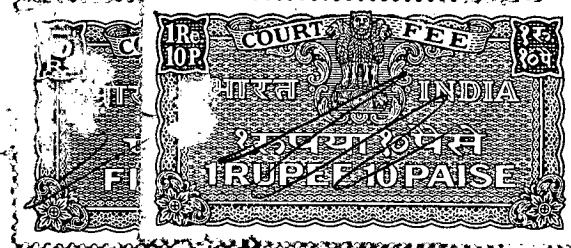
Please refer to your letter dated 28.9.05 on the above subject.
 In this connection I am to state that the benefits admissible
 to temporary status employee has already been paid to your client .
 This is for your information .

Yours faithfully

(C. D. BAIDYA)
 ASSISTANT COMMISSIONER
 CENTRAL EXCISE DHUBRI

6/10
 05

Certified to be true
 Advocate



DISTRICT: *Bongaigaon*

V A K A L A T N A M A
c.A.T. Gauhati Bench
 IN THE GAUHATI HIGH COURT
 (THE HIGH COURT OF ASSAM, NAGALAND, MEGALAYA,
 MANIPUR, TRIPURA, MIZORAM AND ARUNACHAL
 PRADESH)

O. 4 NO.....19.... OF 2006.

Laxmoni Baruah

-Versus-

The Union of India & ors.

Appellant
 Petitioner

Respondent
 Opposite-Party

Laxmoni Baruah is taken care of

Know all men by these presents that the above named.....Applicant.....do hereby nominate, constitute and appoint Sri.....Harsikhar Das, A. R. Sikdar, J. A. Azad.....Advocate and such of the under-mentioned Advocate(s) as shall accept this Vakalatnama to be my/ our true and lawful Advocate(s) to appear and act for me/ us in the matter noted above and in connection therewith and for that purpose to do all act whatsoever in that connection including depositing and drawing money filing in or taking our papers, deeds of composition etc. for me/ us and on my/ our behalf and I/ We agree to ratify and confirm all act to be done by the said Advocate(s) as mine/ ours to all intents and purposes. In case of non-payment of the stipulated fee in full, no Advocate will bound to appear and on my/ our behalf. In witnesses whereof I/ We hereunto set my/ our hand on this .../64. day of ..January...2006.

N. M. LAHIRI
 B. K. GOSWAMI
 B.K.DAS
 BIJAN Ch. DAS
 BHABOTOSH BANERJEE
 DWIJEN BHATTACHARJEE

ASHISH DAS GUPTA
 TIP MAZUMDAR
 P. N. T. A. Kr. ROY
 P. C. L.
 B. KAR
 ASTHA

SURAJIT DUTTA
 SANCHITA ROY
 PANCHALI BRAHMA
 SUPRIYA KAR
 RABINDRA Ch. PAUL
 HARESWAR DAS

Received from the executant, Mr.....
 Satisfied and accepted. Advocate will lead me/us in the case.

Accepted

Harsikhar Sikdar
 Advocate

Jahangir Alom Azad
 Advocate

*Harsikhar Sikdar
 09.12.05*
 Advocate

Notice

46

From: J. A. Azad
Advocate

To: C.G.S.C. ~~Recd~~

Sub:- Filing of O.A. no. 106.
Laxmi Basfore
-vs-
Union of India.

Sir,

Please kindly take the notice
of filing of the above mentioned
Case.

Copy received

by


N.U. Khan
19/11/102
C.G.S.C

Yours sincerely

J. A. Azad.
Advocate

9 JUN 2006

Guwahati न्यायालय
Guwahati Bench

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI

O.A. NOV 19 OF 2006

Smt. Laxmi Basfore

Applicant

-vs-

Union of India & Ors. . . Respondents

The written statement on behalf of
the Respondents above named -

WRITTEN STATEMENT OF THE RESPONDENTS

MOST RESPECTFULLY SHEWETHI:

1. That with regard to the statements made in paragraph 1 of the instant application the respondents beg to state that the same are not correct and hence denied.
2. That with regard to the statements made in paragraph 2 and 3 of the application the answering respondents beg to offer no comment.
3. That with regard to the statements made in paragraph 4.1 of the application the respondents beg to state that those are matter of record hence beg to offer no comment.

Contd., P/-

File by
the respondents
through Granban Singh
8.6.06

8.6.06
8.6.06

4. That as regards to the statements made in paragraph 4.2 of the application the answering respondents have no comment.

5. That as regard to the statements made in paragraph 4.3 of the application the answering respondents beg to state that those are matter of records and the respondents can not admit or deny the same.

6. That as regard to the statements made in paragraph 4.4 of the instant application the answering respondents beg to state that the contentions of the applicant are not correct. Late Kanai Lal Basfore was not a regular employee. He was a casual worker. As per CCS (Pension) Rules, 1972, Pensionary benefit is admissible to a Govt. Since the Grant of temporary status to the casual employees/workers is without availability of a regular post, such workers are entitled to only those benefits as are specified in the Scheme for grant of temporary status. In other words, the family of a deceased temporary status casual employee/worker is not entitled to the benefits of family pension/death gratuity.

7. That in respect of the statements made in paragraph 4.5 of the instant application the answering respondents beg to state that the Late Kanai Lal Basfore was not a regular employee. He was a casual worker. Late

Kanailal Basfore was granted Temporary status as per DOPT's OM dated 10.9.1993 vide office letter C No. II(704/F.T.II/91/1096-1033 dated 19.1.1994. As per DOPT's OM dated 10.9.1993 the casual worker holding temporary status are entitled to certain benefits only as mentioned in para 5 of the OM. Moreover, as per CCS (Pension) Rules, 1972, Pensionary benefit is admissible to a Govt. Servant who is appointed on regular basis. Since the grant of temporary status to the casual Employees/workers is without availability of a regular posts, such workers are entitled to only those benefits as are specified in the scheme for grant of temporary status. In other words, the family of a deceased casual worker having temporary status is not entitled to the benefits of family pension/death gratuity like regular employee.

A copy of the office memorandum dtd. 10.9.1993 is annexed herewith as Annexure - i.

8. That with regard to the statements made in paragraph 5.1 of the instant application the answering respondents beg to state that those are untrue, false and baseless statement, hence the same are denied. The respondents state that as entitled, GPF and CGEGIS, were paid to wife of Late Kanai Lal Basfore amounting to Rs.18319/- and Rs.15707/- respectively as drawn vide bill dated 27.7.2001 of CF Dhubri Division.

9. That as regard to the statements made in paragraph 5.II of the instant application the answering respondents beg to state that the applicant's husband was a casual employee who was granted temporary status. So, the family of the deceased casual worker having temporary status is not entitled to the benefits of family pension/death gratuity like regular employee.

10. That as regard to the statements made in paragraph 5.III of the instant application the answering respondents beg to state that the compilation cited in the paragraph is not applicable here and the application is liable to be dismissed.

11. That with regard to the statements made in paragraph 5.IV of the instant application the answering respondents beg to state that the deceased was a casual worker. The applicant were paid all GPF and CGEGIS amounting to Rs.18,319/- to Rs.15,707/- respectively which she is entitled as per provision of law.

12. That with regard to the statements made in paragraph 5.V, 5.VI and 5.VII of the instant application the answering respondents beg to state that those are untrue and incorrect, hence the same are denied. The respondents further beg to state that the grounds set forth in the instant application are not at all good grounds for

filling this application hence the Original Application is liable to be dismissed.

