

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

ORDER SHEET

Original Application No. 28/06

Misc. Petition No. _____

Contempt Petition No. _____

Review Application No. _____

Applicant(s) Smt. Etomi Bala Nath

Respondent(S) U.O.I FORM

Advocate for the Applicants Matin B. M. Ahmed,
M. Sauma

Advocate for the Respondent(S) GGSG
Rly St. Counsel

Notes of the Registry	Date	Order of the Tribunal
	2.2.06	
	17.02.2006	

No. 2693/7977
Dated 25.1.06

1/e Dy. Registrar

bb

17.02.2006

Heard Mr. M. B. U. Ahmed, learned counsel for the applicant.

Issue ~~simple~~ notice to the respondents.

Post on 27.2.2006.

Vice-Chairman

When the matter came up for hearing, Dr. J. L. Sarkar, learned standing counsel for the railways submits that he would like to have six weeks time to file reply statement.

Post on 4.4.2006.

Vice-Chairman

mb

Notice & order received by Mr. J. L. Sarkar, Rly. S.C. on 7/2/06.

7/2/06

Notice duly served on resp. nos. 1 to 7.

7/2/06

Contd.....

4.4.06

The counsel for the respondents has prayed for adjournment to file written statement. The counsel for the applicant wants to file rejoinder. Let it be done. Post the matter on 4.5.06.

Vice-Chairman

Im

31-3-06

No W/S has been filed

my

4.5.2006

Respondents have filed their reply statement. Applicant has filed rejoinder. Applicant is directed to file the same in proper form.

Post on 23.5.2006.

Vice-Chairman

bb

A.4.06

W/S filed by the

Respondents.

Ar

01.06.2006

Learned counsel for the respondents submitted that he has received rejoinder. The short question is that the applicant has been granted temporary status as on 01.01.1984. According to the applicant, he was casual labourer prior to 01.01.1984. The question is whether the periods prior to grant of temporary status could be reckoned as qualifying service for grant of pensionary benefit, i.e. at-least 50 of the service. Learned counsel for the applicant will workout the position.

Considering the issue involved in the O.A. is admitted. Post on 20.06.2006 for hearing.

Vice-Chairman

5.5.06

Reply has been filed by the applicant.

W/S
5.5.06.

Rejoinder has been filed.

my
31.5.06

The case is ready for hearing.

mb

20.6.06

On the prayer of the counsel for the parties post the matter on 22.6.06 for hearing.

Vice-Chairman

22.06.2006

After hearing learned counsel for the parties, for some time, the learned counsel for the applicant is directed to produce the Workmen Compensation Act, 1923 enabling an employee to get benefit of pension if he completed 7 years of service and Chapter IX of Rule 401 and sub-rule (4), etc. The learned counsel for the respondents is directed to produce Rules 14, 18 and 131 of the Railways Pension Rules.

Post on 27.06.2006.

Wz and rejoinder
has been filed,

26.6.06

Vice-Chairman

mb

27.06.2006

Mr M.B.U. Ahmed, learned counsel for the applicant and Mr K.K. Biswas, learned railway counsel for the respondents were present.

The counsel for the applicant is directed to produce the relevant provisions.

Post on 28.06.2006.

Vice-Chairman

mb

28.06.2006

Heard Mr M.B.U. Ahmed, learned counsel for the applicant and Mr K.K. Biswas, learned railway counsel for the Respondents. Hearing concluded. Reserve for orders.

Vice-Chairman

mb

01.08.2006

Judgment pronounced in open Court kept in separate sheets. The application is allowed in terms of the order. No order as to costs.

Vice-Chairman

mb

And copy of order
sent to
Advocate
11/8/06

25.8.06

C. Copy has been
collected by the L/Adv.
for the applicant.

PUC C

Memo No. HC.XXII. 7244-52 / 1111
15.12.06 received from The Asstt.
Registrar (Jd), Gauhati High Court,
Gimwahati.

The order dtd 1.12.06 passed in
NP(C) No. 5927/06 may kindly be
seen at the PUC.

The claim of Jd's on our file
filed the above mentioned NP(C)
against the Jd's and order d. 1.8.06
passed in O.A. No. 28 of 2006 which
was allowed by this Tribunal. But
the Hon'ble High Court has upheld
the C.A.'s order on 1.12.2006.
Submitted for favour of kind
perusal.

AS 2/1/07
Jd's
8.2.07
SOL (J)
SP/Hon'K

SP
8/2/07

80 - 7 FEB 2007

गुणाहारी न्यायपीठ

CIVIL APPELLATE SIDE

W. P (C) No. 5927 of 2006

Respondent	Opposite Party
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Respondent M. B. U. Ahmed
For _____
Opposite Party Adv. for caveator

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports orders or proceedings with signature
1	2	3	4
<p>50(3) <u>NS</u> 31/1/07</p>			
<p><u>in name</u></p>			
<p><u>NYS</u></p>			

Sw(J)
N5
31.1.07

Mr. Lamm

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

WP(C) No.5927/06

PRESENT

**HON'BLE THE CHIEF JUSTICE B.S.REDDY
HON'BLE MR.JUSTICE B.P.KATAKEY**

01.12.2006.

KATAKEY,J: -

The Railway Administration by way of this writ petition has challenged the order dated 1st August,2006 passed by the learned Central Administrative Tribunal, Guwahati Bench in O.A. No.28/06 directing the respondents to pay the family pension to the present respondent.

We have heard Mr. S. Sarma, learned counsel for the petitioner and as well as Mr. MBU Ahmed, learned counsel for the respondent.

The petitioners are resisting the order passed by the learned Tribunal basically on two grounds, namely, the Pension Rules does not permit granting of family pension to the family of the deceased employee, he having not completed 10(ten) years of qualifying service and secondly, on the ground of limitation, contending that the original application filed by the present respondent before the learned Tribunal is barred by time.

The learned Tribunal, on the basis of the materials available on record, came to the finding

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
	2	3	4

that the husband of the respondent herein before his engagement as Gangman w.e.f. 10.11.82 to 18.8.92, also worked as casual worker for a period of 3 years.

10 months 1 day and accordingly in terms of the

Master Circular dated 12.8.93, which provides for

counting 50% of the period of such casual

engagement for the purpose of pensionary benefits,

counted 1 year 11 months period towards the

qualifying service required for granting family

pension. The learned Tribunal has thus found that

the deceased employee therefore rendered more

than 10 years qualifying service and as such entitled

to family pension. The learned Tribunal has also

rejected the plea of limitation taken by the Railway

Administration by holding that the claim for

pensionary benefits being a continuity cause of

action, the question of limitation does not arise.

In our considered view, the learned Tribunal has not committed any error apparent on the face of the record, requiring interference by this Court under Article 226 of the Constitution.

Hence, this writ petition is dismissed. No costs.

Sd/- B.P. Katakey. Sd/- B.S. Reddy.
JUDGE. CHIEF JUSTICE.

Contd...

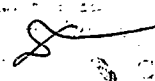
URGENT

Memo No. HC. XXI. 3744-52 / R.M. Dtd. 15/12/06

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Govt. of India, Ministry of Railways, New Delhi-1.
2. The General Manager N.F. Railway, Maligaon, Guwahati.
3. The Chief Engineer (Con- III) N.F. Railway, Maligaon, Guwahati.
4. The Deputy Chief Engineer (COM) 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-1) N.F. Railway, New Jalpaiguri, West Bengal.
7. The Chief Personnel Officer N.F. Railway, Maligaon, Guwahati.
8. Smt. Eroni Bala Nath, wife of Late Mangalu Ram Nath resident of Village-Rampur, P.O. Sorbhog, Dist. Barpeta, Assam.
9. The Registrar, Central Administrative Tribunal, Guwahati Bench Rajgarh Road, Bhangagarh, Guwahati- 781005.

By order


Asstt. Registrar (Judl.)
Gauhati High Court, Guwahati.

Chy
13/12/06

*Placed
in the
Record*

[Large handwritten signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

O.A. No. 28 of 2006

DATE OF DECISION 01.08.2006

Srimati Eroni Bala Nath

.....Applicant/s

Mr.M.B.U.Ahmed

.....Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors.

.....Respondent/s

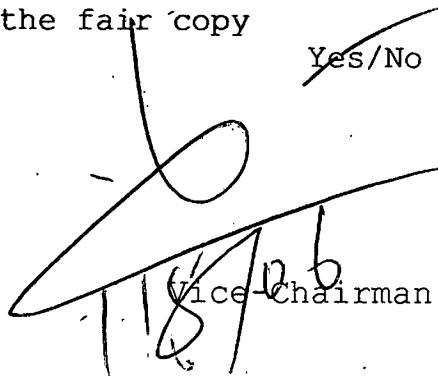
Mr.K.K.Biswas, Railway Counsel

.....Advocate for the
Respondents

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 complied at Jodhpur Bench? Yes/No ☒
4. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No ☒


Vice-Chairman

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 -

1. 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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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 Oesophagus. The death certificate will show that he died on 18.8.1992 (Annexue-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:-

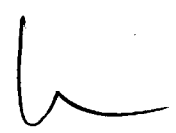
- "(i) To direct the Respondent Authorities to forthwith release the family pension of late Manglu Ram Nath, Ex. Gangman, CPWI/NJP/CON as admissible under the Pension Rules and the Casual Labour (Grant of Temporary Status and Regularisation) Scheme, 1989 and subsequent schemes of the Government of India.



(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.

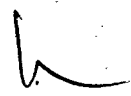
(iii) Cost of this application."

2. The respondents have filed a detailed reply statement contending that as per record of Service Book the date 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 abinitio. 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 Ironi Bala Nath". She has sworn in an affidavit on 11.4.2006 before the Judicial Magistrate, Kamrup



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.,

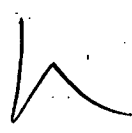
4. Heard Mr.M.B.U.Ahmed, learned counsel for the applicant and also Mr. K. K. Biwsas, learned Railway counsel for the respondents. Counsel for the parties have taken my attention to various pleadings, materials and evidence placed on record. Counsel for the applicant argued that admittedly the deceased 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.

7. 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:-

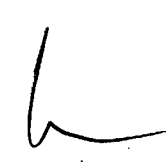
"to count half of the service rendered (i) in the case of open line casual labour after 1.1.61 (after attaining temporary status) and (ii) in the case of Project casual Labour (after attaining temporary status) after 1.1.81, towards qualifying service for

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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 1.1.981, 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."



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.



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.

A handwritten signature in black ink, consisting of a large, stylized 'S' shape with a horizontal line extending to the right.

(K.V.SACHIDANANDAN)
VICE CHAIRMAN

BB

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH
AT GUWAHATI

O.A. No. 28 of 2006

Smt. Eroni Bala Nath

-- Applicant

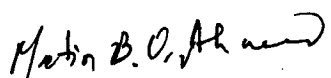
Vs

Union of Indian & Others

-- Respondent

C I T A T I O N

1. Administrative Tribunal Judgement
2003 (3) Page 478 K. Ayyappan Vs. Union of India
decided on 24-01-2003 in O. A. No. 543/2002
(Ernakulam Bench)
Pension : Temporary status on completion of 6 months Continuous
Service in Railway
"Applicant husband held entitled to count his service for 15-
12-1979 till he was die in harness for the purpose of
pensionary benefit."
2. Administrative Tribunal Case
1992 (20) 280 Union of India-Vs- Basantlal & others Civil Appeal No. 847 of
1992 decided on Feb. 18, 1992 Supreme Court of India
Regularisation : Casual Labour employed by Railway continuously
working for over 120 days-- Held entitled to be regularised of
temporary worker.
3. Supreme Court Cases (1982) 1 SCC page 645
L. Robert D. Souza Vs-Executive Engineer Southern Railway.
Railway Establishment Manual-- person rendering more than 6 month
continuous service as peon / Lascar in the construction Div. not in project of
the Railway and Subject as transfer several occasion, held as temporary
worker not casual labour.


Matin B. U. Ahmed
Advocate

A-3), charge sheet dated 28.12.93 and order dated 29.9.95, Annexure A-10) are hereby quashed. It shall be scarcely necessary to mention that the disciplinary authority shall be at liberty to proceed with the disciplinary proceedings held in pursuance of the charge sheet dated 23.3.93 (Annexure A-1) 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

Applicant

Versus

The Union of India and Ors

Respondents

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, Palghat Division, was initially engaged as a substitute khalasi in the Mechanical Department of Southern Railway, Palghat Division. It is averred that on completion of six months continuous service, the applicant was given temporary status with effect from 20.05.1968. Subsequently, he was illegally terminated from service with effect from 16.01.1970. Applicant and 19 other similarly situated persons challenged their termination in O.P. No. 945/970 and the orders of termination were set aside by Hon'ble High Court of Kerala vide judgment dated 26.05.1972. The applicant and others were taken back on

duty and granted arrears of pay and allowances for the period from 16.01.1970. Later, his services were regularised according to rules and finally he superannuated from service on 30-04-1998. 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 20.05.66. Thereafter, his services were discon-

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continued from 27.01.70. But on account of the direction of Hon'ble High Court in O.P. No. 945/1970, he was reengaged as substitute Khalasi with effect from 22.08.72, alongwith 19 other similarly situated employees. Applicant retired from service as Loco Khalasi holder 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 Khalasi, 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 duly 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 Khalasi 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 of 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 copetitioners, who were similarly and identically situated, were granted entire benefits as per direction of this Tribunal in O.A. Nos. 1453/98 and 1626/98. 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 20.11.67. It is averred that the contention of the applicant 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 a manipulated one as stated by the applicant. There cannot be any assumption or presumption as contended by the applicant in the maintenance of service record as this is the prime 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. Rajeswar Krishnan (represented by Mrs. Seema), learned counsel for the respondents and have perused the material, pleadings and documents placed on record.

6. We have given due consideration to the arguments advanced by both the parties.

7. Since the entries made in the service register are disputed 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:-

"6. 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. From 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. 1453/98, P. Kuttinarayanan 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 applicants' 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 Khalasi shown as 13.4.69."

9. It is pertinent to note that all the applicants in the aforesaid OAs and the applicant in this OA 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

taken as a substitute Khalasi and not as casual labour. The direction of Hon'ble High Court in the said O.P. was to reinstate the applicant and had the applicant been a mere casual labour, the respondents would not have reinstated him as a substitute Khalasi. Therefore, the contention of the respondent that the applicant was only a casual labour at the time of his original engagement will not stand good. Learned counsel for the applicant submitted that in Mechanical Department (Loco Division) skilled labour service is required and therefore, substitute Khalasi is being posted and not the casual labour. It is true that the casual labourers generally do not occupy a post. But it is evident that the applicant in this case who was one of the petitioners before the Hon'ble High Court in O.P. No. 945/1970, was occupying a post and while implementing the judgment of the High Court, the applicant was reinstated in service. In a similar matter in OA No. 1453/98, the Tribunal made the following observation:

We have heard learned counsel on either side and have perused the pleadings and other material placed on record. The grievance of the applicant is that, the respondents have in his service record, entered 22.8.72 as the date of which he commenced substitute service, which according to the applicant is an incorrect statement, as he has been granted temporary status as substitute, with effect from 13.4.69. The sole question, therefore, is whether the applicant was a temporary status attained substitute on 13.4.69 or was only a temporary status casual labourer with effect from that date. An answer to this question can be gathered from the judgment of the Hon'ble High Court and the action of the respondents pursuant to the above judgment in O.P. No. 945/70. It has been stated in the opening sentence of the judgment itself that the petitioners were employed as Khalasi in the Olavakkode Division of Southern Railway, in page 6 of the judgment, it has been observed by the High Court as follows:

"...I have already referred to the relevant contention. It is the case of the respondents that when permanent staff from other Divisions had to be employed in the posts occupied by the petitioners necessarily they had to be thrown out."

The casual labourers generally, do not occupy a post. It is evident that the applicants in this case who was one of the petitioners before the High Court in O.P. NO 945/1970, was occupying a post. It is the admitted case of the respondents that in implementation of the judgment of the High Court, the applicant was reinstated in service on 22.8.72 and that this reinstatement was as Substitute Khalasi. If the applicant was only a Substitute Casual Labourer, respondents would not have reinstated the applicant on 22.08.72 as substitute Khalasi, but as a casual labourer. The contention of the respondents therefore, that the applicant was only a casual labourer on 30.4.69, has to be rejected."

10. The respondents have no case that facts in this O.A. and the other OAs mentioned above are different. In these circumstances, the present OA also has to be decided in tune with the decision in O.A. Nos. 1453/98 and 1626/98 (supra) as the applicants therein are identically and similarly situated persons in O.P. No. 945/1970. The operative portion of the order in O.A. No. 1626/98 is reproduced as under:

"4. In the result, the contention of the respondents are rejected. The application is allowed declaring that the recording of the applicant's date of entry in the service register as 22.08.72 is unjust and arbitrary

and that the applicant is entitled to have his date of entry in their service register as Substitute Khalasi shown as 13.04.69. We direct the respondents to change the date of entry of the applicant as Substitute Khalasi to 13.04.69 deleting the date 21.08.72. This shall be done and intimation of it given to the applicant within a month from the date of receipt of a copy of this order. There will be no order as to costs."