13. That with regard to the statements made in paragraph 6 of the instant application the answering respondent beg to offer no comment.

14. That with regard to the statements made in paragraph 7 of the application the answering respondents beg to state that those are within the personal knowledge of the applicant and hence no comment.

15. That with regards to the statements made in paragraphs 8 and 9 of the instant application the respondents beg to state that in view of the facts and circumstances mentioned above the applicant is not entitled to any relief or interim relief as prayed for and the application is liable to be dismissed.

VERIFICATION

I, Sri Prashanjan Kumar Mishra S/o B.B. Mishra (Late) aged about years, R/o Guwahati

District Assam, and competent officer of the answering respondents, do hereby verify that the statement made in paras 1 to 6 and 8 to 15 are true to my knowledge and those made in paras 7 being matters of record are true to my information derived therefrom which I believe to be true and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this verification on this 30th day of May, 2006 at Guwahati.

Prashanjan Kumar Mishra

Signature

प्रभञ्जन कु. मिश्रा

उपआयुक्त

केन्द्रीय उत्पाद, गुवाहाटी

ANNEXURE - P-I (Colly)

No. 51016/2/90-Estt. (C)
GOVERNMENT OF INDIA
Min. of Par, P.G. and Pensions,
Dept. of Per, & Trg.

53
P-6
New Delhi, The 10th Sep. 1993.

OFFICE MEMORANDUM

SUBJECT: Grant of Temporary status and regularisation of Casual workers-formulation of a scheme in pursuance of the CAT, Principal Bench New Delhi, judgement dated 16th Feb. 1990 in the case of Shri Raj Kamal & Others Vs. U.O.I.

The guidelines in the matter of recruitment of persons on daily wages basis in Central Government offices were issued vide this Department's O.M. No. 49014/2/86 -Estt (C) dated 07.06.88. The policy has further been reviewed in the light of the judgement of the CAT, Principal Bench, New Delhi delivered on 16.02.90 in the writ petition filed by Shri Raj Kamal and others vs. Union of India and it has been decided that while the existing guidelines contained in O.M. dated 07.06.1988 may continue to be followed, the grant of temporary status to the casual employees, who are presently employed and have rendered one year of continuous service in Central Govt. offices other than Department of Telecom, posts and Railways may be regularised by the scheme as appended.

2. Ministry of Finance etc. are requested to bring the scheme to the notice of appointing authorities under their administrative control and ensure that recruitment of casual employees is done in accordance with the guidelines contained in O.M. dated 07.06.1988. Cases of negligence should be viewed seriously and brought to the notice of appropriate authorities for taking prompt and suitable action.

sd/-

(Y.G.PARANDE)
DIRECTOR

All Mins./Deptts. of the Govt. of India

Abhijit
Gopal
S. C. S.

54

DEPARTMENT OF PERSONAL & TRAINING, CASUAL LABOURERS
(GRANT OF TEMPORARY STATUS AND REGULARISATION)SCHEME.

1. This Scheme shall be called "Casual labourers (Grant of Temporary status and Regularisation)Scheme of Govt. of India, 93.
2. This Scheme will come into force w.e.f. 01.09.1993.
3. This Scheme is applicable to casual labourers in employment of the Ministries/Departments of Govt. of India and their attached and subordinate office, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of posts who already have their own Schemes.

4. TEMPORARY STATUS

- i) Temporary status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).
- ii) Such conferment of temporary status would be without reference to the creation/availability of regular Group 'D' posts.
- iii) Conferment of temporary status on a casual labourer would not involve any change in his duties and responsibilities. The engagement will be on daily rates of pay on need basis. He may be deployed anywhere anywhere within the recruitment unit/territorial circle on the basis of availability of work.
- iv) Such Casual labourers who acquire temporary status will not however, be brought on to the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

5. Temporary status would entitle the casual labourers to the following benefits:-

~~✓~~ i) Wages at daily rates with reference to the minimum of the pay scale for a corresponding regular group 'D' official including DA, HRA, and CCA.

ii) Benefits of increments at the same rate as applicable to a Group 'D' employees would be taken into account for calculating pro-rata wages for every one year of service, subject to performance of duty for at least 240 days (206 days in administrative offices observing 5 days week) in the year from the date of conferment of temporary status.

iii) Leave entitlement will be on a pro-rata basis at the rate of one day for every 10 days of work, casual or any other kind of leave, except maternity leave, will not be admissible. They will also be allowed to carry forward the leave at their credit on their regularisation they will not be entitled to the benefits of encashment leave on termination of service for any reason or on their quitting service.

iv) Maternity leave to lady casual labourers as admissible to regular group 'D' employees will be allowed.

v) 50% of the service rendered under Temporary status would be counted for the purpose of retirement benefits after their regularisation.

vi) After rendering three years continuous service after conferment of temporary status, the casual labourers would be treated on par with temporary Group 'D' employees for the purpose of contribution to the General Provident Fund, and would also further be eligible for the grant of Festival Advance/Flood Advance on the same conditions as are applicable to temporary Group 'D' employees, provided they furnish two surties from permanent Govt. Servants of their Department.

v. Until they are regularised, they would be entitled to productivity Linked Bonus/Ad-hoc bonus only at the rates as applicable to casual labourers.

6. No benefits other than those specified above will be admissible to casual labourer with temporary status. However, if any additional benefits are admissible to casual workers working in Industrial establishments in view of provisions of Industrial Dispute Act, they shall continue to be admissible to such casual labourers.

GJ to JAI

- 3 -

58

7. Despite conferment of temporary status, the services of a casual labourers may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for the notice period will be payable only for the days on which such casual worker is engaged worker is engaged on work.

8. PROCEDURE FOR FILLING UP OF GROUP 'D' POSTS

i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual labourers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department Of Personnel & Training from amongst casual workers with temporary status. However, regular Group 'D' staff rendered surplus for any reason will have prior claim for absorption against existing/future vacancies in case of illiterate casual labourers or those who fail to fulfil the minimum qualification prescribed for post, regularisation will be considered only against those posts in respect of which literacy or lack of minimum qualification will not be a requisite qualification. They would be allowed age relaxation equivalent to the period for which they have worked continuously as casual labourer.

9. On regularisation of casual worker with temporary status, no substitute in his place will be appointed as he was not holding any post. Violation of this should be viewed very seriously and attention of the appropriate authorities should be drawn to such cases for suitable disciplinary action against the officers violating these instructions.

10. In future, the guidelines as contained in this Department's O.M. Dated 07.06.1988 should be followed strictly in the matter of engagement of casual employees as in Central Government offices.

11. Department of Personnel & Training will have the power to make amendments or relax any of the provisions in the Scheme that may be considered necessary from time to time.

* * * * *

केन्द्रीय प्रशासनी विभाग Central Administrative Service
19 JUL 1986
गुवाहाटी बैचिटी Guwahati Bench

Filed by the
Applicant

52
RTI of
Laxmi Banerjee
Taraknath
Jahangir Roy (122)

In the Central Administrative Tribunal
Guwahati Bench: Guwahati.

An application under Section 19 of the
Central Administrative Tribunal Act, 1985

O.A. No. 19/86

Smt. Laxmi Banerjee

-vs-Applicant

Union of India & Ors...Respondents.

In the matter of :-

A Rejoinder statement on behalf of the
applicant in the above noted case.

A Rejoinder/Additional Statements

1. That the applicant filed the above noted application seeking a direction for grant of pension and other death benefits. In the said case respondent filed a written statement.
2. That a copy of the aforesaid written statement has been served upon the applicant through her counsel which she has gone through and have understood the contents thereof. All the statement made in the said written statement are denied by the applicant except those are specifically admitted to be true and which are not inconsistent to the records.

Contd... 2p-

R.T.O. 58
L. Bong

(2)

3. That as regards the various statements made in the Written Statement the applicant begs to state that she relied upon the statements already made in the original application as a reply to the written statement and are reaffirmed ^{the} same stand once again.

4. That as regards the statement made in paragraph 11 & 12 in the Written Statement applicant begs to state that she received only GPF and CGEGIS but no pension has been paid to her. The applicant has been receiving a lump sum salary @ Rs. 970/- per month in a safaiwale by putting some impression in the Office of the Central Excise Bongaigaon. The payment of GPF & CGEGIS does not preclude ~~the~~ the entitlement of other pension benefit as per provisions of law.

5. That the contention raised by the respondents are not borne out of law and facts and hence liable to be rejected.

....Verification.

(3)

- VERIFICATION -

I. Laxmi Basfore, Wife of Late Kanailal Basfore
Resident of Kanaklata Road, W/No.1, Bongaigaon Town,
P. O & District Bongaigaon, Assam, presently working
as a Safaiwala on daily wage basis and being wife
of the employee died in-harness seeking pension benefit
and do hereby verify the contents made in para 2 to 4
are true to my knowledge and belief and I have not
supress the material facts. And I sign this
Verification on this 18 th day of July, 2006
at Guwahati.

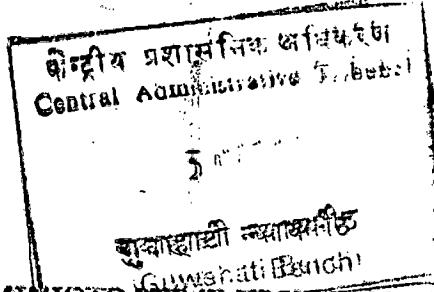
Places Guwahati

Date : 18.07.06

RTF of

L. Basfore

Signature/Thumb impression of
the Applicant.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BRANCH, GUWAHATI

File No. R/T 1 of
Date of filing 10/09/2000
Date of hearing 10/09/2000
Court Room No. 1
Date of hearing 10/09/2000

An Application u/s 19 of the Central Administrative Tribunal Act, 1985.

O.A. No. 19/06

Smt. Laxmi Basfor ... Applicant

-Vs-

Union of India & Ors. Respondents

In the Matter of :

A rejoinder statement on behalf of the applicant on behalf of the above noted case.

A Rejoinder/Additional Statements

1. That the applicant filed the above noted application seeking a direction for grant of pension and other death benefits. In the said case, respondent filed a written statement.

2. That the applicant begs to state that her husband got the temporary status w.e.f. 1.9.1993 vide notification C. No. II(7)4/ET-II/91/1096-103(b) dtd. 19.1.1994 vide

Annexure-5 to the main application. In the ground under paragraph 5(ii) it has been already stated in the main application that prior to the temporary status order dated 19.01.1994 the applicants husband worked as a casual worker for a period of 10 years prior to 19.1.1994 i.e.

since 1984. However, the applicant was unable to annex the documents in the main application in support of such claim. The applicant enquired in this connection and traced out some documents so as to proof the service rendered prior to temporary status of the applicant's husband. These documents are as follows :-

- (i) Statement of Bill dated 30.4.1990 issued by the Administrative Officer, Custom and Central Excise, Dhubri Division.
- (ii) Statement of Bill dated 31.5.1991.
- (iii) Statement of Bill dated 4.2.1992 issued by the same authority;
- (iv) Statement of Bill dtd. 26.2.1993.

Photocopies of the aforesaid documents are annexed as Annexure No.8 in series.

3. That the applicant begs to state that considering the service period prior to temporary status the husband of the applicants has completed more than 10 years in service and therefore taking into account this period of the service of the applicant's husband the applicant is entitled to receive family pension. The applicant's case is covered by the order dated 1.8.2006 passed by this Hon'ble Tribunal in O.A. No. 28/06 (Smt. Eroni Dala Nath -vs- the Union of India). There are some other similar decision of Ernakulam Bench and Apex Court decision.

A photocopy of the order dtd. 1.8.2006

passed in O.A. No. 28/06 is annexed as

Annexure No.9.

A photocopy of order dated 24.1.2003 in

O.A. No. 543/2002 of Ernakulam Bench

is annexed as Annexure No.10.

4. That it is submitted that in a case reported as (1996)7 SCC

113 (Yashwant Hari Katakkar -Vs- Union of India & Ors.)

the Apex Court hold a view that in absence of material on

records to show as to why an employee putting in long

(18½ years) years of quasi-permanent service had not

been made permanent despite of such long period of

service, is deemed to have become permanent and entitled

to pension.

A photocopy of the Apex Court Judgment

reported as (1996)7 SCC 113 is annexed

as Annexure No.11.

5. That this additional/rejoinder statement is filed bohafide in

the interest of justice.

4

VERIFICATION

I, Laxmi Basfore, wife of Late Kanailal Basfore, resident of Kanaklata Road, W/No.1, Bongaigaon Town, P.O. & Dist. Bongaigaon, Assam presently working as a Safaiwala on daily wage basis and being wife of the employee died in harness seeking pension benefit and do hereby verify the contents made in para 2 to 4 are true to my knowledge and belief and I have not suppress the material facts. And I sign this verification on this 3 day of November/2006 at Guwahati.

Place : Guwahati

Date :

Signature/Thump impression
of the Applicant.

RTI 9

Smt Laxmi Basfore is taken by
Smt Laxmi Basfore is taken by

Amoenus 788 in Series

OFFICE OF THE ASSISTANT COLLECTOR OF
CUSTOMS AND CENTRAL EXCISE & DUTY DIVISION : PIN-733301
EGD. WITH A/D.

10.III(14)/Cash/DB/87/

Dated :-

The Superintendent of
Customs & Central Excise,
Baroda.

Shri _____
Inspector of Customs & Central
Excise,

Please find herewith a Govt. Draft No. 01/A/29 20803
date: 30.4.70 for Rs. 16105/-

Replies Sixteen thousand one hundred and ~~one~~ ^{one} only
and a disbursement to the payee concerned as stated below. The
receipt of the Govt. Draft may please be acknowledged and the
necessary acquittance slips please forwarded to this Office
at an early date.

Enclo:-1 (One) Govt. Draft
as stated above.

Office
30/11/90
(S. C. Adhikary)
Administrative
Customs and Central
Dhubri divn.

Contd. Ax M. 8th Series

OFFICE OF THE ASSISTANT COLLECTOR OF
CUSTOMS AND CENTRAL EXCISE : DHUBRI DIVISION

PIN-783301.

REGISTERED ITT A/D

J. NO. III (14) Cash/DB/87/

Dated: 3.6.71

To

The Superintendent of
Customs & Central Excise,

Shri
Inspector of Customs & Central Excise,

BONIFICATION.