11. Apart from the above, we find from the records that applicant's service from 20.05.68 till date of his superannuation on 30.04.98 was never treated as non-qualifying service for the purpose of pension and other retiral benefits. Vide Annexure A/2, it appears that the benefit claimed has already been granted to the applicant. The Senior DPO in terms of CPO/Madras letter No. P/S: 443/N/O.L O.A. No. 945/70, dated 26.07.01 giving effect to the order in OA No. 945/70, has allowed reckoning the services rendered by the applicant from 20.05.68 to 21.08.72 for the purpose of pensionary benefits. Annexure A/2 never mentioned that 50 % of the service period could only be reckoned for the purpose of pensionary benefits, as contended by the respondents in the reply statement. So also, Annexure A/3 did not specifically speak about the calculation made in respect of fixation of pension of the applicant. Only from the reply statement one could gather that the pension has been calculated taking into account 50% as qualifying service from 20.05.68 to 21.08.72, and benefits were granted to the applicant. According to the applicant, this is not in consonance either with Annexure A/2 or the findings of Hon'ble High Court in O.P. No. 945/1970. Since similarly situated persons were granted entire benefits by the orders of this Tribunal referred to above, Annexure A/3 is discriminatory to the extent it calculates applicant's pension on a total qualifying service of 27 years and 6 months and deserves to be quashed.

12. Taking into consideration the entire aspect, we are of the considered view that the applicant is entitled to get pensionary benefits on total qualifying service of 29 years 11 months and 10 days (to be rounded to 30 years) by reckoning his past service (before reinstatement) as Substitute Khalasi and the entry in the service register as casual labourer before his reinstatement is to be changed accordingly. This is more so, since identically placed employees in other OAs were granted entire benefits and already implemented the same.

13. In the result, the contention of the respondents are rejected. The application is allowed declaring that the applicant is entitled to have his dated of entry in service register as Substitute Khalasi on 20.05.68. He is entitled to pensionary benefits counting the full period with effect from 20.05.68. Accordingly, we set aside and quash Annexure A/3 dated 12.11.2001 to the extent it calculates applicant's pension on a total qualifying service of 27 years and 6 months and direct the respondents to treat the applicant as Substitute Khalasi from the date of initial engagement and grant him full pension having completed 30 years of service, as observed above. However, we do not find any reason to grant any consequential benefits or any interest as claimed by the applicant. We make it clear that the benefits of reckoning such period will only be given for the pension purpose alone. The arrears, if any, on account of revision of pension flowing out of this order shall also be paid to the applicant. The exercise shall be done within three months from the date of receipt of a copy of this order and an intimation to this effect be given to the applicant within fifteen days thereafter.

14. There will no order as to costs.

levelled against the appellant. In the result, we allow this appeal, set aside the orders of the High Court as well as the trial court and decree the suit filed by the plaintiff-appellant to the extent of quashing the order of dismissal dated February 26, 1962 as well as the order of Appellate Authority dated May 18, 1962 and exonerate the appellant from all the charges levelled against him. In the circumstances of the case, no order as to costs.

(1992) 20 Administrative Tribunals Cases 280

Supreme Court of India

(BEFORE N.M. KASLIWAL AND K. RAMASWAMY, JJ.)

UNION OF INDIA AND OTHERS

Appellants,

Versus

BASANT LAL AND OTHERS

Respondents.

Civil Appeal No. 847 of 1992¹, decided on February 18, 1992

Labour Law — Regularisation — Casual labour employed by Railway — Continuously working for over 120 days — Held, entitled to be regularised as temporary workers — Railway cannot deny them the temporary status on the ground that they had been appointed as casual labour on a project work and not on construction work on open line and as such they would acquire the temporary status only after completing 360 days of service — Directions issued — Railway Establishment Manual, R. 2304

Appeal disposed of

R-M/TS/11153/CLA

Advocates who appeared in this case:

Dr Anand Prakash Sharma, Senior Advocate (S.N. Sikka and B.K. Prasad, Advocates, with him) for the Appellants;
D.N. Goburuban, Ms Pinki Anand and G.K. Luthra, Advocates, for the Respondents.

The Judgment of the Court was delivered by

KASLIWAL, J.— Special leave granted.

2. The Union of India has filed this appeal by grant of special leave challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated March 16, 1990. Shri Basant Lal and 104 others were employed on the post of casual labour in July 1988. Their services were terminated by oral order dated December 19, 1988. The workers submitted a representation against their illegal termination. Their contention was that they had been working continuously for more than 120 days and as such were entitled to the status of temporary Railway servants. Having received no response to their representation, they approached the Central Administrative Tribunal. It was an admitted case of the Railway that the casual labourers who have worked con-

tinuously for more than 120 days in open line and those who have worked for more than 360 days on projects acquire temporary status and they will be entitled to the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. Thus, the contention of the Railway was that the workers in the present case were employed in project work and having completed nearly 143 days of work with effect from July 26, 1988 to December 19, 1988 and having not completed 360 days of continuous work, they were not entitled to acquire temporary status. The case of the workers was that they had worked for over 120 days continuously in the Construction Division of the Northern Railway other than projects and as such they had acquired temporary status. The Tribunal held that admittedly all the applicants before them had completed more than 120 days of continuous service as such they had acquired temporary status. The workers had been given casual labour cards. The Tribunal also referred to a letter of General Manager, Northern Railway dated December 29, 1978 which contained reference of earlier instructions vide letters dated March 21/22, 1972, May 23, 1972 and November 27, 1975 in accordance with which casual labourers whether employed on project or otherwise who had completed four months' continuous service were required to be considered for employment by a Screening Committee for absorption against regular class IV posts and casual labour on project who as a rule be appointed against class IV posts that may be required for operation and maintenance of new assets created and they were eligible for appointment on new section of the open line of the Railway concerned irrespective of the limitation of the immediate area of the construction. The workers had alleged in para 37 of their application that the aforesaid instructions which had statutory force were not being implemented by the Railway. In reply to the said allegation the Railway admitted the same as a "matter of record". The Tribunal in the above circumstances held that the applicants before them had worked for more than 120 days as such they will be deemed to have acquired temporary status and this conclusion was further supported by the letter of the General Manager, Northern Railway, dated December 29, 1978 extracted above. The termination of their services without giving them a notice was in violation of the provisions of Rule 2304 of the Indian Railways Establishment Manual and was not sustainable in law. The Tribunal thus set aside and quashed the termination orders and gave a direction to reinstate them and to consider for engaging them in the zone of the Railway where they had been engaged, failing which anywhere else in India depending on the availability of work. In the circumstances of the case the Tribunal did not allow the payment of back wages. It was also directed that the Railway shall consider the absorption of the applicants in the regular posts in group IV category in accordance with their length of service and the relevant Rules. The Railway was directed to comply with the above directions within a period of three months from the date of communication of the order.

From the Judgment and Order dated March 16, 1990 of the Central Administrative Tribunal, New Delhi in O.A. No. 2467 of 1988

Consistent with the order of the Tribunal dated 18.2.1992

3. We have heard Dr Anand Prakash, Senior Advocate on behalf of the Union of India and Shri Goburdhan, Advocate on behalf of the workers. It was not disputed before us by learned counsel for the Union of India that in case the workers were employed in the construction work on the open line then they would acquire a temporary status after continuous employment of 120 days, but if the workers were employed on a project work then they can acquire temporary status only after completing 360 days of service. Learned counsel thus strenuously urged that in the present case the stand taken by the Railway was that the workers were employed in the Construction Division and being project workers, the rule of 360 days of service ought to have been applied in their case. It was also contended that the Tribunal did not record a finding that the workers in the present case were engaged on open line and not on project works and in the absence of such finding the Tribunal was wrong in applying the rule of 120 days of continuous service in the present case.

4. We have considered the arguments advanced on behalf of both the parties and have thoroughly perused the record. The workers had clearly come forward with a case that they were employed as casual labour in the Construction Division and in this regard they placed on record the letter of appointment Annexure IV which reads as under:

"INFORMATION—

You are being informed by Asst. Engineer Construction/Northern Railway, Kurukshetra by information No. E-II/AEN/C/KKDEA/dated July 19, 1988 that you are being appointed in the post of as casual labour. This appointment shall only be for the monsoon period. In this duration, your services can be terminated at any moment. You shall not be entitled for any claim in respect of this service.

N.E. IT/R.P.G./N/Ambala

Chawni, dated 7/88

Permanent way Inspector/
Construction N. Railway."

In the application filed before the Tribunal the workers took a clear stand that they were class IV employees in the Northern Railway and were employed in the Construction Division and employed as Gangmen and Mates. They had been working for over 120 days and as such were entitled to all the rights and privileges admissible to temporary Railway servants. The workers in para 4.37 of their application stated as under:

"That in fact, the Railway Board, and high officials have always considered the class IV employees in high esteem. It has even ordered by a Railway Circular dated December 29, 1978, which has a statutory force that all workers in the Division be made permanent and regular after completing the mandatory days in casual work. It has also noticed, that, Delhi Divisions and other divisions are not following the orders, and they should

implement the orders. A true copy of the annexure is marked as Annexure V."

a The Railway filed a written statement before the Tribunal and gave the following reply to para 4.37:

"Para 4.37 is admitted only insofar as it is a matter of record. But the same is against ill-motivated and highly misconceived."

b The Railway as such did not deny the allegations made in para 4.37 in the application filed by the workers and on the other hand admitted by saying that it was a "matter of record". The contents of Annexure IV extracted above clearly goes to show that the information given by Assistant Engineer, Construction/Northern Railway, Kurukshetra dated July 19, 1988 workers were appointed in the post of casual labour and it nowhere mentioned that they were employed as casual labour on a project work. Apart from this letter, it is nowhere the case of the Railway that there was any other order of appointment, nor they have placed any documentary evidence on record before the Tribunal or even before this Court to show that the workers were employed as casual labour on a project work. A request was made on behalf of the Union of India that the case may be remanded to the Tribunal for allowing the Railways to produce relevant record to show that the workers were employed as casual labour in a project work. We do not consider it proper in the interest of justice to allow this opportunity to the Union of India at this belated stage and to further drag on the poor workers in this litigation.

e 5. Thus, in the circumstances mentioned above, we do not find any error in the order of the Tribunal so as to call for any interference. The Railway was directed by the Tribunal to comply with the directions within a period of three months from the date of communication of the order of the Tribunal dated March 16, 1990. Thereafter the workers had moved a contempt application before this Court and on March 12, 1991, this Court had directed the Union of India to give employment to all the respondents (workers) within two months and to pay them the salary equal to temporary status employee of the Railway at the initial stage of the pay. During the proceedings for contempt of court it was brought to our notice that the Railway had given employment to 35 workers initially and for the remaining 70 workers it was stated on January 6, 1992 that they have also been employed. In view of such statement made on behalf of the Union of India we did not consider it necessary to pursue the contempt petition any longer and the same was accordingly dismissed. In the circumstances mentioned above, we direct that all the 105 workers would be entitled to the salary equal to a temporary status employee of the Railway at the initial stage of the pay from May 12, 1991 when two months expired in accordance with our order dated March 12, 1991. It has been brought to our notice on behalf of the workers that they have been uprooted from their original place and even now they are being given daily wages at the rate of Rs 19.10 paise and not being given the wages equal to a temporary status employee of the Railway

at the initial stage of pay. We, therefore, direct the Railway authorities to pay the back wages to all the employees from May 12, 1991 equal to a temporary status employee allowed at the initial stage of pay within two months from today after adjusting any amount already received by them. The Railway authorities shall accord the status of temporary employee to all the 105 workers. The workers shall also be entitled to one set of costs from the petitioner, Union of India. We dispose of the appeal in the manner indicated above.

(1992) 20 Administrative Tribunals Cases 284

Supreme Court of India

(BEFORE KULDIP SINGH, K. JAYACHANDRA REDDY AND
YOGESHWAR DAYAL, JJ.)

RATAN KUMAR CHATTERJEE AND OTHERS

Versus

STATE OF BIHAR AND OTHERS

Civil Appeal No. 1353 of 1991¹, decided on March 27, 1991

Appointment — Selection — Reselection — Overage — Selection rendered ineffectual owing to claim of other retrenched government employees — On facts, giving effect to select list now found improper — Reselection ordered — Those in select list now overage must be considered in the fresh selection — Village level Workers and Village Extension Workers (Recruitment and Conditions of Service) Rules, 1987

M/A/10922/SLA

ORDER

1. Special leave granted.

2. Recruitment to the post of Village Level Workers/Village Extension Workers is governed by the statutory rules called the Village Level Workers and Village Extension Workers (Recruitment and Conditions of Service) Rules, 1987 (hereinafter called 'the Rules').

3. In response to the advertisement dated May 13, 1987, appellants applied for appointment to the post of Village Level Worker/Village Extension Worker. The process of selection was completed and a Select List of 152 candidates including the appellants was finalised on November 15, 1987. At that point of time some retrenched employees of the Census Department represented to the government that on the basis of the government instructions regarding retrenched employees they had the preferential right for appointment to the above posts and the Select List could not be operated. Subsequently, a

¹ Arising out of Special Leave Petition (C) No. 13464 of 1990

writ petition for the said relief was also filed by those retrenched employees in the Patna High Court. It was under these circumstances that the appellants and other selected candidates could not be sent for training. Meanwhile, the government also became conscious of its own instructions providing one year life to the Select Panels. To overcome various objections to the Select List the government referred the matter to more than one committee but no final decision could be reached and ultimately the appellants filed a writ petition in the Patna High Court seeking mandamus to the effect that they be sent for training and thereafter be appointed under the Rules. The High Court dismissed the writ petition in limine.

4. It is no doubt correct that due to no fault of the appellants the Select List remained inoperative with the result that the appellants could not be sent for training. We are of the view that issuing a direction to the State of Bihar to send the appellants for training at this point of time would do more harm than good.

5. In the facts and circumstances of this case we are of the view that the interests of justice would be met if we direct the State of Bihar to initiate process of selection afresh and complete the same in accordance with Rules within six months from the date of the receipt of this order. We do accordingly. We further direct that the appellants and other similarly situated persons shall be considered for selection notwithstanding the fact that some of them have become overage by the time of fresh selection. With these observations the appeal is disposed of with no order as to costs.

(1992) 20 Administrative Tribunals Cases 285

Supreme Court of India

(BEFORE L. M. SHARMA, J.S. VERMA AND S.C. AGRAWAL, JJ.)

STATE OF JAMMU & KASHMIR

Appellant;

Versus

A.R. ZAKKI AND OTHERS

Respondents.

Civil Appeal No. 4879 of 1991¹, decided on December 6, 1991

Constitution of India — Arts. 226 and 234 — Writ of mandamus — Can not be issued to legislature or to executive exercising rule making power — Hence High Court cannot issue writ of mandamus to Governor exercising power to make rules under S. 110 of Constitution of J & K to incorporate the amendments recommended by it in the existing rules relating to employees of the High Court — Jammu & Kashmir Civil Services (Judicial) Recruitment Rules, 1967, R. 4 — Constitution of J & K, S. 110

Constitution of J & K — S. 110 — Recommendations made by High Court for amendments to R. 4 of J & K Civil Services (Judicial) Recruitment Rules, 1967 — Various aspects adverted to by Public Service Commission for consid-

¹ Arising out of SLP (C) No. 12336 of 1991

Rs 21,023-53 with interest thereon at the rate of four per cent and this decree was drawn up on April 23, 1970.

8. Section 319(2) of the 1961 Act runs thus:

Every such suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.

Relying upon this provision counsel for the appellant urged that since the suit had been filed on May 7, 1964 the respondent's claim for refund during eight months prior to May 7, 1964 would be within limitation but the rest of the claim from February 1, 1962 to September 7, 1963 would be barred by limitation and to that extent the decree in favour of the respondent firm deserves to be modified.

9. We are not inclined to entertain this contention sought to be urged by counsel for the appellant before us for more than one reason. It is true that this bar of limitation under Section 319(2) was pleaded by the appellant Council in its written statement and an issue thereon was also raised at the trial but the trial court held that the claim arising under the new Act after February 1, 1962 was not barred by limitation because cause of action arose on September 24, 1963 when there was refusal to pay or accede to the notice of demand but when the matter was carried in appeal to the High Court by the respondent firm against the dismissal of their claim on merits and the High Court reversed the trial court's view on merits and held that the plaintiffs' claim for the period subsequent to February 1, 1962 was liable to be decreed, this point of limitation arising under Section 319(2) was neither raised nor pressed before the High Court. No contention was raised that the refusal to pay on September 24, 1963 did not give rise to the cause of action but that it arose on dates when goods were exported and refund vouchers were presented or certified. Had it been pressed the High Court would have, while remanding the matter given appropriate directions to the trial court in that behalf. This shows that the appellant Council acquiesced in the trial court's finding on the question of limitation, namely, the cause of action arose on September 24, 1963. Secondly, while applying for a certificate from the High Court for appeal to this Court the appellant Council sought the certificate on points touching the merits of the claim and not on the question of limitation. Further in the Memo of Appeal filed in this Court the grounds do not include the point of limitation. Lastly, the point raised cannot be said to be a pure question of law as it will require investigation into facts to ascertain the exact date or dates of accrual of the cause of action. When on the point of limitation the appellant Council had at one stage acquiesced in the trial court's finding and did not raise the question in appeal before the High Court we do not think it would be fair or just to permit the appellant Council to raise the plea of limitation in this Court, especially when the result of allowing such plea might be to defeat the just claim of the respondent firm.