Please find herewith a Govt. Draft No.

04/A/29 203527

dated

30.5.71

for Rs. 16994/-

(Rupees Sixteen Thousand Nine
Hundred and Ninety Four/-)

payee concerned is stated below. The receipt of the Govt. Draft may please be acknowledged and the necessary acquittance slips please forwarded to this Office as early date.

Bill No & date	Name of the payee	Amount	Particulars
----------------	-------------------	--------	-------------

123/P/91/0-30.5.71	S. C. Alley Supt.	3126.00	Pay for May/71
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125/P/91/0-30.5.71	W. K. Medhi Supt.	2430.00	— do —
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129/P/91/0-30.5.71	S. C. Beaumaloy	1859.00	— do —
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— do —	G. C. Mondal	1630.00	— do —
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— do —	T. K. Sulta	1559.00	1559.00
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131/P/91/0-30.5.71	G. L. Tari Supt	1242.00	— do —
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— do —	B. C. Das	1328.00	— do —
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— do —	R. K. Borgoyari	932.00	— do —
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136/P/91/0-30.5.71	S. R. C. Boro. Supt	777.00	— do —
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— do —	K. L. Bradford Supt	482.00	Wages for May/71
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— do —	D. K. Barman Forash	1147.00	— do —
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— do —	B. Ray Forash	482.00	— do —
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— do —		R. 16994.00	
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Enclo:- 1 (One) Govt. Draft
as stated above.

— P. P. Chakraborty
G. X. Acharyal
Administrative Officer,
Customs and Central Excise,
Dhubri Divn.

Contd. Ax 8 in series

OFFICE OF THE ASSISTANT COLLECTOR OF
CUSTOMS AND CENTRAL EXCISE : DHUBRI : ASSAM : 783301.

REGISTERED WITH A/D
C.No. XXXXXX III (14) Cash/DB/87/

Dated: - 4.2.92

To

The Superintendent of
Customs & Central Excise
Bongaigaon.

Shri Inspector of Customs & Central
Excise,

Please find herewith a Govt. Draft No. MOL/A/16 # 383180
dated 4.2.92 for Rs. 14715/- (Rupees ~~fourteen thousand~~
~~Eleven thousand fifteen~~) only for disbursement to the
payee concerned is stated below. The receipt of Govt. Draft
may please be acknowledged and the necessary acquittance slips
please be forwarded to this Office at an early date.

Bill No. & date	Name of the payee	Amount Rs. P.	Particulars
44/P/92 dt. 25.1.92	S. C. Dey, Subdt.	3476.00 - 250.00 = 3226.00	Pay for Bongaigaon
46/P/92 28.1.92	N. K. Meheri Subt.	2610.00 - 225.00 = 2385.00	- do -
50/P/92 28.1.92	S. C. Bagumalay	2350.00 - 225.00 = 2125.00	- do -
8. - do -	G. C. Mondal	1810.00 - 225.00 = 1585.00	- do -
(P) - do -	T. K. Datta	1850.00 - 225.00 = 1625.00	- do -
55/P/92 dt. 28.1.92	G. L. T. J. Subdt	1450.00 - 75.00 = 1375.00	- do -
(S) - do -	B. C. Das	1433.00 - 75.00 = 1358.00	- do -
(S) - do -	R. K. Bongaigaon	988.00 - 0.00 = 988.00	- do -
62/Contd/92 dt. 31.1.92	K. L. Baruwa Saha	482.00 - 0.00 = 482.00	Payage Bongaigaon
- do -	B. Ray Farash	482.00 - 0.00 = 482.00	- do -
- do -	D. K. Boraon	1209.00 - 0.00 = 1209.00	- do -
	Rs. 78140.00	- 1300 = 76840.00	
		(-) 2125.00	
		Rs. 74715.00	

Enclo:- 1 (One) Govt. Draft
as stated above.

82/Charg/92
(JX) Charg/92
Administrative Officer,
Customs & Central Excise,
Dhubri Divn.

53
Amine M. 9

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 28 of 2006.

Date of Order: This, the 1st day of August, 2006.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN

Srimati Eroni Bala Nath
Wife of Late Manglu Ram Nath
Ex. Gangman under CPW1/CON/NJP
Resident of Village Rampur
P.O: Sorbhog
District: Barpeta, Assam.

..... Applicant.

By Advocates Mr. M.B.U.Ahmed & S.Sarma.

Versus -

The Union of India
Represented by the Secretary to the
Government of India
Ministry of Railways
New Delhi-1.

2. The General Manager
N.F. Railway, Maligaon
Guwahati-11.
3. The Chief Engineer (Con-III)
N.F. Railway, Maligaon
Guwahati.
4. The Deputy Chief Engineer (Con)
N.F. Railway, New Jalpaiguri
West Bengal.
5. The Asstt. Personnel Officer (Con)
N.F. Railway, New Jalpaiguri
West Bengal.
6. The Executive Engineer (Con-I)
N.F. Railway, New Jalpaiguri
West Bengal.

7. The Chief Personnel Officer
N.F.Railway, Maligaon
Guwahati-11.

.....Respondents.

By K.K.Biswas, Railway Counsel.

O R D E R

SACHIDANANDAN, K.V., (V.C.):

The applicant is the widow of late Manglu Ram Nath who died in harness on 18.8.1992 while working as Gangman (casual employee) at CPWI/CON, New Jalpaiguri under the N.F.Railway. The applicant pleaded in this Original Application that her husband was engaged as casual labour in the N.F.Railway on 23.12.1976 and continued till 15.4.1979 and after some break again he was engaged as casual labour w.e.f.17.6.1979 to 15.10.1979. In the same manner the deceased rendered service as casual employee till 1982 and subsequently appointed as Gangman. The name of the applicant's late husband appeared in Sl. No.20 in the list of casual employee showing his Provident Fund No.552949 (Annexure-I dated 8.7.1988). By the said Annexure the Executive Engineer (CON-I)/NJP issued a list of 25 Nos. of P.Way Labours intimating that on their reporting for duty of CAT on 16.8.1988 on being released by DY.CE/CON/MLDT from HCR-KDPR section they would be

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b

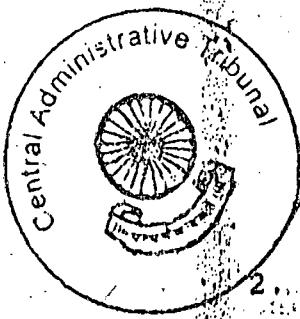
posted under CPWI/CON/NJP with headquarter at CAT in their same scale of pay. Pursuant thereto, the deceased resumed duties as Gangman at New Jalpaiguri and continued upto 18.8.1992 when he breathed his last. While working as such, he suffered from Carcinoma Oesphagus. The death certificate will show that he died on 18.8.1992 (Annexure-II). The widow approached the authority for release of Provident Fund and other pensionary benefits and submitted required documents. The APO(CON), New Jalpaiguri vide letter dated 12.2.1994 endorsed all the documents to FA&CAO (CON), Maligaon for release of the PF amount credited to the deceased PF account (Annexure-III). Vide Annexure-IV another letter was addressed for payment of the same. Though a meagre amount of Provident Fund and Gratuity has been released, the respondents had not released the family pension of the deceased employee. Various representations were made requesting for release of the same (Annexure-V) but the applicant has not yet received the same and therefore, aggrieved by the inaction of the respondents, the applicant has filed this application seeking the following reliefs:-

(i) To direct the Respondent Authorities to forthwith release the family pension of late Manglu Ram Nath, Ex. Gangman, CPWI/NJP/CON as admissible under the Pension Rules and the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1989 and subsequent schemes of the Government of India.