10. In the result the appeals are dismissed and each party will bear its own costs.

(1982) 1 Supreme Court Cases 645

(BEFORE D.A. DESAI AND R.B. MISRA, JJ.)

L. ROBERT D'SOUZA

Appellant;

Versus

EXECUTIVE ENGINEER, SOUTHERN RAILWAY
AND ANOTHER

Respondents.

Civil Appeal No. 1613 of 1979†, decided on February 16, 1982

Labour and Services — Industrial Disputes Act, 1947 (14 of 1947) — Sections 2(cc) and 25-F — Termination of service for unauthorised absence from duty amounts to 'retrenchment' — Even a casual or seasonal workman who rendered continuous service for one year or more cannot be retrenched on such ground without complying with the requisites of Section 25-F

Labour and Services — Industrial Disputes Act, 1947 (14 of 1947) — Sections 25-F and 9-A — Requirement of serving notice under Section 25-F not dispensed with by proviso (b) to Section 9-A

Labour and Services — Termination — Absence without leave is a misconduct and termination of service on such ground without complying with minimum principles of natural justice would not be justified

Labour and Services — Railway Establishment Manual — Rules 2501, 2505, 2301 and 2302 — Casual labour or temporary servant — Determination of — Person rendering more than six months' continuous service as Peon/Lascar in the Construction Division and not in any 'project' of the Railways and subjected to transfer for several occasions, held, is a temporary workman and not casual labour — Hence, termination of his service, merely on his absence without leave, without complying with the requirements of Rule 2302, would be illegal and void — Temporary

Labour and Services — Railway Establishment Manual — Rule 2505 — To be read subject to Section 25-F of Industrial Disputes Act, 1947 where a casual labour rendering continuous service for a period of one year or more is sought to be retrenched

Labour and Services — Temporary — Appellant deprived of the status of temporary servant due to his discharge from service while his colleagues equally circumstanced regularised and conferred that status after the appellant's discharge — Held, action discriminatory — Constitution of India, Articles 14 and 16

Words and Phrases — 'Project' — Meaning of — Labour and Services — Railway Establishment Manual, Rule 2501(b)(ii)

The appellant joined service in the Southern Railway as a Gangman. He rendered continuous service in the Construction Division for not less than 20 years and in the course of his service he was transferred to several places, but all the same he was denied the status of a temporary and/or

† Appeal by special leave from the Judgment and Order dated January 9, 1979 of the Kerala High Court in O.P. No. 4401 of 1974

Enfiled by Mr. B.D. Misra

In the present case neither the appellant nor other requirements of that section were complied with and Section 25-F was served on the appellant, being retrenchment, for failure to comply with Section 25-F would be void ab initio.

(2) The test provided in Rule 2501 in Chapter XXV of the Indian Railway Establishment Manual is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. Therefore, if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour.

From the established facts of the present case it appears that the appellant was in continuous uninterrupted service in the construction unit of the Railways for a period of at least 20 years and was working as Peon/ Lascar. Therefore, he must be deemed to be a temporary servant entitled to all the benefits available to such class of servants even if he had been referred to as belonging to casual labour staff. (Para 16)

Although a casual labour can be employed in a 'project' irrespective of duration by virtue of Rule 2501(b) (ii), every construction work does not imply project. Project is confined to planned projects in which the workman is treated as work-charged. Construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated to project. The appellant belonged to the construction unit and therefore, he cannot be said to be working on project.

Moreover, the definition of 'casual labour' in Rule 2501 clearly indicates that the person belonging to casual labour is not liable to transfer. But continuously for 26 years and when he questioned the bona fides of his transfer he had to be re-transferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2505. Rule 2302 clearly prescribes the mode, manner and methodology of terminating service of a temporary railway servant and admittedly the procedure therein prescribed having not been carried out, the termination is void and invalid. (Paras 21 and 22)

(3) Even assuming that he was a daily-rated worker, once he rendered continuous uninterrupted service for a period of one year or more within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly, the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid.

regular workman and was treated as a daily-rated casual labour. Those who were victims of the treatment formed the Southern Railway Construction Workers' Union of which the appellant was the General Secretary. The appellant alleges that owing to his trade union activities he was transferred from his last place of posting where he was working as Pooni Lascar, though later as a result of mediation by a trade union leader his transfer was cancelled and he was allowed to be paid arrears of wages and granted continuity in service for the period he did not join duty at the place of his transfer. Later the appellant went on fact into debar for repudial of the grievances espoused by the Union, but on the intervention thereafter, the authorities issued the impugned order terminating his service for his unauthorised absence from duty. Declaring the termination order to be void and allowing the appeal with costs the Supreme Court.

(1) The expression "termination of service for any reason whatsoever" in the definition of the expression "retrenchment" in Section 2(oo) of the I.D. Act covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF. Once the case does not fall in any of the exempted categories, the termination of service even if it be according to automatic discharge from service under agreement, would nonetheless be retrenchment within the meaning of expression in Section 2(oo). So that if the name of the workman is struck off the rolls that itself would constitute retrenchment. Therefore, the termination of service for unauthorised absence from duty in this case would be retrenchment within the meaning of Section 25-F and so the pre-conditions to a valid retrenchment set out in Section 25-F must be satisfied.

[illegible]

The submission that in view of the provision contained in proviso (b) to Section 9-A, the notice contemplated by clause (a) of Section 25-F would be dispensed with, is without merits. The notice of change contemplated by Section 9-A and notice for a valid reengagement under Section 25-F are two different aspects of notice, one having no correlation with the other. In order to attract Section 9-A the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. Since reengagement which connotes termination of service, cannot constitute change in conditions of service in respect of any item mentioned in Fourth Schedule, Section 9-A would not be attracted. Reengagement is specifically covered by item 10 of the Third Schedule. (Para 5 and 9)

1. *Westburn v. City of San Jose*, 1971, 300 F.2d 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687

(4) Further, after the termination of his service if the appellant, his colleague belonging to the same category and having almost equal period of service, was treated as on regular employment and ceased to belong to the category of casual labour. This is a discriminatory treatment. If his colleague was accorded the status of regular employee, the appellant could not be distinguished and treated otherwise but for a singular unfortunate event of his termination of service. If by operation of law, Rule 2501, the appellant had acquired the status of temporary railway servant by rendering continuous uninterrupted service for more than six months, his service could not have been terminated under Rule 2505.

(5) Further, absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and enquiry or at any rate without complying with the minimum principle of natural justice.

[However, the Court observed that Rule 2501 which permits a man serving for 10, 20 or 30 years at a stretch without break being treated as daily-rated servant, is thoroughly opposed to the needs of socio-economic justice and it is high time that the Railway Administration brings this part of the provision of the Manual in conformity with the Directive Principles of State Policy.]

R-N/5767/CL

Advocate who appears in this case :

K.R.R. Pillai, Advocate, for the Appellant;
P.L. Prasad, Senior Advocate (M/s A. Subramanian, Advocate, with him), for the Respondents.

The judgment of the Court was delivered by

DESAI, J.—Appellant L. Robert D'Souza joined service as a Gangman at Mangalapuram in Southern Railway on July 1, 1948. In course of his service he was transferred to various places. When he was last working as Lascart at Ernakulam, on October 8, 1974 the Executive Engineer (Construction), Ernakulam indicated to him that his services were deemed to have been terminated from September 18, 1974, from which date the appellant was said to have absented himself from duty. This letter has an important bearing on the issues raised in this appeal, and, therefore, relevant portion may be extracted here :

You have absented yourself unauthorisedly from September 18, 1974 and hence your services are deemed to have been terminated from the day you have absented yourself. Please note.

Since you are no longer on the rolls of this office you should vacate the quarters allotted to you immediately failing which action will be taken to evict you.

According to the appellant up to the date of unauthorised and illegal termination of his service he had rendered continuous service for a period of 26 years yet the Railway Administration wrongfully treated him the status of a temporary and not regular workman and treated him a daily-rated casual labourer. This treatment according to the appellant was so unfair that it prompted persons who were victims of this unfair treatment by the Railway Administration to form a Union named Southern Railway Construction

WORKERS' UNION, ERNAKULAM, of which the appellant was the General Secretary. The Union submitted a charter of demands which presumably irritated the authorities and chagrined by it, the appellant was transferred to Padmanur in Tamil Nadu by way of punishment. As the late Shri A.K. Gopalan, who was a renowned trade union leader, espoused the cause of the appellant, his transfer was cancelled and he was reposted and allowed to continue at Ernakulam after paying the arrears of wages and granting continuity of service for the period he did not join duty at the place of his transfer. This is quite evident from the letter of the Under-Secretary, Ministry of Labour, dated April 23, 1974, which reads as under :

With reference to your letter dated May 28, 1973, on the above subject, I am directed to say that it has been reported by the Ministry of Railways that the Southern Railway Administration has been advised that as you were transferred back to Ernakulam on March 19, 1971, you should be deemed to have been on duty for the intervening period from March 8, 1970, to February 19, 1971, and your wages paid accordingly.

2. The local superiors of the appellant were annoyed by the success of the appellant and they were on a look out for settling the score with the appellant. In the meantime the appellant approached the Labour Court for recovering some of his dues which remained pending for a long time. As the appellant and those similarly situated were likely to reach the age of superannuation and by the unfair labour practice of the Railway Administration they were likely to be denied the full retirement benefits, appellant and several others filed a writ petition in the High Court of Kerala. According to the appellant, for the various reasons stated in the petition, appellant and those similarly situated could not be treated as daily-rated casual labour and under the relevant rules appellant and his co-workers would at least acquire the status of temporary railway servants and their services could not be terminated in the manner in which the appellant's service was terminated and that they would be entitled to all the retiral benefits. The petition came up before a learned Single Judge who dismissed the same. The matter was taken in appeal before the Division Bench. In the appeal it was contended that the termination of service of the appellant in the circumstances as set out earlier would constitute retrenchment within the meaning of Section 25-F of the Industrial Disputes Act, 1947 (Act for short), and therefore, the order of termination, inter alia, is invalid. The Division Bench found the question raised before it of such importance and magnitude that it referred the same to the Full Bench.

3. In the meantime the appellant was actively pursuing his trade union activities. A demand was made that all the benefits granted by the Central Pay Commission be extended to the category of employees to which the appellant belonged and when these demands fell on deaf ears, it was resolved to give a strike notice. The matter was taken in consultation which ultimately resulted in failure. The appellant approached the Central Government to make

a reference under Section 10 of the Act in respect of the defects for adjudication by National Tribunal. As the Central Government was webbing in its approach, the appellant declared his intention to go on fast unto death for redressal of the grievances suffered for decades by the lowest category of railway employees. At that stage the Assistant Labour Commissioner intervened and persuaded the appellant not to precipitate the matter. The appellant accordingly broke his fast on September 28, 1974, in the hospital where he was confined during his fast. Taking advantage of his absence during the fast immediately the order of termination of his service was served and this led to the present proceedings which have culminated in this appeal.

4. The appellants, inter alia, contended before the Full Bench of Kerala High Court that the termination of his service for the reasons and in the manner brought about is illegal and invalid, that it was victimisation for trade union activities, that it was unfair labour practice and that it was mala fide. It was also contended that in view of his long uninterrupted service admittedly over 20 years he was at the minimum a temporary railway servant and, therefore, his service cannot be terminated unless he was rendered surplus or by way of disciplinary measure after complying with Article 311 of the Constitution. The legal submission put in the forefront was that in the circumstances herein mentioned the termination of service constituted retrenchment within the meaning of Section 25-F of the Act and as the retrenchment having not been satisfied, the termination on pre-condition to valid retrenchment was not satisfied, the termination is illegal and invalid. The Full Bench answered the point referred to it against the appellant holding that there is no retrenchment as contended for, on behalf of the appellant and finally dismissed the petition. Hence this appeal by special leave.

5. At the outset it must be pointed out that the construction put by the Full Bench of the Kerala High Court on the expression 'retrenchment' in Section 2(oo) of the Act that it means only the discharge of surplus labour or staff by the employer for any reason whatsoever is no more good law and in fact, the decision of the Full Bench of Kerala High Court in *L. Robert D'Souza v. Executive Engineer, Southern Railway*, has been specifically overruled by this Court in *Sankosh Gupta v. State Bank of India v. N. Sundara Murthy, Hindustan Steel Ltd. v. Presiding Officer, Labour Court*, and *Dulha Cloth and General Mills Ltd. v. Sankosh Gupta*, that the expression 'termination of service for any reason whatsoever' now covers every kind of termination of service except those not expressly included in Section 25-F or not expressly provided for by other provisions of the Act such as Sections 25-FF and 25-FFF. It was

1. (1979) 1 Lab LJ 211
(1980) 3 SCC 884, 892; (1980) 3 SCC 410; (1980) 2 Lab LJ 72
(1980) 2 SCC 409; (1980) 2 Lab LJ 1; 1978 Lab IC 1766; (1976) 49 EJR 397
2. (1978) 1 SCC 591; (1977) 4 SCC 415; 1978 SCC (L & S) 1; AIR 1978 SC 8; (1978) 1 Lab LJ 1
3. (1977) 1 SCC 598; (1976) 4 SCC 221; 1976 SCC (L & S) 583; (1977) 1 Lab LJ 1; 1978 Lab IC 1766; (1978) 1 Lab LJ 1
4. (1977) 1 SCC 598; (1976) 4 SCC 221; 1976 SCC (L & S) 583; (1977) 1 Lab LJ 1; 1978 Lab IC 1766; (1978) 1 Lab LJ 1
5. (1976) 3 SCC 160; (1976) 1 SCC 822; (1976) 3 SCC 160; (1976) 1 SCC 822; (1976) 3 SCC 160; (1976) 1 SCC 822

attempted to be urged that in view of the decision of this Court in *Sankosh Gupta v. State Bank of India*, the ratio of which was reaffirmed by a Constitution Bench of this Court in *Hindustan Steel Mills v. A.D. Datta*, all the later decisions run counter to the ratio of the Constitution Bench and must be treated per incuriam. It is contended that not only because first in *Hindustan Steel Mills Ltd.* case, then in *Sankosh Gupta* case and lastly in *Maharaj v. Mahanagar Sahasra* case, it was in terms held that the decision in *Sankosh Gupta* case was not at all inconsistent with the decision in the Constitution Bench in *Hindustan Steel Mills* case, and not only required no reconsideration but the decision in *Hindustan Steel Mills* case was affirmed in the aforementioned three cases. This position is further buttressed by the decision in *Dulha Cloth and General Mills Ltd.* case, wherein, relying on the name of a workman from the rolls was held to be retrenchment. It was, therefore, the settled law that the expression 'termination of service for any reason whatsoever' in the definition of the expression 'retrenchment' in Section 2(oo) of the Act covers every kind of termination of service, and not only of the staff but also of the surplus labour. It was, therefore, not only in the provisions of the Act as set out in Sections 25-F, 25-FF, and 25-FFF, but also in the under appeal has been specifically overruled by this Court in *Sankosh Gupta v. State Bank of India*, and secondly, in view of the decision in *Dulha Cloth and General Mills Ltd.* case, striking off the name of a workman from the rolls without anything more constitutes retrenchment within the meaning of the expression 'retrenchment' in Section 2(oo) of the Act. It is contended that there would be sufficient force to fallow the appeal and set aside the decision of the Kerala High Court.

6. Section 25-F of the Act provides that an employer shall not be deemed to have retrenched any workman if he terminates his service for any reason whatsoever, but in the decision of this Court in *Hindustan Steel Mills v. A.D. Datta*, it was held that the expression 'retrenchment' in Section 2(oo) of the Act covers every kind of termination of service, and not only of the staff but also of the surplus labour. It was, therefore, not only in the provisions of the Act as set out in Sections 25-F, 25-FF, and 25-FFF, but also in the under appeal has been specifically overruled by this Court in *Sankosh Gupta v. State Bank of India*, and secondly, in view of the decision in *Dulha Cloth and General Mills Ltd.* case, striking off the name of a workman from the rolls without anything more constitutes retrenchment within the meaning of the expression 'retrenchment' in Section 2(oo) of the Act. It is contended that there would be sufficient force to fallow the appeal and set aside the decision of the Kerala High Court.

6. 1956 SCR 872; AIR 1957 SC 95; (1957) 1 LJ 235
(1957) 1 SCC 115; 1957 SC 95; (1957) 1 LJ 235
7. 1957 SCR 121; AIR 1957 SC 121; (1957) 1 LJ 235

decisions and they stand in harmony with each other and the later decisions take note of an amendment in the relevant provisions of Industrial Disputes Act and, therefore, the construction put on the expression 'retrenchment' in the aforementioned decisions pronounced the settled view of this Court. We, therefore, consider it futile and waste of precious time of the Court to re-examine the submission of Mr Francis negated by four different occasions in the past. Undoubtedly, Mr Francis pointed out that in *Sunder Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi*, Patanjali, J. in his concurring judgment has stated that his concurrence with the majority view propounded by Reddy, J. should not be taken to imply his agreement with the interpretation of Section 2(oo) rendered in *Sundar Gupta* case. It may, however, be mentioned that the majority in that case has affirmed the earlier decision. Therefore, after meticulously examining on five distinct and different occasions, it is clearly and unequivocally stated that there is neither apparent nor real conflict between the decision of the Constitution Bench in *Hariprasad Shivula* case and the later five decisions commencing from *Sundar Mistry* and ending with *Mohan Lal* case. It would be sheer waste of time and merely adding to the length of the judgment to re-examine this contention over again, so as to cover the familiar ground.

7. As we are not prepared to examine the contention over again, the submission of Mr Francis that 'retrenchment' comprises some overt act on the part of the employer, that it involves the principle of *let come first go* which again requires an overt act on the part of the employer, that when retrenched workers are required to be re-employed, first option for re-employment has to be given to the retrenched workers, which necessitates some overt act on the part of the employer, would be beside the point and of no relevance and significance. The reference to Rules 76, 77 and 78 of the Industrial Disputes (Central) Rules, 1957, does not advance his case a step further. The definition of expression 'retrenchment' in Section 2(oo) is so clear and unambiguous that no external aids are necessary for its proper construction. Therefore, we adopt as binding the well-settled position in law that if termination of service of a worker is brought about for any reason whatsoever, it would be retrenchment except if the case falls within any of the excepted categories, that is termination by way of punishment indicated pursuant to disciplinary action, the voluntary retirement of the worker, the retirement of the worker on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, (iv) or termination of the service in the event of economic or health. Once the case does not fall in any of the excepted categories and termination of service even if it be according to a standing agreement or a standing order under agreement would nonetheless be retrenchment within the meaning of expression in Section 2(oo).

It must as a corollary follow that if the name of the workman is struck off the rolls that itself would constitute retrenchment, as held by this Court in *Dalla Cloth and General Mills Ltd.* case. We specifically refer to this case because the facts in the case before us are on all fours with the facts in the aforementioned case and on parity of reasoning and judicial comity the same conclusion must follow unless something to the contrary is indicated. In that case respondent S.N. Mukherji who was recruited as a labourer came to be promoted in course of time to the post of Motion Setter. On October 1, 1964, pursuant to some reorganisation in the establishment the post of Motion Setter was abolished. The Management offered employment to respondent S.N. Mukherji on any other suitable post, which was indicated to be the post of Assistant Line Fitter (Assistant Grade I) without loss of wages. He was to be on probation. The Management found him unsuitable for this post even after extending the period of probation by nine months and therefore offered him post of Fitter on the same pay which this offer was that he should be given a further opportunity to show his efficiency in his job and if he fails to improve, he would tender his resignation voluntarily. The Management did not reply to the letter with the result that the workman did not report for work at the newly offered post. On January 19, 1966, the Management wrote to the workman that his name has been struck off from the rolls with effect from August 24, 1965, for continued absence without intimation. Such termination of service was held to be covered by the expression 'retrenchment' and it was struck down on the ground that the pre-condition to valid retrenchment was not complied with. It would thus appear that it is consistently held by this Court that termination of service for any reason whatsoever except the excepted categories would constitute retrenchment within the meaning of the expression in the Act. And here recall the order of termination of service of the appellant wherein it is stated that: "You have absented yourself unauthorisedly from September 18, 1974 and hence your services are deemed to have been terminated from the day you have absented yourself." Is any other conclusion possible save and except the one recorded by this Court in *Dalla Cloth and General Mills Ltd.* case that this constitutes retrenchment and for non-compliance with pre-condition, it is invalid.

8. Before referring to other contentions of Mr Francis, we may dispose of one contention based upon construction of Section 9-A of the Act as in our opinion, it is utterly untenable. Mr Francis says that if valid retrenchment presages a notice contemplated by Section 25-F, the same would stand dispensed with in view of proviso (b) to Section 9-A of the Act and therefore even if the termination is held to be retrenchment, Retrenchment to be valid must comply with three conditions set out in Section 25-F. They are, (a) subject to the proviso to clause (a), one month's notice in writing specifying the reasons for retrenchment or wages

in lieu of notice; (b) compensation to be paid according to the measure provided in the clause; the payment to be simultaneous with the retirement; and (c) the notice in the prescribed manner to be served on the appropriate Government. If the termination in this case otherwise constitutes retrenchment admittedly clauses (b) and (c) of Section 25-F have not been complied with. That apart, the submission that in view of the provision contained in proviso (b) to Section 9-A, the notice contemplated by clause (a) of Section 25-F would be dispensed with, is without merits. Section 9-A imposes an obligation on the employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule to give notice as therein provided and the employer is precluded from effecting the change without giving to the workman likely to be affected by such change, notice in the prescribed manner of the nature of the change proposed to be effected, and the change cannot be effected within 21 days of the giving of such notice. In order to attract Section 9-A the change proposed must be in the conditions of service applicable to the workman in respect of any matter specified in the Fourth Schedule. If the proposed change falls in any of the matters specified in the Fourth Schedule the change can be effected after giving notice in the prescribed manner and waiting for 21 days after giving such notice. There is a proviso to Section 9-A which exempts the employer from giving the notice of change if the case falls in any of the two provisos. According to Mr Francis the case would be covered by proviso (b). It reads as under:

9-A. No employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

Provided that no notice shall be required for effecting any such change—

(b) where the workman likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Reserved Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establish-ment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

9. It was obligatory upon the employer who wants to retrench the workman to give notice as contemplated by clause (a) of Section 25-F. When a workman is retrenched it cannot be said that change in his conditions of service is effected. The conditions of service are set out in the Fourth Schedule. No item in the Fourth Schedule covers the case of retrenchment. In fact, retrenchment is specifically covered by item 10 of the Third Schedule. Now, if retrenchment is not a retrenchment, it cannot constitute

change in conditions of service in respect of any item mentioned in Fourth Schedule, Section 9-A would not be attracted. In order to attract Section 9-A the employer must be desirous of effecting a change in conditions of service in respect of any matter specified in Fourth Schedule. If the change proposed does not cover any matter in Fourth Schedule Section 9-A is not attracted and no notice is necessary (see *Workmen v. Sur Iron & Steel Co. (P) Ltd.*, *Talwar & Steel Co. Ltd. v. Workmen*, and *Assam Match Co. Ltd. v. Bijoy Lal Sarma*). Thus if Section 9-A is not attracted, the question of seeking exemption from it in the case falling under the proviso would hardly arise. Therefore, neither Section 9-A nor the proviso is attracted in this case. The basic fallacy in the submission is that notice of change contemplated by Section 9-A and notice for a valid retrenchment under Section 25-F are two different aspects of notice, one having no correlation with the other. It is, therefore, futile to urge that even if termination of the service of the petitioner constitutes retrenchment it would nevertheless be valid because the notice contemplated by Section 25-F would be dispensed with in view of the provision contained in Section 9-A proviso (b). That apart, it is an indisputable position that none of the other pre-conditions to a valid retrenchment have been complied with in this case because the very letter of termination of service shows that services were deemed to have been terminated from a back date which clearly indicates no notice being given, no compensation being paid and no notice being given to the prescribed authority. Therefore, termination of service, being retrenchment, for failure to comply with Section 25-F, would be void ab initio.

10. Mr Francis next contended that as the appellant belongs to the category of casual labour as defined in Rule 2501 in Chapter XXV of the Indian Railway Establishment Manual ('Manual' for short), no notice prior to termination of his service is necessary or required by law in view of the provision contained in Rule 2505. The submission is that in the case of casual labour the service will be deemed to have been terminated when such employee absents himself or on the close of the day.

11. Rule 2501 reads as under:

2501.—(a) 'Casual labour' refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:

10. (1971) 1 LJ 570: (1970) 3 SCC 618: (1969) 18 FLR 223
11. (1973) 1 SCR 594: (1972) 2 SCC 383: 1973 SCC (L & S) AIR 1972 SC 1917: (1972) 2 LJ 259: 1972 Lab IC 1128
12. (1974) 1 SCR 116: (1974) 3 SCC 163: 1973 SCC (L & S) AIR 1973 SC 2155: 1973 Lab IC 1158: (1973) 2 LJ 49: (1973) 43 FJR 461

- (i) Staff paid from contingencies except those retained for more than six months continuously. Such of those persons who continue to do the same work for which they were engaged as other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.
- (ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.
- (iii) Seasonal labour who are sanctioned for specific works of less than six months' duration. If such labour is shifted from one work to another of the same type, e.g., relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

Notes.—

- (2) Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, when it is transferred by the administration to work of a different nature he does not lose his temporary status.

- (4) Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

Rule 2505 may as well be extracted. It reads as under:

2505. *Notice of termination of service.*—Except where notice is necessary under any statutory obligation, no notice is required for termination of service of the casual labour. Their service will be deemed to have terminated when they absent themselves or on the close of the day.

Note.—In the case of a casual labourer who is to be treated as temporary after completion of six months' continuous service, the period of notice will be determined by the rules applicable to temporary Railway servants.

12. In order to substantiate a claim that the appellant belongs to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the same fiction, it must be shown that the appellant was employed in any of the categories set out in clause (b) of Rule 2501. What has been urged in behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective of duration would belong to the category of casual labour. That, however, does not mean that every construction work by

Chapter XXIII.

13. Rule 2301 in Chapter XXIII defines a temporary railway servant. It reads as under:

2301. *Definition.*—A 'temporary railway servant' means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include 'casual labour', a 'contract' or 'part-time' employee or an 'apprentice'.

14. The service of a temporary railway servant may be terminated as provided in Rule 2301. The benefits which a temporary railway servant enjoys are set out in the same chapter.

15. The question, therefore, is whether the appellant who was recruited as casual labour continued to be the same or he had acquired the status of temporary railway servant at the time of termination of his service. In the affidavit filed in the High Court the respondents contended that the appellant was employed in construction work on work-charged project. The High Court did not examine this contention on merits and, therefore, it has become obligatory upon us to probe it.

16. The appellant has stated that he joined as a Gangman on July 1, 1948 at Mangalapuram and he was transferred in 1953 to Pindur in Mysore

This evidence furnished from the record of the respondent and not controverted by any affidavit to the contrary would establish that the appellant was in continuous service from November 3, 1954, to October 8, 1974. A period of 20 years and he was working apart from the period in controversy from 1954 to 1974 is unquestionable. Established that the appellant was in continuous uninterrupted service from November 1954 to October 1974, a period of 20 years and he was working

Sl. No.	Name	Presently working as	Date of appointment
10.	Robert D'Souza	Peon/Lascar	November 13, 1954

List of C.L. staff working in KEY'S Office

(1) List:

Enclosures:

Willing.

Construction Division so that they may be relieved in time if they are

Please advise whether you can absorb any of these personnel in your

to the post held by them, is enclosed.

Since the major portion of the work in this construction unit is over the list of the C.L. staff who are liable to be rendered surplus by

September 3, 1956 and December 31, 1956 due to expiry of sanction

Dated September 3, 1956

Executive Engineer's Office,
Ernakulam

EX. P-2

reads as under:

could be absorbed by any of them. The material portion of the letter

Engineers enquiring from them whether the surplus staff on his establishment

September 3, 1956, was working, addressed a letter to various Executive

Engineers, Ernakulam, where the appellant at the relevant time, i.e.

unimpeachable evidence produced by the appellant. The Executive

controvertible and have not rightly been controverted before us, in view of

termination of service on October 8, 1974. These arguments are incon-

construction branch of the Southern Railway at the date of his illegal

at Mangalore and since then he has been in continuous employment in the

November 13, 1954, on transfer he joined in the office of Inspection of Works

finding on it one way or the other. The appellant further contends that on

our. We would bypass this controversial period without recording any

by the Railway Administration, the fact alleged would be completely borne

ment but urged that if the pay roll of the relevant period would be produced

State. He confessed that he does not have any record to show this employ-

L. ROBERT D'SOUZA v. EXECUTIVE ENGINEER (Dua, J.) 639

17. There is, however, one more aspect to which we would refer before we proceed to pronounce upon the status of the appellant. The definition of casual labour extracted by us above clearly indicates that person belonging to casual labour is not liable to transfer. The appellant has stated that he was transferred to Madras in 1957, to Tuni in Andhra Pradesh in 1958, to Rajahmundry in 1960, to Samalkhota in 1961, to Virudhnagar in 1962, and to Manamadurai in 1965 and then to Ernakulam in August 1965. It appears that he was again transferred from Ernakulam which was seriously objected and he took up the matter with the higher authorities when he was re-transferred to Ernakulam on March 19, 1971. This appears from the letter of the Under-Secretary in the Ministry of Labour addressed to the appellant in which it is stated that the Ministry of Railways was advised that the appellant be transferred back to Ernakulam, which advice has been carried out and the intervening period for which he did not report for duty, i.e. from March 6, 1970 to February 19, 1971, he would be paid the wages as if he was on duty. In the face of these incontrovertible facts could it at all be said that the appellant though transferred ad nauseam still continued to belong to the category of casual labour?

18. An additional fact which buttresses this conclusion may be referred to. The appellant and several others filed petition in the High Court of Kerala from which the present appeal arises. All the petitioners before the High Court contended that each of them having rendered continuous service for decades they could not be said to be belonging to the category of casual labour and if anything all of them had acquired status of temporary employees. The respondent filed counter-affidavit and contended that the appellant and his co-petitioners in the High Court never acquired the status of temporary railway servant and each of them belonged to the category of casual labour. During the pendency of the petition in the High Court service of the appellant was terminated but his co-petitioners continued in service. After the dismissal of the writ petition by the learned Single Judge appellant and three others preferred Writ Appeal No. 218 of 1973 in the same High Court. By the time the appeal came up for hearing three co-appellants of the present appellant who were appellants before the Division Bench were informed that they were treated as on regular employment and ceased to belong to the category of casual labour. Unfortunately as the service of the appellant was already terminated he was not given this benefit. This fact clearly emerges from the manner in which the Division Bench disposed of

completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under Rule 2503.

27. Once it is held that by operation of statutory rule in the Manual, the appellant had acquired a status of temporary railway servant and assuming, as contended by Mr Francis, that the termination of service in the circumstances alleged does not constitute re-employment *stricto sensu*, would the termination be still valid? The answer is an emphatic no. On the admission of the Railway Administration, service was terminated on account of absence during the period appellant was on leave. Absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and enquiry or at any rate without complying with the minimum principle of natural justice. Further, Rule 2302 clearly prescribes the mode, manner and methodology of terminating service of a temporary railway servant and admittedly the procedure therein prescribed having not been carried out, the termination is void and invalid. Accordingly, the same conclusion would be reached even while accepting for the purpose of the facts of this case simultaneously rejecting it in law that the termination does not constitute re-employment yet nonetheless it would be void and inoperative.

28. We would be guilty of running a blind eye to a situation apart from being highly unethical, wholly contrary to constitutional philosophy of socio-economic justice if we fail to point out that Rule 2501 which permits a man serving for 10, 20, 30 years at a stretch without break being treated as daily-rated servant, is thoroughly opposed to the notions of socio-economic justice and it is high time that the Railway Administration brings this part of the provision of the Manual, antiquarian and anachronism, in conformity with the Directive Principles of State Policy as enunciated in Part IV of the Constitution. It may be necessary for a big employer like the Railway to employ daily-rated workmen but even here it is made distinctly clear that in case of casual labour, the daily wage is fixed by dividing monthly minimum wage by 26 so as to provide a paid holiday. Slaves, for seasonal employment, or for other intermittent work daily-rated workmen may have to be employed. It may as well be that on projects work-charged staff may have to be employed because on the completion of the project the staff may become surplus. That was at a time when planning and projects were foreign to the Indian economy. Today, Railways have perspective plans spreading over decades. If one project's complete matter has to be taken over, Railway Administration has miles to go and promises to keep and this becomes clear from the fact that the appellant is a daily-rated workman. continued to render continuous service for 33 years which would imply that there was work for a daily-rated workman throughout the 33 years at a stretch.

without break and yet his status did not improve and continued to be treated as daily-rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fair play to the lowest and the lowest in Railway Administration.

24. Now, if appellant had become at least a temporary railway servant he is entitled to many benefits set out in Rule 2303 onwards. We have no doubt in our minds that the appellant whose case was on par with Shri K. N. Balakrishna who had already been offered regular employee status, would be entitled to be placed in the same category and that too from the date much earlier to the date of termination of his service. In this situation termination of his service not being covered by any of the excepted categories and not after notice would be re-employment within the meaning of the expression as used in the Act and for failure to comply with the pre-condition the termination of service would be void.

25. Assuming we are not right in holding that the appellant had acquired the status of a temporary railway servant and that he continued to belong to the category of casual labour, would the termination of service in the circumstances mentioned by the Railway Administration constitute re-employment under the Act?