(ii) To grant any other relief or reliefs to which the applicant may be entitled to and as may be deemed fit and proper by this Hon'ble Tribunal.

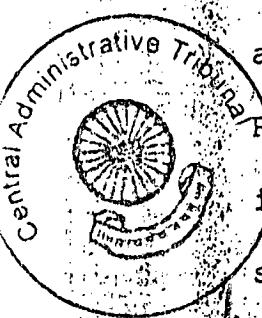
(iii) Cost of this application."

2. The respondents have filed a detailed reply statement contending that as per record of Service Book the date of his engagement was 10.11.1982 and the death was on 18.8.1992. There is no record available therein regarding engagement of late Manglu Ram Nath on 23.12.1976 which continued upto 15.4.1979 and again from 17.6.1979 to 15.10.1979. The records available with the respondents revealed that the deceased was granted temporary status w.e.f.1.1.1984 after completion of 360 days of continuous service with effect from 10.11.1982. The case of the applicant is hopelessly barred by limitation and contrary to the rules and therefore, the instant application is liable to be dismissed ab initio. The deceased was transferred from the unit Dy. Chief Engineer Construction, Malda and joined under Chief Permanent Way Inspector/Con/New Jalpaiguri on 16.8.1986 and continued upto his death on 18.8.1992. The Provident Fund, Termination Gratuity and Group Insurance (GIS) were paid to the heir of the deceased employee late M. R. Nath, ex-Gangman. Family pension is not admissible under the Rules as the deceased was an unscreened staff and moreover, he



could not completed required 10 years of regular and continuous service till his death. As per Rule 14 of Chapter-II of the Railway Pension Rule, 1993 the casual period of daily rated service of an employee shall not be counted and treated as 'qualifying service' for the pensionary benefit. Railway Organisation is having its own Rules, Regulation and working system to be guided with separately and therefore, CCS Pension Rules 1972 are not applicable in the case of Railways and the citation of the Workman Compensation Act, 1923 in the instant case is also not applicable, and hence, are not admitted and denied to the extent which are contrary to the Rules and working system of the Railways. The matter raises a doubt as the claim of the applicant as real heir of late Manglu Ram Nath, ex-Gangman and thus competency of the applicant is challenged. The continuation of minimum 10 years of service is a must as per extant Railway rules and therefore the applicant cannot be granted family pension inspite of having all sympathy and bereavement for the premature demise of her husband.

3. The applicant has filed a rejoinder contending that she is legally married wife of the deceased and entitled to get the pensionary benefits. There is some inadvertence in putting her name as "Inrani" instead of "Smti Iromi Bala Nath". She has sworn in an affidavit on 11.4.2006 before the Judicial Magistrate, Kamrup

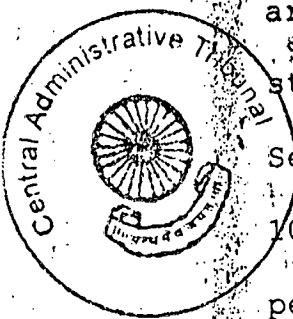


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explaining the fact, which is annexed at Annexure-A. Admittedly, having rendered not less than 8 years 7 months of continuous service, and reckoning 50% of premium service even assuming as per Railway rules the applicant is entitled to get the family pension.

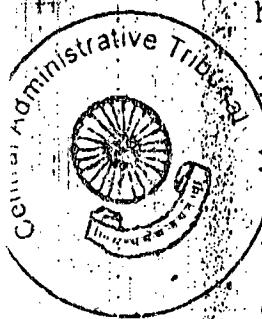
4. Heard Mr. M. B. U. Ahmed, learned counsel for the applicant and also Mr. K. K. Biswas, learned Railway counsel for the respondents. Counsel for the parties have taken my attention to various pleadings, materials and evidence placed on record. Counsel for the applicant argued that, admittedly the deceased was granted temporary status as Gangman, in which case he must be having a Service Book which will reveal that he had put more than 10 years of service entitling his legal heir to get the pensionary benefit. Mr. Biswas, counsel for the respondents, on the other hand, submitted that the deceased employee had put less than 10 years of service and therefore his legal heir is not entitled to get any family pension as Railway rules does not permit for the same.

5. I have given my due consideration to the pleadings and arguments advanced by counsel for both the parties. The claim for pensionary benefits being a continuing cause of action, the question of limitation does not arise (M. R. Gupta's case). Then short question

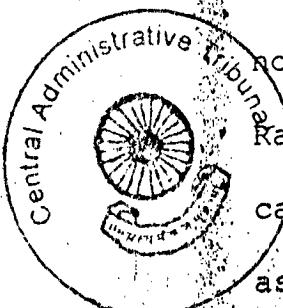


for consideration is whether the deceased Husband of the applicant has got qualifying service so as to enable the applicant to get the family pension. The specific case of the applicant is that the deceased employee was engaged as casual labourer on 23.12.1976 and continued till 15.4.1979 and after some break from 17.7.1979 to 15.10.1979 and rendered casual employment service till 1982 and subsequently appointed as Gangman. The applicant has produced photocopy of the Casual Labour Card (Annexure-1 Series) to show that he was engaged as casual labour as averred in the O.A. Annexure-I Series, Page 18 shows that he was engaged during the period 1976-1977 and Pages-16 & 17 show that N.F.Railway has issued the deceased Casual Labour Card to show that he was engaged as a casual labourer prior to 1981. Though the same was issued to the deceased details as to the period in which he was engaged is not clear.

6. The respondents have produced the Service Book of the deceased employee and in the application for Death cum Retirement Gratuity it is stated that date of his beginning in service is from 10.11.1982 and the date of ending service is 18.8.1992 (Form No.8) and the temporary status was granted to him w.e.f. 1.1.1984 and the amount of Gratuity were disbursed on the basis of the said period of service. There is no entry for previous service, but it is evident that he was granted temporary status w.e.f.

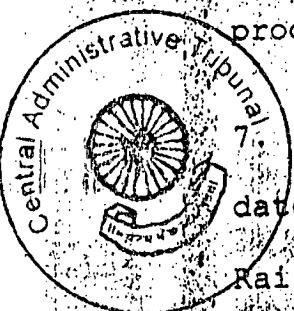


1.1.1984 in terms of the Railway Board letter dated 11.9.1986 alongwith the casual employees who had completed 360 days of continuous service after 10.11.1982. Therefore, the deceased was absorbed as per the Scheme and the letter issued by the Railway Board mentioned above. The previous service of the employee, if any, should be counted for terminal benefits. Specific case of the respondents is that there is no document to prove that the deceased was engaged from 23.12.1976 till upto 15.4.1979 and from 17.6.1979 to 15.10.1979 and the deceased could not complete 10 years of service till his death and as per Railway Pension Rule 1993, Rule 14 of Chapter-II, the casual period of daily rated employee shall not be treated as 'qualifying service' for the pensionary benefit. The specific case of the applicant is that the deceased had worked for few years prior to grant of temporary status. To substantiate her contention, she has produced Casual Labour Card (Annexure-1 Series) which will through light that the deceased had worked prior to 1981. Obviously the benefit of the Scheme was granted to the applicant's late husband only on the ground that he was engaged prior to 1981. As per the decision of the Supreme Court in Indrapal Yadav's case the scheme was promulgated for absorption of such casual labourers. When the Service Book of the deceased has been opened, the respondents should have collected all the materials of his previous service and



made entry therein which was not done in the present case.