26. Section 25-F of the Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the conditions set out in the Act are satisfied. The expression 'workman' is defined as under:

2. In this Act, unless there is anything repugnant in the subject or context,—

(f) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person—

(a) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(b) who is employed in the police service or as an officer or other employee of a prison; or

(c) who is employed mainly in a managerial or administrative capacity; or

(d) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to

Private Medical Colleges (Taking Over) Act, 1978 (Bihar Act 5 of 1978), Sections 3 and 5 — Successor

Labour and Services — Employee continuing on ad hoc basis — Status of — Termination of service of such employee on one month's notice valid

Labour and Services — Conditions of service — Power to make recommendations regarding rank, pay, allowances and other conditions of service, including that regarding age of superannuation — Bihar Private Medical Colleges (Taking Over) Act, 1978 (Bihar Act 5 of 1978), Section 5

The respondent was appointed as Professor in Magadh Medical College, which was then a private institution. His appointment was subject to such regulations as might be in force from time to time in the Magadh University to which the said College was affiliated. The regulations provided 62 years as the age of superannuation. Meanwhile, the management of the College was taken over by the State Government under Section 3 of the Bihar Private Medical Colleges (Taking Over) Act, 1978 and on the basis of recommendations of the Screening Committee appointed under Section 6 of the Act, the Government issued a circular letter dated September 3, 1980 advising the taken over Medical College including the Magadh Medical College that 'services of all the directly appointed teachers in the Medical Colleges who have attained the age of 62 years or more than 58 years but less than 62 years be terminated after giving them one month's notice. The respondent having already attained the age of 58 years, his service was terminated after one month's notice by the Principal of the College. The respondent thereupon filed a writ petition in the High Court which was allowed. Allowing the State's appeal the Supreme Court

Held:

(1) When a member of the teaching staff becomes an employee of the State Government, he would be governed by the same age of superannuation which is applicable to other government servants, namely, 58 years and it was for this reason that the State Government determined the age of superannuation of the teaching staff of the Medical Colleges taken over by it at 58 years.

By virtue of Section 6(1), the respondent ceased to be employee of the owners of the Magadh Medical College and consequently his contract with the owners under the letter of appointment given to him did not devolve on the State Government but came to an end and in terms of the proviso in Section 6(1), he became an employee of the State Government on an ad hoc basis. Therefore, the respondent could not thereafter contend that he was entitled to continue in service until he reached the age of 62 years, as that would be directly contradictory of the position that he continued to serve the Government on an ad hoc basis.

When a person is appointed on ad hoc basis, his tenure is precarious and he cannot claim to continue in service until the age of superannuation. Therefore, quite apart from the power expressly conferred under Section 6(3), the State Government would have power to terminate the service of any person employed on an ad hoc basis.

the office or by reason of the powers vested in him, functions mainly of a managerial nature.

27. There is no dispute that the appellant would be a workman within the meaning of the expression in Section 2(s) of the Act. Further, it is incontrovertible that he has rendered continuous service for a period over 20 years. Therefore, the first condition of Section 25-F that appellant is a workman who has rendered service for not less than one year, under the Railway Administration, an employer carrying on an industry, and that his service is terminated which for the reasons hereinafore given would constitute retrenchment. It is immaterial that he is a daily-rated worker. He is either doing manual or technical work and his salary was less than Rs 500 and the termination of his service does not fall in any of the excepted categories. Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule 2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with pre-conditions to valid retrenchment, the order of termination would be illegal and invalid.

28. Accordingly, we allow this appeal, set aside the order of the High Court and declare that the termination of service of the appellant was illegal and invalid and the appellant continues to be in service and he would be entitled to full back wages and costs quantified at Rs 2000.

(1982) 1 Supreme Court Cases 664

(Before P.N. BHAGWATI AND R.S. PATHAK, JJ.)

STATE OF BIHAR

Versus

DR. YOGENDRA SINGH COL (RETIRED) AND OTHERS

Respondents.

Appellant;

Civil Appeal No. 676 of 1982, decided on March 1, 1982

Labour and Services — Retirement — Reduction of age of, after taking over of a private institution by Government — Employees of private institution entitled to higher age of retirement — Legislation effecting take-over of management of the institution by Government — On the basis of recommendations of Screening Committee appointed under the Act, Government by its circular reducing retirement age of the employees of the taken-over institution — Respondent employee, having crossed the reduced age limit fixed by the Government, discharged from service after giving one month's notice in terms of the circular — Held, order of termination of service valid — Bihar

C.A.V. SLIP

1. Constitution of Bench *Hon Mr. K. V. Sackidamandan, Vol*
2. Circulated to: *ksj*
3. Case No. : *OA 28/2006*
4. Connected case Nos., if any : *—*
5. Dates of final hearing : *28-6-2006*
6. Name of Advocates argued the case : *Mr. MUB Ahmed, Applicant*
Mr. K K. Brijwas, Respond.
7. Date when reserved for judgment : *28-6-2006*
8. Cases cited by the Counsel for Applicants:
- (a) *Workmen Compensation Act,*
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)
9. Cases cited by the Counsel for Respondents:
- (a) *Railway Pension Rule, 1983*
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)
10. Books Circulated :
11. Departmental files, Confidential Records, if any: *Senior Secy of the applicant.*

bn
28/6/06

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

G. A. R. 6

[See Rule 22 (1)]

RECEIPT

1784

No.....

Date. 06/2/2006..

Received from MBU Ahmed.....with

Letter No. OA 28/06.....dated.....20.....

the sum of Rupees. Ten only.....

In cash/by IPO on account of Service charge for excise
by bank draft

Rs. 10/-.....in payment of.....

Signature

[Signature]
Cashier

Rs. 10/-.....

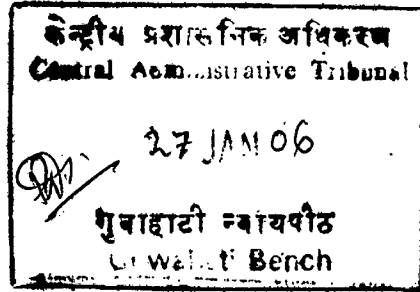
Original Application No. 28/06

1. a) Name of the Applicant: Smt E. B. Nath
b) Respondants: Union of India & Ors.
c) No. of Applicant(S): -
2. Is the application is the proper form: Yes / No.
3. Whether name & description and address of the all the papers been furnished in cause title :- Yes / No.
4. Has the application been duly signed and verified :- Yes / No.
5. Have the copies duly signed :- Yes / No.
6. Have sufficient number of copies of the application been filed : Yes/No.
7. Whether all the annexure ~~parties~~ are impleaded :- Yes/No.
8. Whether ~~English~~ translation of documents in the Language: Yes/No.
9. ~~Has~~ the application is in time :- Yes/ No.
10. ~~Has~~ the Vokatlatnama/Memo of appearance /Authorisation is filed: Yes/No.
11. Is the application by IPO/BD/for Rs. 50/- 269 3179 79
12. Has the application is maintainable : Yes /No.
13. Has the Impugned order original duly attested been filed: Yes/ No.
14. Has the legible copies of the annexurea duly attested filed: Yes/No.
15. Has the Index of the documents been filed all available :- Yes/No.
16. Has the required number of enveloped bearing full address of the respondants been filed: Yes/ No.
17. Has the declaration as required by item 17 of the form: Yes /No.
18. Whether the relief sought for arises out of the Single: Yes/ No.
19. Whether interim relief is prayed for :- Yes/ No.
20. Is case of Condonation of delay is filed is it Supported :- Yes/No.
21. ~~Whether this Case can be heard by Single Bench/Division Bench~~
22. Any other pointd :-
23. Result of the Scrutiny with initial of the Scrutiny Clerk:

SECTION OFFICER(J)

DEPUTY REGISTRAR

S Y N O P S I S



Applicant is a wife of Late Manglu Ram Nath engaged as Gangman of N. F. Railway C P W I /CON/NJP who died in harness and the family as well as applicant being wife of entitled for family pension as provided under the Pension Rule.

The applicant husband Late Manglu Ram Nath joint as a casual labour on 23/12/1976 which continued till 15/4/1979 after small break engaged as casual labour from 17/6/1979 to 15/10/1979. In the same manner, the applicant husband rendered service under N. F. Railway as casual employee till 1982.

The applicant husband was posted under CPWI/CON/ NJP with headquarter at CAT in their same scale of pay and indicating in the order showing his provident fund No.552949 and by aforesaid order applicant husband resumed duties as Gangman at New Jalpaiguri Division of the N. F. Railway and continued in the same capacity till 18/8/1992 when he breathed his last.

Applicant husband suffered from carciroma oesophagus and was brought to his own resident at village Rampur, P.O. - Sorbhog, District - Barpeta, Assam where he died on 18/8/1992. under treatment of D.M.O., N. F. Railway, Sorbhog.

After death of applicant husband she immediately approach the respondent authority for release of pension, provident fund and other pensionary benefits admissible under the Rules and also submitted the required documents.

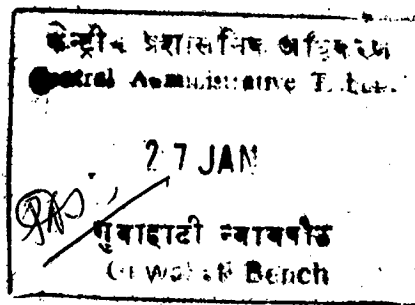
The A.D.O.(CON), NJP vide his letter No.FB/CON/M-22/NJP/MRN dated 12/2/1994 enclosed all documents to the FA & CAO (CON), Maligaon for release of Provident Fund amount credited to the account No.552949(NG) of Late Manglu Ram Nath, Gangman who died in harness.

Applicant being entitled for family pension as under Railway Pension Rule but respondent authority has not release the family pension of the deceased employee for which the entire family has been facing immense hardship.

The applicant husband who was initially engaged as casual labour continued in service since 1976 and died while working as Gangman on regular absorber as such entitled to pension under the provision of Para 423 of the Manual of Railway (Pension Rule). The scheme namely casual labour (Grant of temporary status and Regularisation) Scheme, 1989 formulated by the Govt. of India pursuant the direction of the Hon'ble Supreme Court provides that temporary status would be conferred on casual labours in employment as on 29/11/1989 and continued in employment atleast for one year including DA, HRA, CCA etc. and regularisation. In that view of the matter also, the applicant is entitled to family pension which has been illegally with-held by the Respondent Authority.

Workman Compensation Act, 1923, dies while in service after having rendered not less than seven years continuous service, the rate of family pension would be equal to 50% of the pay last drawn or one and a half time of the family pension admissible under Sub-Rule (2) whichever is less. Under the Scheme of casual labour (grant of temporary status and regularisation) Scheme of 1989 applicant husband ought to have been deemed as a regular employee under the Railway, and therefore the applicant is entitled to the grant of family pension under the Central Civil Service (Pension) Rules, 1972, moreover all railways servants by the Provident Fund Rules are entitled to pension. The applicant being a beneficiary of the provident fund Rules is entitled to benefit of family pension which has been illegally with-held by Respondent Authority.

Filed by Smt. Brown Baker
Wam
Hrish Mathur B.O. And
Advocate.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH AT GUWAHATI

(Application under section 19 of the Administrative
Tribunal Act, 1985)

O.A.NO. 28 OF 2006
BETWEEN

Smti Eroni Bala Nath
... APPLICANTS.

-Versus-

The Union of India & Ors.
... RESPONDENTS

I N D E X

Sl.No.	Particulars of document	Page No.
1.	Application	- 1 to
2.	Verification	-
3.	Annexure-I : - Letter dated 16.08.1988 issued by the EE/CON-I/NJP	
4.	Annexure-II : -Death Certificate issued by DMD/NFRly Sorbhog.	
5.	Annexure-III: - Letter dated 12.02.93 issued by APO/CON/NJP	
6.	Annexure-IV: - Letter dated 28.03.94 issued by APO/CON/NJP	
7.	Annexure-V : - Last representation submitted by the applicant.	

FOR USE IN TRIBUNAL'S OFFICE

Date of Filing:
Registration No.

REGISTRAR.

Contd....p....

Copy sent
1-1-84
18/8/92
Stamp
Stamps

DISTRICT : BARPETA

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL :
GUWAHATI BENCH AT GUWAHATI

(Application under section 19 of the Administrative
Tribunal Act, 1985)

O.A.NO. 28 OF 2006


BETWEEN

Srimati Eroni Bala Nath,
wife of late Manglu Ram Nath,
Ex.Gangman under CPW1/CON/NJP,
Resident of Village Rampur,
PO Sorbhog, District Barpeta, Assam.

... APPLICANT.

-AND-

1. The Union of India,
represented by the Secretary to the
Govt of India; Ministry of Railways,
Rail Bhwan, New Delhi-1.
2. The General Manager,
N.F.Railway; Maligaon,
Guwahati-11.
3. The Chief Engineer(Con-III),
N.F.Railway, Maligaon,
Guwahati.

RTS

Smt Oroni Bala Nath

Contd....p...

Filed by Smt Eroni Bala Nath
applicant
through Natin B. Bhunia
Advocate-in-Law

-:3:-

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.

DETAILS OF APPLICATION


1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLI-
CATION IS MADE:

- (i) Non-payment of pension and pensionary bene-
fits to heirs/legal representative of Ex. Gangman late
Manglu Ram Nath, died in harness on 18.08.1992.
- (ii) Non-disposal of representation of the appli-
cant.

2. JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject
matter of the instant application is within the competen-

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Smt. Erum Bala

tance and jurisdiction of Hon'ble Tribunal under the Administrative Tribunal Act, 1985 (Act 13 of 1985) in terms of Article 323-A (2)(1)(a) of the Constitution of India read with Clause(b) of sub-rule (5) of Rule 4 of the Central Administrative Tribunal (Procedure) Rules, 1987.

3. **LIMITATION:**

The applicant declares that the applicant being the widow of the Casual Employee/Gangman namely, late Mangluram Nath, filed several representations and also personally approached the higher authorities for sanction of family pension etc., which are yet pending before the Respondent authorities and, therefore, instant application is within the limitation period 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 Rampur, P.O. Sorbhog, District Barpeta, Assam. She is the widow of late Manglu Ram Nath, who died in harness on 18.08.1992 while working as Gangman (Casual Employee) under the Respondent authorities and was posted at New Jalpaiguri.

4.2 That, the applicant's husband was engaged as casual labour under the N.F. Railway on 23.12.1976 which continued till 15.04.1979. After a small break, again he

RTS

snr. From B. N. N. N.

Contd....p....

was engaged as Casual Labour from 17.06.1979 to 15.10.1979. In the same manner, the applicant's husband rendered service under the N.F.Railway as casual employee till 1982 and subsequently appointed as Gangman.

4.3 That, the Executive Engineer (Con-I)/NJP vide order No.27/88 issued under Memo No.E/57/CON/I/NJP/P.II/1325 dated 08(11).07.1988 issued in terms of letter No.CE/CON-III/MLG's letter No.E/57/CON/I/P.II dated 05.05.1988 issued a list of 25 Nos. of P.Way Labours (Casual Labourers/T.S) intimating that on their reporting for duty of CAT on 16.06.1988 on being released by DY.CE/CON/MLDT from HCR-KDPR section they would be posted under CPWI/CON/ NJP with headquarter at CAT in their same scale of pay. It is pertinent to state here that the name of the applicant's husband appeared at Sl.No.20 of the list of such casual employees showing his Provident Fund No.552949.

A copy of the aforesaid order dated 18.07.1988 is annexed hereto and marked as ANNEXURE-I.

4.4 That, the applicant states that pursuant to the aforementioned order, applicant's husband resumed duties as Gangman at New Jalipaiiguri Division of the N.F.Railway and continued in the same capacity till 18.08.1992 when he breathed his last.

RTS
Smt. B. S. Balaiah

Contd....p...

4.5. That, while working as Gangman under CPWI/CON-NJP the applicant's husband suffered from Carcinoma Oesophagus and was brought to his own residence at Village Rampur, PO Sorbhog, District Barpeta, Assam where he breathed last on 18.08.1992 under the treatment of DMO/N.F.Railway, Sorbhog.

A copy of the Death Certificate issued by the DMO/ NF Railway, Sorbhog is annexed herewith and marked as ANNEXURE-II.

4.6. That, the applicant states that after the death of her husband, she immediately approached the respondent authorities for release of Pension, Provident Fund and other pensionary benefits admissible under the Rules and also submitted the required documents.

4.7 That, the applicant states that the APO(CON) NJP vide his letter No.FG/CON/M-22/NJP(MRN) dated 12.02.1994 endorsed all documents to the FA. & CAO(CON), Maligaon for release of PF amount credited to the account No.552949(NG) of late Manglu Ram Nath, Gangman who died in harness.

A copy of the aforesaid letter dated 12.02.1993 is annexed hereto and marked as ANNEXURE-III.

Contd....p....

RTS
Smt Brown Barpeta

4.8 That, thereafter vide another letter No.PC/CON/M-23/NJP(MRN) dated 28.03.1994 the Assistant Personnel Officer/Con, New Jalpaiguri forwarded relevant papers to the Asstt. Accounts Officer(CON), N.F.Railway, Maligaon for payment of Gratuity of the petitioner's husband at an early date.

A copy of the aforesaid letter dated 28.03.1994 is annexed hereto and marked as ANNEXURE-IV.

4.9 That, the applicant states that though a meagre amount of the Provident Fund and Gratuity has been released, but till date the Respondent authorities has not released the family pension of the deceased employee. The applicant submitted various representations time and again requesting for release of family pension, but since 1992 the family pension of the deceased employee is yet to be settled for which the entire family has been facing immense hardship.

A copy of one of the last representation is annexed hereto and marked as ANNEXURE-V.

5. **GROUND'S FOR RELIEF WITH LEGAL PROVISIONS:**

5.1 For that, the applicant's husband who was initially engaged as casual labour continued in service since 1976 and died while working as Gangman on regular absorption as such entitled to pension under the provi-

Contd.....p...

RTS
Smt. Enamul Bala Maiti

sion of Para 423 of the Manual of Railway (Pension Rules).

5.2 For that, the scheme namely, Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989 formulated by the Government of India pursuant to the directions of the Hon'ble Supreme Court provides that 'Temporary Status' would be conferred on casual labourers in employment as on 29.11.1989 and who continued in employment at least for one year for a period 240 days would be paid daily wages at the rate of the minimum of the pay scale for a regular Group 'D' official including DA, HRA, CCA etc. and regularisation. In that view of the matter also, the applicant is entitled to family pension, which has been illegally withheld by the Respondent authorities.

5.3 For that, even otherwise, where a government servant governed by the Workmen's Compensation Act, 1923, dies while in service after having rendered not less than seven years continuous service, the rate of family pension would be equal to 50 per cent of the pay last drawn or one and a half times of the family pension admissible under sub-rule (2), whichever is less.

5.4 For that, in the present case, the applicant's husband though initially appointed as casual

RTS
Smt. Eroni Balu Ram

Contd.....p...

employee in 1976 was regularised as Gangman in 1982 and continuously served till 1992 when he died in harness. As such, under the scheme of Casual Labour (Grant of Temporary Status and Regularisation) Scheme of 1989, applicant's husband ought to have been deemed as a regular employee under the Railways and therefore the applicant is entitled to be grant of family pension under the Central Civil Service (Pension) Rules, 1972.

5.5 For that, under the Liberalised Pension Rules, applicable to railway servants lays down that all railway servants governed by the Provident Fund Rules and opted for the Pension Rules in preference to the existing retirement benefits under the Provident Fund Rules are entitled to pension. The applicant's being a beneficiary of the Provident Fund Rules is entitled to the benefit of family pension, which has been illegally withheld by the Respondent authorities.

6. **DETAILS OF REMEDIES EXHAUSTED:**

The applicant states that she filed several representations before the Respondent authorities, which have not been attended as yet, therefore she has no other alternative efficacious remedy than to come under the protective hands of this Hon'ble Tribunal.

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R/S
Smt. Brown Babu Mohan

7. MATTERS NOT PREVIOUSLY FILED OR PENDING
BEFORE ANY OTHER COURT:

The applicant declares that she has not filed any proceeding/suit in the matter before any forum or Court of law nor any proceeding is pending before any authority.

8. RELIEFS SOUGHT:

Under the facts and circumstances stated above, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to admit this application, call for the records and upon hearing the parties on the cause or causes that may be shown and on perusal of the records be pleased to grant the following reliefs:

(1) To direct the Respondent Authorities to forthwith release the family pension of late Manglu Ram Nath, Ex. Gangman, CPW1/ 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.

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R.S.
Smt. Erum R. Khan

-:11:-

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.

vi) Cost of this application.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the this application, be pleased to direct the Respondents to grant provisional pension to the petitioner.

10. PARTICULARS OF I.P.O.:

- (i) I.P.O.No : 266-317979
(ii) Date : 18-1-06.
(iii) Payable at : Guwahati.

11. LIST OF DOCUMENTS:

As stated in the Index.

Verification....


Contd....p....

RSS
Smt. Brou/Bale Mah

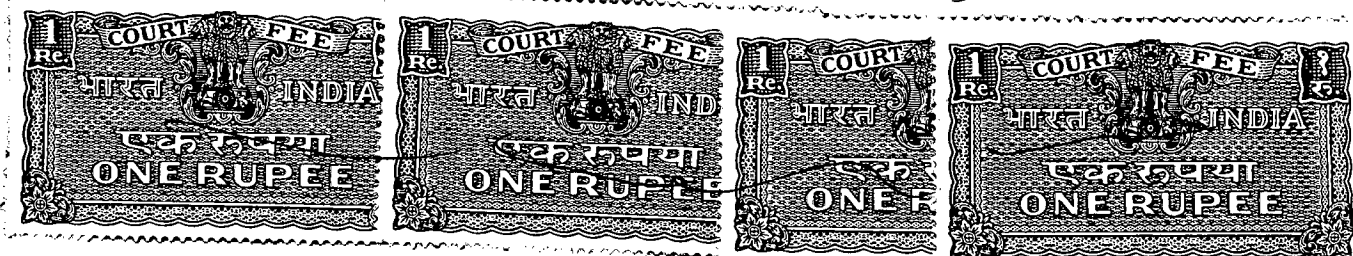
V E R I F I C A T I O N

I, Srimati Eroni Bala Nath, wife of late Manglu Ram Nath, aged about years, resident of Rampur, P.O. Sorbhog, District Barpeta, Assam, do hereby solemnly affirm and verify that the statements made in paragraphs 1, 2, 3, 5, 6, 7 are true to my knowledge, those made in paragraphs 4, 5, 4, 7, 4, 8 and 4, 9 are legal advice and I have not suppressed any material fact.

And I sign this verification on this 20 day of Jnuary, 2006 at Guwahati.

RTS


Signature
Eroni Bala Nath



A F F I D A V I T

I, Srimoti Eroni Bala Nath wife of Late Mangolu Ram Nath Ex. Gangman under C.P.W.I/C.D.M/N.J.P/ Railway, resident of Vill- Rampur, P.O- Sorbhog, Dist- Barpeta Assam, do hereby solemnly affirm and declare as follows:

1. That I am the applicant in the present case and fully conversant with the fact and circumstances of this case.
2. That the statements made in this affidavit and accompanying petition at paragraph Nos. ^{1, 2, 3} 4... 6... 7... are true to my knowledge those of the case in paragraph Nos. ^{4, 5, 6, 7, 8, 9} 4... 5... 6... 7... 8... 9... being matter of records of the case are true to the best of my information and derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble tribunal.

Identified by me:

M. Sarma
Advocate,

D E P O N E N T

1.9
Signature
Sign before me by
the deponent.

Signature
24/8/05
MAGISTRATE.

NORTHEAST FRONTIER RAILWAY

Annexure I (14)

OFFICE OF THE
DY. CHIEF ENGINEER/CON-I
NEW JALPAIGURI.

OFFICE ORDER NO.27 /88.

In terms of CE/CON-III/MLG's L/No.E/57/CON/I/P.II dt. 5.5.88, the following P.way labours (Casual labours/T.S) on their reporting for duty of CAT on 16.6.88 on being released by DY.CE/CON/MLDT from HCR-KDPR section are posted under CPWI/CON/NJP with their head quarter at CAT in their same scale and pay.

S.No.	Name	Father's name	Design.	P.F.No.
1.	Md. Deragul Haque	Md. Abed Ali	Gangmen	553313
2.	Sri Babulal Brahma	Sri Ram Singh Brahma	Keymen	552996
3.	" Badul Nath	" Arun Nath	Gangman	553314
4.	Md. Sanabat Ali	Md. Sajahan Ali	-do-	553316
5.	Sri Anil Ch. Roy	Sri Nripendra Roy	-do-	553326
6.	Md. Alkash Ali	Md. Dwak Ali	-do-	553248
7.	Sri Joyram Chowdhury	Sri Mohan Chowdhury	-do-	553249
8.	Md. Anwar Hussain	Abdul Rahaman	-do-	553264
9.	Md. Jabbar Ali (1)	Md. Salamuddin Seikh	-do-	553225
10.	Sri Manab Sangma	Sri Terendra Sangma	-do-	553345
11.	Sri Charneshwar Narzory	Sri Jatra Ram Narzory	-do-	553346
12.	Md. Akash	Md. Sadul	-do-	552990
13.	Sri Odal Boro	Sri Haraw Boro	-do-	552991
14.	Sri Khagen Ch. Sorgiory	Sri Dalaram Sorgiory	-do-	553378
15.	Sri Phabendra Nr. Deb	Sri Amrit Nr. Deb	-do-	553348
16.	Md. Juell Ali	Md. Karimuddin Ahamed	-do-	553344
17.	Sri Chicken Narzory	Sri Ananta Narzory	-do-	552946
18.	Md. Schar Ali	Md. Vasha Seikh	-do-	552995
19.	Sri Indra Mohan Das	Sri Moniram Das	-do-	553227
20.	Sri Mangluram Nath	Sri Dhangar Nath	-do-	552949
21.	Sri Goyen Burman	Sri Bhagoram Burman	-do-	553005
22.	Md. Jaharuddin	Md. Nashiruddin	-do-	553000
23.	Md. Faruq Ali	Md. Kala Ali	-do-	552945
24.	Md. Arfan Ali	Md. Nobin Ali	-do-	552493
25.	Md. Mateb Ali	Md. Masam Ali	-do-	552623.

Matlab

EXECUTIVE ENGINEER/CON-I/NJP.

NO.E/57/CON/I/NJP/P.II/325

DATED, THE 8th JULY 1988.

11-7-88

Copy forwarded for information and necessary action to:-

1. CE/CON-III/MLG, Dy.CE (CON)-I/NJP
2. DY.CE/CON/MLDT., He is requested to send service records of these staff at and early date.
3. SAO/CON/MLDT.
4. AEN/CON-II/NJP
5. CPWI/CON/NJP
6. Staff concerned.

EXECUTIVE ENGINEER/CON-I/NJP
N. F. RAILWAY.

pdp.
8.7.88

certified to be true
with
Advocate

Department By c/c/r/g (15)
Ledger Folio No. 5/12 SPD

Bill Unit No. _____

Statement of non contributory State Railway Provident Institution Account.

Deposit Account of Sri Mona Designation clerk
 T.No. Depositor No. 29 ... with the N.F. Railway
 Provident Fund for and up to the end of the year 31st March
 198⁰...

N.B.:—Special attention is invited to Notes 1 & 2 of this
 form.

1	Subscription		V.P.F.		Details of with- drawals.	Remarks
	2		3			
	Rs.	p.	Rs.	p.	Rs.	p.
Balance on 1st April 198 &	—					
Add-Subscription during 198 &	658					
Refund of Advance 198 &	—					
Interest for 198 & @ 12 per annum	34					
Total	692					
Less withdrawals as per details in column- 4						
Balance on 31st March, 198 ⁰	692					

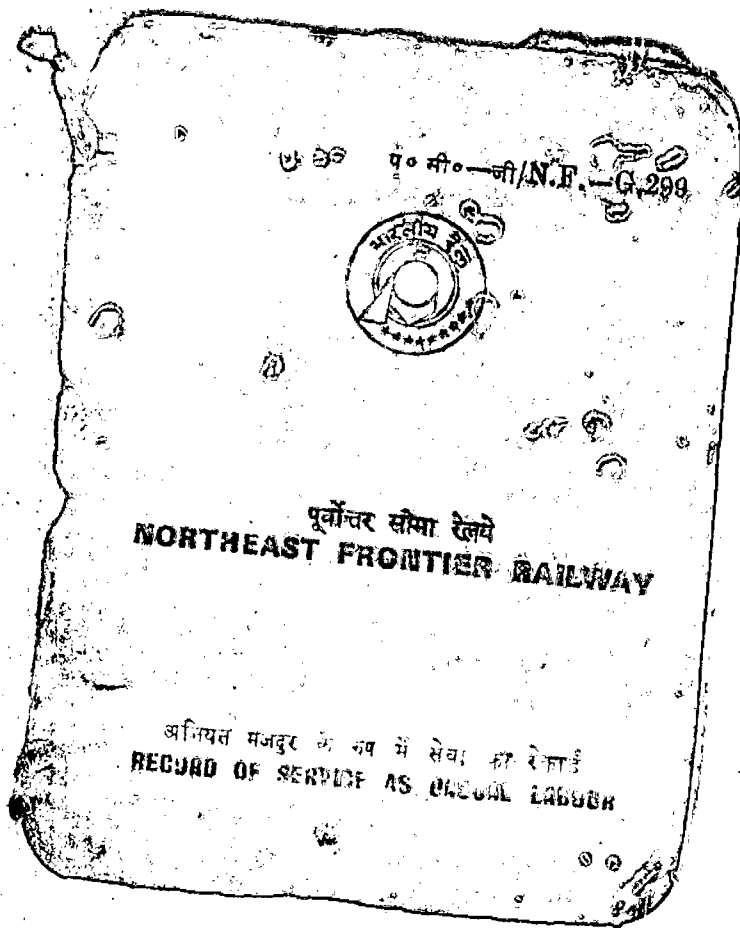
Note :—(1) The attention of subscribers is drawn to the importance
 of revising their declaration in case any event has
 occurred which necessitates revision. If a subscriber
 has not so far signed the declaration form he should
 now sign one.

(2) Subscribers should themselves as to the cor-
 rectness of the statement and errors should be brought
 to the notice of the Accounts Officer within six
 months from date its receipts. You are urged to pre-
 serve this statement for production, if required.

18-10-1980

✓ P.A. & C.A.O. (CON) MALIGAON.

Certified to be true
 within
 Advocate.



Ameyne / series

(16)

RECORD OF SERVICE AS CASUAL LABOUR
N.F. RAILWAYS

Continued to be done
without
Advocate

४०/No. ३

प० सी० रेलवे/N. F. RAILWAY

कार्यालय/विभाग Office/Department Jan/1984

अनियमित मजदूर के रूप में सेवा का रिकार्ड

Service book for Casual Labour

पूरा नाम साफ-साफ
Name in full (In Block letters)

पिता का नाम
2. Father's name

जन्म तिथि
3. Date of Birth

प्रारम्भ में अनियमित मजदूरी पाने के समय आयु
4. Age at initial casual employment
वर्ष/Year माह/months

5. Personal marks of identification

प्रारम्भिक नियुक्ति के समय ड्यूटी
Nature of job on initial employment

बगुटे का निशान
L. T. I.

Signature of the First Appointing Senior Supervisor

अनियत मजदूर के रूप में सेवा का रिकॉर्ड

Record of service as Casual Labour.

क्रम सं. Sl. No.	नौकरी की अवधि Period of Employment.		प्रति की क्रिया Nature of assignment	तारीख सहित प्रियवक्ता का हस्ताक्षर और पदनाम Signature and designation of the Supervisor with date
	से/From	तक/To		
1	2	3		
1	13/11/77	15/11/77	C.S.R.	
2	16/11/77	17/11/77		

109

Nath & Sons Ghy-83/83/0063/1/4010/1-1-84/1400

GO TO THE N.P. RAILWAY

TO/Non

From

Station

Rate

Remarks

12/3/92

13/4/92

14/5/92

15/6/92

16/7/92

17/8/92

18/9/92

19/10/92

20/11/92

21/12/92

22/1/93

23/2/93

24/3/93

25/4/93

26/5/93

27/6/93

28/7/93

29/8/93

30/9/93

31/10/93

32/11/93

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175/10/05

176/11/05

177/12/05

178/1/06

179/2/06

180/3/06

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93

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(19)

Annexure - II

N.F. RAILWAY.

Death Certificate

Certified that Sri Manglu Ram Nath, age - 50 yrs (approx)
sex - male, Designation Gangman under CPWI/Con - NJP, expired
on 18.8.92 at 14-30 hrs. at his own residence at village
Rampur, P.O. Sorbhog Dist. Barpeta, Assam. He was last
attended by me on 18.8.92 at 14-10 hrs at his residence.

Primary cause of death -

Carcinoma oesophag as secondary cause of death -

Cardio respiratory failure.

Sd/-Illegible,
Dr P.C. Brahma

Anneapne II
(20)

Northeast Frontier Railway

Office of the
Dy. Chief Engineer (Con)
New Jalpaiguri.

Dated: 12/1 February '83.

No. 10/CON/A-22/NJP (MRH)

2542

PA & CAO (CON)
MALIGAON.

Sub:- P.S. papers of Late Manglu Ram Nath
ex. Gangman under CPWI/CO/NJP expired
on 13.3.82.

P.S. Memo, Affidavit, Bona, Surviving Family Members
Certificate, M.O.P. of Late Manglu Ram Nath ex. Gangman under
CPWI/Con/NJP expired on 13.3.82 are sent herewith for release
of P.F. amount credited to Account No. 552215 (17).

DA:-
Vineet K. G.

(Sd/-) (Signature)
For Dy. Chief Engineer/Con
New Jalpaiguri.

Copy to:-

✓ Smt. Eronibala Nath w/o Late Manglu Ram Nath.
Ex. Gangman under CPWI/CO/NJP for information.