Annexure 1 Series Casual Labour Cards also through light that the late Manglu Ram Nath was engaged for certain time and in the absence of any other contra-evidence it has to be taken that he was in engagement as casual labourer from 23.12.1976 to 15.4.1979 and from 17.6.1979 to 15.10.1979. The averment in the O.A. in this regard and the documents produced has no reason to be doubted.

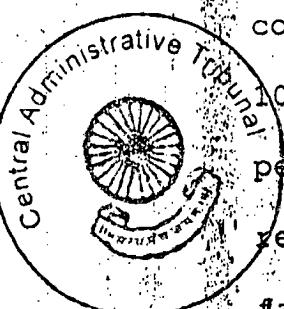

 My attention was taken to the Master Circular dated 12.8.1993 issued by the General Manager, N.E.F. Railway consolidating all the letters, rules and instructions on the casual labour subject in a single body as a Master Circular copy of which is produced and placed on record in which various benefits available to such casual labourers are listed under the heading 'Entitlements of Privileges'. It is stated therein "casual labourers are not entitled to any privileges other than those statutorily admissible under the Labour Laws such as Minimum Wages Act, WC Act, I.D. etc. or those specifically sanctioned by the Board from time to time". As to the entitlement of the casual labour who have attained temporary status, in para 11.2(c) it is stated as under:-

"to count half of the service rendered (i) in the case of open line casual labour after 1.1.61 (after attaining temporary status) and (ii) in the case of Project casual Labour (after attaining temporary status) after 1.1.81, towards qualifying service for

pensionary benefits on their eventual absorption in a regular post".

Admittedly, the deceased was absorbed in the regular post at the time of his death and even according to the respondents, he was in service from 10.11.1982 till his death i.e. upto 18.8.1992. The case of the respondents is that was granted temporary status w.e.f. 1.1.1984 after completion of 360 days of continuous service from 10.11.1982 and therefore that period cannot be treated for pensionary benefits. Since the deceased could not complete required 10 years of continuous service for grant of family pension, such benefits cannot be given to the applicant contrary to the rules mentioned in the Master Circular above. The spirit of the said rule is that once an employee is regularised the service rendered from 10.11.1982 to 1.1.1984 i.e. 360 days of service and prior casual labourers service rendered if any should be considered for pensionary benefits. Of course, 50% of the aforesaid period only can be counted for the same. If 50% of the service rendered w.e.f. 23.12.1979 to 15.4.1979 and 17.6.1979 to 15.10.1979 is reckoned, this Tribunal is of the view the deceased will have 'qualifying service' of 10 years in order to get pensionary benefits.

8. Sub-rule (3) of the Rule 18 of the Railway Service (Pension) Rules, 1993 under the heading



'Pensionary, terminal or death benefits to temporary railway servants' lays down as below:-

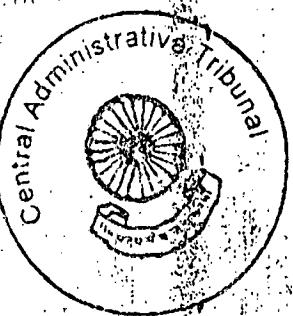
"In the event of death in harness of a temporary railway servant his family shall be eligible to family pension and death gratuity on the same scale as admissible to families to permanent railway servants under these rules."

Paragraph 20 of the Master Circular No.54 of 1994 lays down as under:-

"20. Counting of the period of service of casual labour for pensionary benefits:- Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits. With effect from 1.1.1981, the benefit has also been extended to Project Casual Labour."

Sub-para-2005(a) of Indian Railway Establishment Manual, Volume-II lays down as under:-

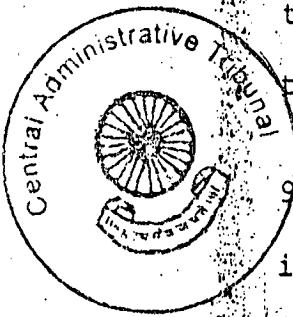
"Casual labour including Project Casual labour shall be eligible to count only half of the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption, as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits."



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Therefore, from the reading of the said provisions it is clear that on absorption whole of the period for which a casual labour worked (after getting temporary status) would have to be counted and half of the period for which he worked without being absorbed have to be counted for pensionary benefits. Therefore, I have no doubt in my mind that once temporary status is granted to an employee half of the service rendered by him as casual labour before getting temporary status has to be counted which include the entire service rendered as casual labourer even prior to re-engagement as per the Scheme.

9. Therefore, I am of the view that the applicant is entitled 50% of the service rendered w.e.f. 23.12.1976 to 15.4.1979 and from 17.6.1979 to 15.10.1979 and also from 10.11.1982 to 31.12.1983 totaling a service of 3 years 10 months 1 day. 50% of the said period i.e. 1 year 11 months has to be reckoned notionally for the purpose of pensionary benefits. The deceased employee admittedly had 8 years 7 months regular service adding 50% of the period i.e. 1 year 11 months comes to more than 10 years. The minimum required period for grant for family pension is 10 years, and therefore, the applicant is entitled to get the family pension counting 50% of the service rendered before grant of temporary status as stated above. But this period is only to be reckoned notionally for the purpose of grant of family pension.



19

In the conspectus facts and circumstances of the case and the findings as above, I direct the respondents to grant the applicant admissible family pension within a period of three months from the date of receipt of this order.

The Original Application is allowed as above.
There shall be no order as to costs.

Sd/ VICE CHAIRMAN



Date of Application : 12.7.06
 Date on which copy is ready : 12.7.06
 Date on which copy is delivered : 12.7.06
 Certified to be true copy

Section Officer (Jd)
 C. A. T. Guwahati Bench
 Guwahati S.

12/7/06
 12/7/06

A-3), charge sheet dated 26.12.93 and order dated 29.9.95 annexure A-10) are hereby quashed. It shall be scarcely necessary to mention that the disciplinary trial before the Board of enquiry was proceeded with the disciplinary proceedings as held in pursuance of the charge sheet dated 23.3.93 Annexure A-H from the stage it was stopped. However, due care shall be given to our observation made herein above. The result of the disciplinary proceedings shall regulate the consequential benefits admissible to the applicant. However, in the facts and circumstances of the case, we make no order as to costs.

18. The Registry is directed to send a copy of this order under the seal of this Bench of the Tribunal directly to the Railway Board so as to enable them to take corrective action in view of our observations made herein above.

CENTRAL ADMINISTRATIVE TRIBUNAL

(ERNAKULAM BENCH)

O.A. No 543/2002

Decided on 24.1.2003

K Ayyappan

The Union of India and Ors

For the Applicant : Mr. T.C. Govindaswamy, Advocate.

For the Respondents : Mrs. Rajeswari Krishnan, Advocate.