(Sd/-) (Signature)
AFC (CO) NJP
For Dy. Chief Engineer/Con
New Jalpaiguri.

Provident Fund

certified to be true
and correct
Advocate

Eronibala Nath

Umo 013607/0 220311 22/1/83

22-1-83

(TYPE COPY)

(20)

Annexure-11

Northeast Frontier Railway

Office of the
Dy. Chief Engineer (Con)
New Jalpaiguri

No. FC/CCN/N-22/NJP (MRN)

Dated 12th February '93.

FA & CAO (CCN)
Maligaon

Sub : F.S. papers of Late Manglu Ram Nath
Ex Gangman under CPWI/CCN/NJP expired
on 1.8.92.

F.S. Memo Affidavit Bon Surviving Family members
certificate, M.O.P of late Manglu Ram Nath ex G/man under
CPWI/Con/NJP expired on 18.8.92 are sent herewith for release
of P.F. amount credited to Account No. 552949 (NG).

DA :- Nine sheets.

(A. Kispotta)
APO (CON) NJP
For Dy. Chief Engineer/Con
New Jalpaiguri.

Copy to :

Smt. Indrani Nath W/o late Manglu Ram Nath
Ex Gangman under CPWI/CON/NJP for information.

Sd/-Illegible
(A. Kispotta)
APO (CON) NJP
For Dy. Chief Engineer/Con
New Jalpaiguri.

By Post
Northeast Frontier Railway

Annexure IV
20

Office of the
Dy. Chief Engineer (Con)
New Jalpaiguri.

No. 20/CON/AL-22/NEP (MRU)

136

Dated: 11th. March '94.

Asstt. Accounts Officer (Con),
N.F.Rly., New Jalpaiguri.

Subject: Gratuity Act 72.

Shri Mangloo Ram Nath, Gangnam under Dy. Chief Engineer (Con) L.J.
breathed his last on 19th. August, 1993.

Gratuity Act/72 papers are arranged and signed by
the competent authority and sent for audit and payment at an early date.

DA:- R/case- *53* 45 folios
S/Sheet & Leave Account- two books.
Gratuity Act 72 papers.

(*S. S. Mandal*)
Asstt. Personnel Officer/Con
New Jalpaiguri.

Copy to :-

✓
Smt. Bronibala Nath. W/o Late Mangloo Ram Nath
Ex. Gangnam under Dy. Chief Engineer (Con) L.J.
Vill- Rampur, P.O. Sarbhog
Dist. Barpeta (Assam) for information.

(*S. S. Mandal*) *11/3/94*
Asstt. Personnel Officer/Con
New Jalpaiguri.

Certified to be true
Advocate

amb:

(TYPE COPY)

(21)
Annexure IV

Northeast Frontier Railway

Office of the
Dy. Chief Engineer (Con)
New Jalpaiguri

No.PC/CON/M-22/NJP (MRN)/136 Dated 11th March'94.

Asstt. Accounts Officer (Con),
N.F.Railway, New Jalpaiguri

Sub - Gratuity Act 72.

Shri Mangloo Ram Nath, Gangman under Dy. CE (CON) & NJP
breathed his last on 18th August, 1992.

Gratuity Act/72 papers are arranged and signed by the
competent authority and sent for audit and payment at an
early date.

DA:- P/case 53 folios
S/Sheet & Leave Account - two books
Gratuity Act 72 papers

Sd/-

(R.K.Mandal)
Asstt. personnel Officer/Con
New Jalpaiguri

Copy to :-

Smt Eronibala Nath W/o Late Mangloo Ram Nath,
Ex. Gangman under Dy. C /Con/NJP
Vill Rampur, P.O. Sorbhog Dist. Barpeta
Assam for information.

Sd/-

(R.K. Mandal)
Asstt. Personnel Officer/Con
New Jalpaiguri

To:

G4(P)/CON/4LG
H.F.Rly./Maligaon.

Annexure V
27

Sub:- Non receipt of pensionary benefit by the
wife of Manglu Ram Vath, Ex: Gangman under
CPWI/Con/NJP expired on 12.8.92 at 14-30 hrs.

Sir,

I beg to state that my husband was working as a Gangman under
CPWI/CON/NJP and expired on 12.8.92 at 14-30 hrs. while in fly.
service, but ^{to date no} pensionary benefit which is payable to wife has not yet
been sanctioned. by the authorities.

For which I am suffering from starvation with my all children
Necessary papers in this respect has already been submitted
but to no effect.

In view of the above I approach your kind ness to please look
into my case and ^{Kindly do the needful for} ~~arrange~~ ^{only} payment of pension.

Thanking you,

Yours faithfully,



Indrani Vath
W/O Manglu Ram Vath
Ex: Gangman under
CPWI/CON/NJP
Vill. Barbour
P.O. Sorbhog
Dist. Barpeta (Assam).

Carried to the time
in the
Advocate.

(TYPECOPY)

(22)
Annexure - V

To:

GA(P)/CON/MLG
N.F.Rly./Maligaon

Sub : Non receipt of pensionary benefit by the wife
of Manglu Ram Nath, Ex Gangman under CPWI/Con/
NJP expired on 18.8.92 at 14-30 hrs.

Sir,

I beg to state that my husband was working as a
Gangman under CPWI/CON/NJP and expired on 18.8.92 at 14-30
hrs. while in Rly. service, but till date no pensionary
benefit which is payable to me i.e. wife of M.R.Nath has not
yet been sanctioned by the authorities.

For which I am suffering from starvation with my
all children.

Necessary papers in this respect has already been
submitted but to no effect.

In view of the above I approach your kindness to
please look into my case and kindly do the needful for payment
of pension.

Thanking you,

Yours faithfully,

Sd/-

Mrs Indrani Nath
W/o Manglu Ram Nath
Ex Gangman under CPWI/
CON/NJP Vill Rampur
P.O.Sorbhog, Dist.Barpetta, Assam

9
T.
R.

Walter Goodwin

(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA,
MIZORAM AND ARUNACHAL PRADDDTH)

APPELLANT
PETITIONER

Smt Eroni Bala Nakh

VERSUS

N.P. Railways

RESPONDENT
OPPOSITE-PARTY

Know all men by these presents that above named
Smt. Eroni Bala Mah do hereby nominate, constitute and
appoint Shri. Motin B. Ahmed, M. Sarma

..... Aduocate and such of the undermentioned
Advocates as shall accept this Vakalatnama to be my/our true and lawful Advocates
to appear and act for me/us in matter noted above and in connection therewith and
for that purpose to do all acts whatsoever in that connection including depositing or
drawing money filing in or taking out papers, deeds of composition etc. for me / us
and on my /our behalf and I / We agree to ratify and confirm all acts to be done by
the said Advocates as mine /ours to all intents and purposes. In case of non-payment
of the stipulated fee in full, no Advocate will be bound to appear and act on my/our
behalf.

In witnesses whereof I/We hereunto set my/our hand on this 20
day of January 2006

Received from
executant, satisfied
and occepted.

Mr. _____ Senior Advocate
will lead me/us in the case

Accepted

Martin B. V. Ahmed

Advocate

Advocate

M. Larmer

Advocate

Notice

Date - 27-1-06

From, A B Ahmed, Advocate

To, Railway Striking Council.
Rly.

Subj: - OA No -

Sir, Please find enclosed herewith a
copy of the OA, is for your
information and necessary action.

Yours faithfully

A B Ahmed
Advocate

Recd copy

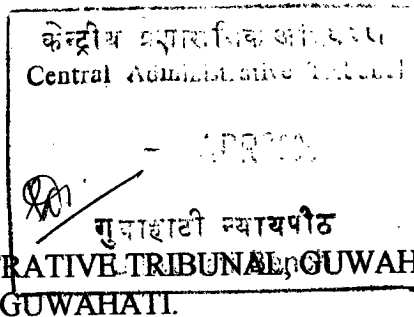
for reference

for S.L. Samra

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Rly Striking Council.

-23-



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH,
GUWAHATI.

O.A. No.28 of 2006.

Smti Eroni Bala Nath,
W/o Late Manglu Ram Nath.,
Village Rampur, P.O. Sarbhog,
Dist. Barpeta, Assam.....Applicant.

-VRS-

The Union of India and others..... Respondents.

WRITTEN STATEMENT ON BEHALF OF THE
RESPONDENTS.

The answering Respondents most respectfully shweth,

1. That they have gone through the copy of the application filed by the above named Applicant and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the Applicant is put to the strictest proof thereof.
2. That for the sake of brevity meticulous denial of each and every allegation/statement made in the application has been avoided. However the answering Respondents confined their replies to those points/allegations/averments of the Applicant which are found relevant for enabling a proper decision on the matter.
3. That the application suffers for want of valid cause of action as will be clearly evident from the statement made in the relevant paragraph below :
4. That in regard to para-4.1, it is submitted that as per the record of Service Book the permanent address of Late Manglu Ram Nath was village Rampur, P.O. & P.S Sarbhog, District. Barpeta having his date of birth was 1.1.1953 and date of engagement was 10.11.82 and his date of expiry was 18.8.92. It is further stated that the statement of the Applicant that "she is the widow of Late Manglu Ram Nath" does not corroborate with the Annexure submitted by her as Annexure-Vat page 22 of the application wherein

Contd.....p/2....it is....

File No. 4/4/06
4/4/06
Advocate
नमूना कार्यालय अधिकारी (नि.)
Dy. Chief Personnel Officer (Con.)
पू.सी. रेन, मालिगाँव
N.F. Railway, Maligaon
गुवाहाटी-11
781011

it is stated that Mrs Indrani Nath is wife of Late Manglu Ram Nath. Thus, the statement made in the application is false and fabricated to get undue benefits.

5. That in regard to statement made at paragraph 4.2 in the application by the Applicant, the Respondents beg to submit that there is no record available regarding the appointment of Late Manglu Ram Nath Casual labour on 23.12.1976 which continued up to 15.4.1979 and again from 17.6.1979 to 15.10.1979.

A copy of Service Book of Casual Labour card enclosed as Annexure-1 by the Applicant does not have any remarks regarding the date of appointment of Late Manglu Ram Nath as Casual Labour. The record available with the Respondents revealed that Late Manglu Ram Nath was awarded temporary status of Gangman with effect from 1.1.1984 after completion of 360 days continuous service with effect from 10.11.1982.

6. That it is submitted in this connection that from the Annexures submitted by the Applicant the last correspondence was made with the Applicant by the Respondents on 11.3.1994 (Annexure-IV of the Applicant) while passing of the papers for granting Gratuity as per Gratuity Act 1972. Since then there was no correspondence made by the Applicant, as it is envisaged from the Annexures submitted by the Applicant, with the Respondents for any of her representations and after lapse of complete 10 years and being silent over the matter all on a sudden the Applicant has approached this Hon'ble Tribunal directly and without availing of the opportunities as per the Administrative Tribunal Act, 1985. Thus the case is helplessly barred by limitation and contrary to Rules according to the Law of Limitation and Administrative Tribunal Act and, hence, is liable to be rejected abinitio.

7. That as regards the statements made at para-4.3 & 4.4. by the Applicant it is submitted that Late Manglu Ram Nath, Ex-Gangman was transferred from the unit of Dy. Chief Engineer Construction, Malda and joined under Chief Permanent Way Inspector/Con/New Jalpaiguri on 16.6.88 and continued there till his death on 18.8.1992.

8. That as regards the statements made in para-4.5,4.6,4.7 & 4.8 of the Applicant made in his application the Respondents submit that those are all matters of records and to that extent those are recorded and also the matters which do not corroborate with the records are traversed and denied to the extent of nonconformity of records.

9. That with regard to the statement made at para-4.9 by the Applicant in his application the answering Respondents beg to submit that the Provident Fund, Termination Gratuity and

it is stated that Mrs Indrani Nath is wife of Late Manglu Ram Nath. Thus the statement made in the application is false and fabricated to get undue benefits.

5. That in regard to statement made at paragraph 4.2 in the application by the Applicant, the Respondents beg to submit that there is no record available regarding the appointment of Late Manglu Ram Nath Casual labour on 23.12.1976 which continued up to 12.4.1979 and again from 17.6.1979 to 12.10.1979.

A copy of Service Book of Casual Labour card enclosed as Annexure-1 by the Applicant does not have any remarks regarding the date of appointment of Late Manglu Ram Nath as Casual Labour. The record available with the Respondents revealed that Late Manglu Ram Nath was awarded temporary status of Garman with effect from 1.1.1984 after completion of 360 days continuous service with effect from 10.11.1983.

6. That it is submitted in this connection that from the Annexures submitted by the Applicant the last correspondence was made with the Applicant by the Respondents on 11.3.1994. Annexure-IV of the Applicant while passing of the papers for granting Gratuity as per Gratuity Act 1972. Since then there was no correspondence made by the Applicant as it is envisaged from the Annexures submitted by the Applicant with the Respondents for any of her representations and after lapse of complete 10 years and being altogether the matter all on a sudden the Applicant has approached this Hon'ble Tribunal directly and without availing of the opportunities as per the Administrative Tribunal Act 1981. Thus the case is helplessly barred by limitation and contrary to Rules according to the Law of Limitation and Administrative Tribunal Act and hence is liable to be rejected ab initio.

7. That as regards the statements made at para-4.3 & 4.4 by the Applicant it is submitted that Late Manglu Ram Nath, Ex-Garman was transferred from the unit of Dy. Chief Engineer Construction, Midla and joined under Chief Engineer, V. Inspector, Convey Jalpaiguri on 12.6.88 and continued there till his death on 18.8.1992.

8. That as regards the statements made in para-4.5, 4.6, 4.7 & 4.8 of the application made in his application the Respondents submit that those are all matters of records and to that extent those are recorded and also the matters which do not corroborate with the records are traversed and denied to the extent of nonconformity of records.

9. That with regard to the statement made at para-4.9 by the Applicant in his application the answering Respondents beg to submit that the Respondents find

Termination Gratuity and

Group Insurance (GIS) were paid to the heir of the deceased employee Late Manglu Ram Nath, Ex-Gangman. Family pension is not admissible as per Rule as the deceased employee was an unscreened staff and, moreover, he could not complete the required 10 years of regular and continuous service till his death. As per Railway Pension Rule 1993, Rule 14 of Chapter-II the casual period of daily rated service of an employee shall not be counted ^{and} treated as "qualifying service" for the pensionary benefit.

10. That in regard to the Grounds for filing this application stated by the Applicant on various paragraphs under Para-5 are denied due to irrelevancy of the fact and non-submission of the relevant Rules. The Indian Railway System is absolutely an independent organization and having its own Rules and Regulation and working system to be guided with separately and, hence, the Central Civil Service Pension Rules, 1972 are not applicable in the case of Railway 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.

11. ~~The~~ The Respondents beg to state that the present case is not supported according to the law of Limitation and, hence, it is hopelessly barred by limitation.

12. That in accordance with the Provision and Rules of the Administrative Tribunal Act, 1985, an aggrieved person shall have to approach the Hon'ble Central Administrative Tribunal only after availing of all opportunities. But here in the case the Applicant has straightway come to this Hon'ble Tribunal without availing of all opportunities after 11.3.1994 when the Gratuity of her husband Late Manglu Ram Nath was passed and arranged for audit & payment with the information to the Applicant in her above residential address. Thereafter there was no representation from any of the lawful heirs of Late Manglu Ram Nath. Hence, this application is not tenable in the eye of law.

13. That the claim of the Applicant is disputed so much so that an application was submitted by one Mrs Indrani Nath addressing the GM(P)/Con/Maligaon, N.F. Railway, Maligaon which is undated and unsigned and annexed by the Applicant herself as Annexure-V containing ^{at} page 22 of the application. The matter raises a doubt as to the claim of the Applicant as real heir of Late Manglu Ram Nath, Ex-Gangman, ^{undone} Dy. C.E, Construction, New Jalpaiguri and, hence, raises dispute to state the factual position of the matter as per lawful acts. Thus, the application is also barred by competency of the Applicant.


25-
Dy, Chief Personnel Officer:
N.F. Railway, Maligaon
New Jalpaiguri-735007

Oenothera laticia

17. That the Respondents beg to crave leave of this Hon'ble Tribunal for submission of Additional Written Statement, Re-joinder, if necessary.

S/O Late Chandra Suiwla

And I sign this Verification on this ...4...th day of ^{APR}~~March~~, 2006.


For and on behalf of
Union of India and other Respondents.
उद्योग मन्त्रालय, लोकिक अधिकारी (नि.)
Dy. Chief Personnel Officer (Con.)
पू०सी० रेल, मालगाँव
N.F, Railway, Maligaon
गुवाहाटी-11
Guwahati- 781011

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI**

VOKALATNAMA

OA No. 28/2006

Smt Eroni Bala Nath

.....Applicant

U.O.I & Ors.