PRESENT

The Hon'ble Mr. T.N.T. Nayar, Administrative Member
The Hon'ble Mr. K.V. Sachidanandan, Judicial Member

Pension—Applicant was appointed as a substitute Khalasi in the Railway—Given temporary status on 20-5-1968 on completion of 6 months continued service—Illegally terminated—High Court directed reinstatement on 26-5-1972—Given arrears of Pay and allowance from the date of termination till reinstatement—Superannuated on 30-4-1998—Qualifying service for pension counted from 26-5-1972—On representation 50% of the service from 20-5-1968 to 26-5-1972 also counted on the ground that he was engaged as a casual labour and not substitute khalasi—Challenged—Applicant was reinstated as a substitute khalasi and not as a casual labour—Records also show that his service from 20-5-1968 to 30-4-1998 was never treated as non-qualifying service for the purpose of pension and other retiral benefits—Similarly situated person also granted the entire benefits—Relief—Applicant held entitled to count his service from 20-5-1968 till his superannuation for the purpose of pensionary benefits.

ORDER

Mr. Sachidanandan, Judicial Member :—Applicant K. Ayyappan, who retired as Loco-Khalasi of Southern Railway, Paignat Division, was initially engaged as a substitute khalasi in the Mechanical Department of Southern Railway, Paignat Division. It is averred that on completion of six months continuous service, the applicant was given temporary status with effect from 20-5-1968. Subsequently, he was illegally terminated from service with effect from 18-3-1970. Applicant and 19 other similarly situated persons challenged their termination in C.P. No. 945/970 and the orders of termination were set aside by Hon'ble High Court of Kerala vide judgment dated 26.9.1972. The applicant and others were taken back on

pay and granted arrears of pay and allowances for the period from 18-3-1970. Later, his services were regularised according to rules and finally he superannuated from service on 30-4-1998. According to the applicant, he had total qualifying service of 29 years 11 months and 10 days (to be rounded to 30 years) at the time of superannuation. It is, therefore, stated that his pension and other retiral benefits ought to have been calculated on that basis. But to his surprise, he came to know later on that his pension was calculated only on the total qualifying service of 25 years and six months. He was also granted a service certificate dated 30.04.98 (Annexure A/1) indicating his date of appointment as 22.08.72 instead of 20.05.1968. Applicant submitted various representations before the concerned authorities and finally vide Annexure A/2 dated 26.9.2001/1, 10.2001, the order of the Chief Personnel Officer (respondent No.2) was communicated to the applicant stating that his entire service from 20.05.68 to 21.08.72 will be reckoned for the purpose of pension and other retiral benefits. The name of the applicant is shown at serial No. 1 in the list Annexure A/2. The other persons shown in Annexure A/2 are the co-petitioners mentioned in the aforesaid O.P. As per Annexure A/2, the retiral benefits should have been determined on the total qualifying service of 30 years. But vide Annexure A/3, the 4th respondent calculated the pension only on the total qualifying service 27 years and six months and not 30 years as required. It is averred that had it been properly counted, he would have 30 years of qualifying service for the purpose of pension and the applicant had suffered on account of wrong calculation. As against this, applicant represented vide Annexure A/4 dated 23.12.2001 to the 3rd respondent, but no response from his side. Hence, the applicant preferred the present O.A. seeking following relief:

- (i) Call for the records leading to the issue of Annexure A/3 and quash the same to the extent total qualifying service of 27 years and 6 months and fixes the same as Rs. 1,373/- per month;
- (ii) declare that the applicant is entitled to have his pension and other retiral benefits calculated on a total qualifying service of 30 years and direct the respondents to fix and pay the applicant's pension and other retiral benefits accordingly, within a time limit as may be found just and proper by this Hon'ble Tribunal;
- (iii) direct the respondents to pay interest to the applicant on the difference on pension and other retiral benefits arising out of the erroneous calculation of his qualifying service @ 12% per annum to be calculated with effect from 1.5.98 upto the date of full and final settlement of the same;
- (iv) award costs of and incidental to this application;
- (v) grant such other further reliefs as may deem just, fit and proper by this Hon'ble Tribunal in the facts and circumstances of the case.

2. The respondents have filed reply statement contending that the benefit as per Annexure A/2 has already been extended to the applicant vide Annexure A/3. The claim of the applicant is not based on any rule/order or facts. He was engaged as casual labour under Loco Foreman, Shoranur, from 20.11.67. He was granted temporary status and brought to the authorised scale of pay with effect from 20.05.68. Thereafter, his services were discon-

tinued from 27.01.70. But on account of the creation of Hon'ble High Court in O.P. No. 945/1970, he was reengaged as substitute Khatasi with effect from 22.08.72, alongwith 18 other similarly situated employees. Applicant retired from service as Loco Khatasi on 30.4.1998. The pensionary benefits of the applicant were calculated taking into account his date of appointment as 22.08.72, the date he was reengaged as substitute Khatasi determining the net qualifying service of 25 years and eight months. He made a representation to count the period of service rendered by him as temporary casual labour and on consideration of his request his qualifying service was revised only counting 50% of the service from 20.05.66 to 21.08.72. Accordingly, the net qualifying service was calculated as 27 years 5 months and 23 days as against 25 years 8 months and 8 days. He was granted pensionary benefits taking into account the revised qualifying service. *Vide Annexure A/3.* Nothing more is due to be paid to the applicant. It is further stated that the contention of the applicant that he joined Railways as substitute Khatasi is incorrect. Applicant was initially engaged as a daily rated casual labour and only after completion of the requisite number of days of continuous service, he was granted temporary status with effect from 20.05.66. In support of this contention, the respondents relied on Annexure R/1, the relevant page of the service book and submitted that there is no merit in the O.A. and it deserves to be dismissed.

3. Applicant filed a rejoinder contending that he was one the petitioners in O.P. No. 945/1970 before Hon'ble High Court of Kerala, which was decided on 26th May, 1972, and all other co-petitioners, who were similarly and identically situated, were granted entire benefits as per direction of this Tribunal in O.A. Nos. 1453/58 and 1628/58. It is alleged that Annexure R/1 is not the true copy of any page of the applicant's service book. The entries therein are fabricated and are made in one stretch by the same person using the same pen and ink. All the entries are seen to have been attested by APO.III in the recent past probably for defeating the case.

4. The respondents have also filed additional reply statement stating that the applicant was engaged as a casual labour on daily wage basis from 20.11.57. It is averred that the contention of the respondent that he was initially engaged as a substitute is totally incorrect. The rules do not provide for counting the entire service rendered by an employee as casual labour for pensionary benefits, but only 50% of such service is reckoned of the purpose. The applicant has not produced any document to show that he was engaged as a substitute. Respondents contended that annexure R/1 is a true copy of the relevant page of the service register of the applicant, which is a permanent record and not manipulated one as stated by the applicant. There cannot be any assumption or presumption as contended by the applicant in respect of maintenance of service records as is the crime record in respect of an employee. They submitted that the O.A. has no force and deserves to be dismissed.

5. We have heard Mr. T. C. Govindaswamy, learned counsel for the applicant and Mrs. Rakeshwar Krishnan (represented by Mrs. Seema), learned counsel for the respondents and have perused the material, pleadings and documents placed on record.

6. After careful consideration of the arguments advanced by both the parties,

7. Since the entries made in the service register are dictated by the applicant, we directed the respondents to produce the original service register of

the applicant, which was also perused by us. On a perusal of the said register, we found that Annexure R/1 is the true photostat copy of page 3 of the service book. It is true that the entire entries have been attested by APO.III and almost all those entries were made by the same person using the same pen and ink. It is admitted by the respondents that all those entries were made at one stretch only after the services of the applicant were regularised. This page has therefore, been incorporated in the service book only after giving effect to the order of Hon'ble High Court dated 26.5.72 in O.P. No. 945/1970 and the entries were made as such. In these circumstances, it cannot be said that the documents in question is a fabricated one and the same cannot be found fault with. On-perusal of the service register, we find that an entry was made in the middle portion at page 3, stating that "Reinstated on 20.02.75 (as per Court Orders No. 3473/74) - granted back wages from 29.05.74." It was not stated anything except saying that reinstated as per the Court orders. Therefore, it would be in the fitness of things if the relevant portion of the order of Hon'ble High Court in O.P. No. is as follows:

"13. We have already indicated earlier that the case here is one of termination of services of surplus staff. We have also indicated that the mere fact that such termination is in accordance with any rule such as R.149 (1) of the Railway Establishment Code, will not make it any the less a retrenchment within the scope of S.26F. We may also notice here that R.149 (1) is subject to R.149 (6) which provides -

"5. Notwithstanding anything contained in Clauses (1) (2) and (4) of this Rule, if a Railway servant or apprentice is one to whom the provisions of the Industrial Disputes Act, 1947 apply he shall be entitled to notice or wages in lieu thereof in accordance with the provisions of the Act. It is apparent from this provision that even a termination under R.149 (1) requires compliance with S.26F of the Act. For this reason too the contention of the respondents is unacceptable.

In the result, we find that the termination of the services of the petitioners have not been validly made. We, therefore, issue a direction to reinstate the petitioners in service. Parties are directed to suffer costs."

8. In that case also, the respondents vehemently contended that the petitioners therein, including the applicant, were not a permanent employee and therefore, they terminated. But quoting various decisions of Hon'ble Supreme Court and the provisions of Industrial disputes Act, Hon'ble High Court has held that the termination of the petitioners therein was not validly made and a direction was given to reinstate them in service. Based on this decision, the Tribunal by following the order passed in O.A. No. 1853/98, P. Kuttanayaran vs. The Senior Divisional Personnel Officer and Others (decided on 04.04.2001), had held in O.A. 1626/98, M. Balasubramanian vs. The Senior Divisional Personnel Officer and Another (decided on 05.06.2001), that "the recording of the applicant's date of entry in the service register as 22.8.72 is unjust and arbitrary, and the applicant is entitled to have his date of entry in the service register as substitute Khatasi shown as 13.4.69."

9. It is pertinent to note that all the applicants in the aforesaid OAs and the applicant in this O.A. were the petitioner in O.P. No. 945/1970 wherein the respondents had specifically taken a plea that the petitioners are casual labourers and not substitutes. It is an admitted fact that when the applicant was reinstated as per the orders of Hon'ble High Court in the said O.P., he was

6. We are, however, unable to accept the said contention of the learned counsel for the appellant. The opening words of clause 18 of the Gujarat Control Order clearly indicate that licence-holder under the Gujarat Control Order shall apart from any such conditions that may be imposed by the licensing authority, is required to observe other conditions as referred to in various sub-clauses under clause 18. One of such conditions is contained in sub-clause (5) of clause 18. Such opening words in clause 18 make it clear that conditions contained in various sub-clauses of clause 18 are applicable to licence-holders under the Gujarat Control Order.

7. It appears to us that the control and regulation of essential commodities under the Gujarat Control Order are applicable in connection with the user and sale of such essential commodities within the State of Gujarat and storage of such commodities must be linked with the sale and user within the State and not in connection with inter-State sale. It also appears to us that High Court is justified in holding that in the instant case the authority concerned and the learned Sessions Judge erroneously proceeded on the footing that the cement in question was stored at the relevant period not for the purpose of inter-State sale but for user within the State without complying the provisions of the Gujarat Control Order. Such finding was made not on consideration of relevant materials objectively but by basing the finding on surmise and conjecture and failing to appreciate that the respondent had been dealing with cement for sale in the State of Maharashtra and as a matter of fact more than 4/5th of the quantity procured by the respondent had been despatched to Bombay. A reasonable inference may be drawn from facts proved established or admitted. But such inference of fact must have an objective nexus to the fact proved, admitted or otherwise established and inference cannot be drawn on surmise and conjecture. It appears to us that in the instant case the cement in question remained stored in the godowns in the State of Gujarat and had not been transported to Bombay. Even if it is assumed that there was no valid justification for the delay in transportation of the cement in question, such delay by itself in the absence of other relevant materials cannot lead to an inference of storing for the purpose of user within the State. We, therefore, find no reason to interfere with the impugned order passed by the High Court. The appeal therefore fails and is dismissed.

8. It appears that during the pendency of this appeal, interim directions were made by this Court on 4-11-1982 and on 12-12-1983 for disposal of the said quantity of cement on certain terms and conditions. In view of the dismissal of the appeal the appellant is directed to comply with the directions contained in the said orders within a period of 4 weeks from today. Liberty is given to the parties to apply for further directions if necessary.

9. Let SLP (Cri) No. 2508 of 1985 be listed next week after showing the name of the learned counsel for the petitioner.

(BEFORE KULDIP SINGH, S.C. AGRAWAL AND B.L. HANSARIA, JJ.)

YASHWANT HARI KATAKKAR

Appellant;

Versus

UNION OF INDIA AND OTHERS

Respondents.

Civil Appeal No. ... of 1994^f, decided on September 19, 1994

Service Law — Permanent — Entitlement to status of — Employee putting in 18 1/2 long years of quasi-permanent service allowed to retire prematurely dehors the requirement of at least 20 years of service — Status of such employee — In absence of material on record to show as to why he had not been made permanent despite such a long period of service, held, he should be deemed to have become permanent — Hence, entitled to pension — Pension — Quasi-permanent employee — When entitled to pension — Central Civil Services (Pension) Rules, 1972, R. 48-A — Retirement — Voluntary retirement

(Para 3)

c) Appeal allowed

H-M/15495/SLA

ORDER

1. Special leave granted.

2. The appellant sought premature retirement from government service after he had put in 18 1/2 years of service in two different departments under the Central Government. Although a request for premature retirement could be made only after 20 years of government service but the Union of India granted premature retirement to the appellant at a stage when he had served the Government for 18 1/2 years. The question for determination is whether the appellant is entitled to any pensionary benefits. The Central Administrative Tribunal rejected the claim of the appellant.

3. Dr Anand Prakash, learned Senior Advocate appearing for the Union of India, has contended that on 7-3-1980 when the appellant was prematurely retired he had put in 18 1/2 years of quasi-permanent service. According to him, to earn pension it was necessary to have a minimum of 10 years of permanent service. It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 1/2 years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him as temporary/quasi-permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits. We allow the appeal, set aside the judgment of the Tribunal and direct the respondents to treat the appellant as having been retired from service on 7-3-1980 after serving the Government for 18 1/2 years (more than 10 years of permanent service) and as such his case for grant of pension be finalised

^f Arising out of SLP (C) No. 6365 of 1988