.....Respondents

I, Shri A.Saikia, DY.CPO/Con/Maligaon, of the Northeast Frontier Railway Administration, who is also ex-officio authorized to act for and on behalf of the Union of India as representing the Northeast Frontier Railway Administration do hereby appoint and authorize Shri K.K.Biswas, Advocate to appear, act, apply plead in and prosecute the above described suit/ appeal/proceedings on behalf of the Union of India, to file and take back documents, to accept processes of the court to appoint and instruct Counsel, Advocate or pleader, to withdraw and deposit moneys and generally to represent the Union of India in the above described suit / appeal / proceedings and to do all things incidental to such appearing, acting, applying, pleading and presenting for the Union of India/express SUBJECT NEVERTHELESS TO the condition that unless express authority in that behalf has previously been obtained from the appropriate Officer of the Government of India, the said Counsel/Advocate/Pleader or any counsel, Advocate or pleader appointed by him shall not withdraw or withdraw from or abandon wholly or partly the suit/appeal/claim/defense/proceedings against all or any defendants / respondents / appellants / plaintiffs / opposite parties or enter into agreement, settlement or compromise hereby the suit / appeal / proceedings parties or enter into agreements, settlement or compromise hereby the suit/appeal/ proceedings is/are wholly or partly adjusted or refer all or any matter or matters arising out in dispute therein to arbitration PROVIDED THAT IN exceptional circumstances when there is not sufficient time to consult such appropriate officer of the Government of India and on omission to settle or compromise would be definitely prejudicial to the interest of the Government of India, the said Pleader/Advocate or Counsel may enter into any agreement, settlement or compromise whereby the suit/appeal proceedings is/are wholly or partly adjusted and in every such case the said Counsel/Advocate/Pleader shall record and communicate forthwith to the said officer the special reasons for entering into the agreement, settlement or compromise.

I hereby agree to ratify all acts done by the aforesaid Shri K.K.Biswas, Advocate in pursuance of this authority.

IN WITNESS WHERE OF THESE presents are duly executed for and on behalf of the Union of India this 7th day of March, 2006

Accepted.
K.K.Biswas
17.3.2006
Railway Advocate

(A.Saikia)

DY.CPO/Con

N.F.Railway, Maligaon

For and on behalf of Union of India & Others

২য় মুখ্য কার্যিক অফিসার (নি)

Dy, Chief Personnel Officer (Con.)

পূ.সী.০ রেল, মালিগাঁও

N.F, Railway, Maligaon

গুৱাহাটী-11

Guwahati- 781011

Filed by
K.K.Biswas
14-06
Adv. Advocate

From:

Sri K.K. Biswas,

Advocate.

Central Administration Tribunal,

Guwahati.

To:

Sri M. Ahmed,

~~Railway~~ Advocate,

CAT/Guwahati.

Dear Sir,

Sub: O.A. No. 28 of 2006

Sri Swati Exoni Bala Nath Applicant/Ptitioner

VS.

Union of India and Qrs. -----

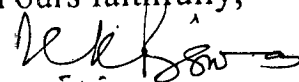
Respondents/Opposite Parties.

Kindly acknowledge receipt of the enclosed "Service Copy" for the Advocate of the Respondents/Opposite Parties.

With thanks,

Dated 4-4- 2006

Yours faithfully,



(K.K. Biswas)

Advocate,

CAT/Guwahati.

*Received copy
of reply
H.B. / Rnd
Advocate
20-4-2006*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL;
GUWAHATI BENCH : GUWAHATI**

IN THE MATTER OF :

MEMORANDUM OF APPEARANCE

In O.A. No 28 of 2006

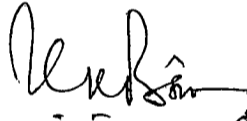
Smt. Eroni Bala Devi
.....Applicant

-Vs-

Union of India & Others
..... Respondents

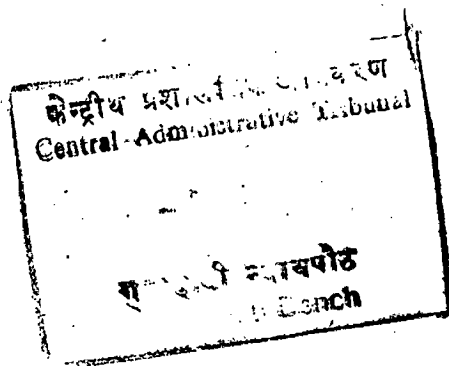
I, Shri Kanti Kumar Biswas, Railway Advocate, Central Administrative Tribunal, Guwahati, hereby enter appearance on behalf of Union of India & Respondents Nos. 1 to 7 in the above case. My name may kindly be noted and shown as Advocate for the Respondent/s accordingly. Necessary Vakalatnama has already been filed.

Encls: 1(one)


(Kanti Kumar Biswas) 02/05/06
Railway Advocate
Central Administrative Tribunal
Guwahati

To
The Registrar,
Central Administrative Tribunal,
Bhangagarh, Rajgarh Road,
Guwahati

10 years
18/8/92



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI
BENCH, GUWAHATI

ORIGINAL APPLICATION NO.28 OF 2006

Smti Eroni Bala Nath,
Wife of late Manglu Ram Nath,
Village Rampur, PO Sarbohng,
District Barpeta, Assam.

... Applicant.

-Versus-

The Union of India & Ors.

... Respondents.

REPLY OF THE APPLICANT AGAINST THE WRITTEN
STATEMENT FILED BY THE RESPONDENTS.

The applicant herein most respectfully Sheweth:

1. That as regards the statements made in paragraphs 1 and 2 of the written statement the applicant has no comment to offer.
2. That the applicant denies the correctness of the statements made in paragraph 3 of the written statement and states that the applicant being the legally married wife of the deceased employee is entitled to claim the pensionary benefits.

And copy
or reply
received
- 4/5/06
Advocate

RTP

Smt. Eroni Bala Nath

3. That, the statement made in paragraph 4 of the written statements are denied by the deponent. The applicant who is an illiterate woman, used thumb impression on papers submitted before the Respondent authorities claiming pension and pensionary benefits. In the said forms/ applications she put her thumb impression and the person who filled in the forms/ application inadvertently put her name as "Indrani", which is her surname, instead of "Eroni Bala Nath". Accordingly, the Respondent authorities made communications in her name i.e. "Smti Eroni Bala Nath." The applicant was fully in dark about the position that her name has been wrongly mentioned as "Indrani Bala Nath" by the scribe of the application on her thumb impression. In this regard the applicant has sworn an affidavit before the Judicial Magistrate, Kamrup, Guwahati explaining the fact that she i.e. "Indrani Bala Nath" and "Eroni Bala Nath" are one and same person, who is the legally married wife of late Manglu Ram Nath, the deceased employee.

A copy of the affidavit dated 11.04.2006 is annexed hereto and marked as ANNEXURE-A.

4. That, as regards the statement made in paragraphs 5 and 6 of the written statement, the applicant states that from the death certificate/ medical report issued by the competent authorities, apart from other communications, the deceased employee has been referred to as "Gangman" by the respondents. As such, the respondents are required to produce the original records before this Hon'ble Tribunal substantiate their own submissions and cannot be permitted to make such vague statements on the plea that the

-29-

RTI

Erani bala Nath

records are not available. Admittedly, applicant's husband was given temporary status of Gangman on completion of statutory working days of continuous service (i.e. from 10.11.1982 to 01.01.1984) and as such the applicant is entitled to family pension being the widow deceased employee as provided in the Pension Rules (Manual of Railway Pension Rules).

As regards the contention of the respondents that the case is barred by limitation, the applicant states that being a poor and illiterate woman she had to depend at the mercy of others to ventilate her grievances before the authorities. After the death of her husband on 18.08.1992 the authorities remained silent and till 1994 she approached various authorities for getting the pensionary benefits and ultimately an application was submitted on 11.03.1994 on the basis of which the Provident Fund and Gratuity have been released in favour of your applicant. The applicant was under the bonafide belief that the matter is being processed. The applicant on various occasions approached the authorities for release of pension, but every time except assurance nothing has been favoured to her, which caused delay in filing the instant application. For such reasons, the applicant cannot be blamed for the alleged delay and deprived from her legitimate due as provided under the rules. That apart, the employer being a welfare State cannot take such plea to deprive a illiterate and poor widow.

5. That, as regards the statements made in paragraphs 7, 8, 9, 10, 11, 12 and 13 of the written statement, the applicant states that admittedly the petitioner's husband was transferred to New Jalpaiguri to Malda on 16.06.1988 and he continued there as Gangman till his

records are not available. Actually applicant's husband was given temporary status of (employee on completion of statutory working days of continuous service (i.e. from 10.11.1982 to 01.01.1984) and as such the applicant is entitled to family pension being the widow of deceased employee as provided in the Pension Rules (Ministry of Railway Pension Rules).

As regards the contention of the respondents that the case is barred by limitation, the applicant states that being a poor and illiterate woman she had to depend at the mercy of others to ventilate her grievance before the authorities. After the death of her husband on 10.08.1982 the authorities remained silent and till 1994 she approached various authorities for getting the pensionary benefits and ultimately an application was submitted on 11.03.1994 on the basis of which the Provident Fund and Gratuity have been released in favour of your applicant. The applicant was under the bonafide belief that the matter is being processed. The applicant on various occasions approached the authorities for release of pension but every time except assurance nothing has been favoured to her which caused delay in filing instant application. For such reasons, the applicant cannot be blamed for the alleged delay and deprived from her legitimate due as provided under the rules. That apart the employer being a welfare State cannot take such plea to deprive a illiterate and poor widow.

That as regards the statement made in paragraphs 1 & 2, 10, 11, 12 and 13 of the written statement, the applicant states that originally the petitioner's husband was transferred to New Jalpaiguri to work on 10.08.1982 and he continued there as Engineer till his

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R
K. S. Nair

death on 18.08.1992. The applicant denies the contention that the casual period of daily rated service of an employee shall not be counted and treated as "qualifying service" for the pensinary benefit. Chapter IX Rule 401 of the M.R.P.R. qualifying service is the number of completed 6 monthly periods of service which is taken into account for determining the amount of pensinary benefits. Sub-rule (4) provides casual labour service on monthly rates of pay shall count as qualifying service to the extent of $\frac{1}{2}$ of it, provided it is followed in continuation by an absorption in regular cadre. In the present case, applicant's husband who was initially engaged as casual worker, was subsequently absorbed as Gangman and as such entitled to pension. The Manual of Railway Pension Rules, itself provides "where a Government servant, who is governed by the Workmen Compensation Act, 1923 dies while in service after having rendered not less than seven years continuous service the rare of family pension payable to the family shall be equal to 50 per cent of the pay last drawn or one and a half times the family pension admissible under sub-rule (2), whichever is less." As such, the contention of the Respondents that Workman Compensation Act, 1923 is not applicable in case of Railway, is totally not contradictory and devoid of any merits.

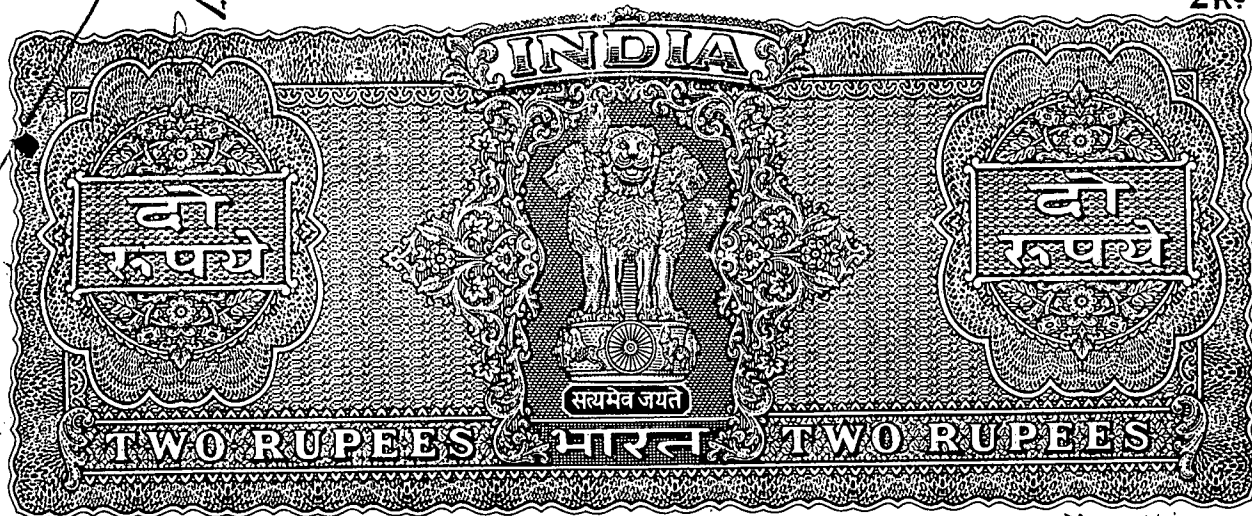
It is now well settled by various decisions of the Hon'ble Supreme Court as well by various High Courts, that the grant of pension to an retired employee or family pension to the deceased employee is statutory right which cannot be defeated by taking an unfounded plea of limitation or genuineness of the claim of the applicant.

Verification

I, Smti Eroni Bala Nath, Wife of late Manglu Ram Nath, aged about 50 years, resident of Village Rampur, PO Sarbohng, District Barpeta, Assam solemnly affirm and verify that the statements made in this paragraph, and those made in paragraphs 1, 2, 4 & 5 are true to my knowledge, those made in paragraphs 3 being matters of record are true to my information derived therefrom which I believe to be true and the rest are my humble submissions.

And I sign this verification on this 3rd day of May, 2006 at Guwahati.

RTI
Smt. Eroni Bala Nath
Deponent.
E



31-

IN THE COURT OF MAGISTRATE AT GUWAHATI

Handwritten note:
T. B. Nath
at 11

A F F I D A V I T -

I, Smt. Eroni Bala Nath wife of Late Manglu Ram Nath, Ex-Gangman, Railway, aged about 50 years, by religion Hindu, by profession house hold, resident of vill - Rampur, P.O Sorbhog, District Barpeta, Assam do hereby solemnly affirm and declare as follows :-

1. That I am a citizen of India by birth and permanent resident of the above mentioned locality.



2. That I am widow of late Manglu Ram Nath who was an employee in the Railway Deptt at Railway New Jalpaiguri Division as a Gangman and died in harness on 18.8.1992.

3. That after death of my husband late Manglu Ram Nath and for his regular service in the Indian Railway I have applied for family pension and as an illiterate woman my name is appeared by typing mistake as Smt. Indrani Bala Nath.

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Handwritten notes:
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22.8.92
22.8.92



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4. That from my childhood I have used my name as Smt. Eroni Bala Nath and all correspondence my name was used as Eroni Bala Nath wife of late Manglu Ram Nath.

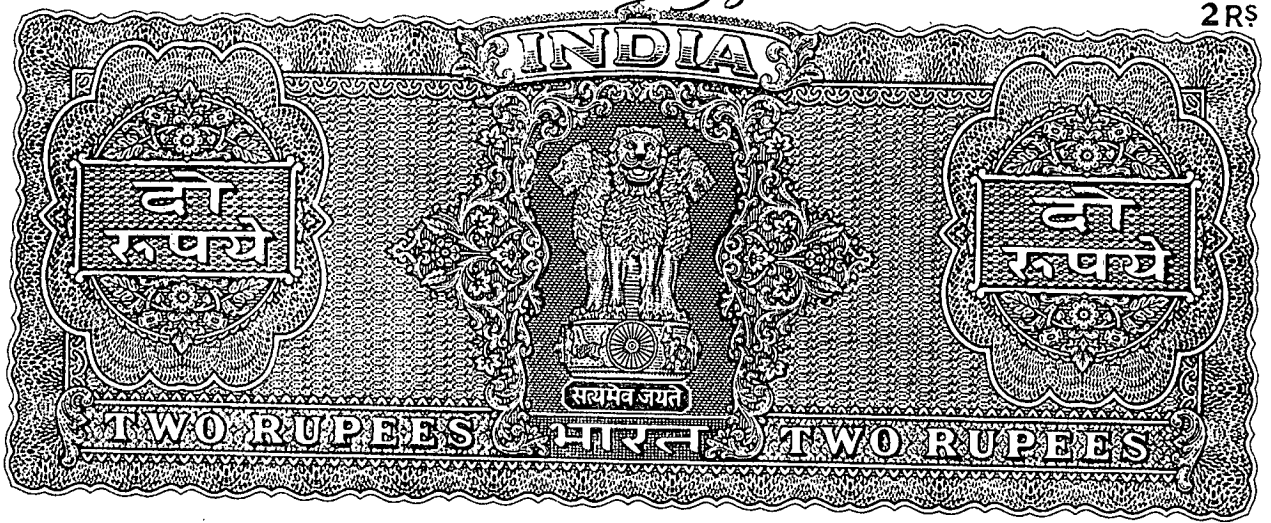
5. That I declare that my name has been wrongly typed as Smt. Indrani Bala Nath in place of Eroni Bala Nath. in the application for family pension before the Railway authority.

6. That now I intend to get correction of my name as Smt. Eroni Bala Nath in the records and application for the ~~xxx~~ above purpose.

contd.3

144/100
Executive Engineer
R.A.M.S.P.





- 3 -

7. That the statements made above are true to my knowledge and belief.

I sign this Affidavit on this 11th day of April, 2006 at Guwahati.

Identified by me

M. Sarma
Advocate,

Deponent

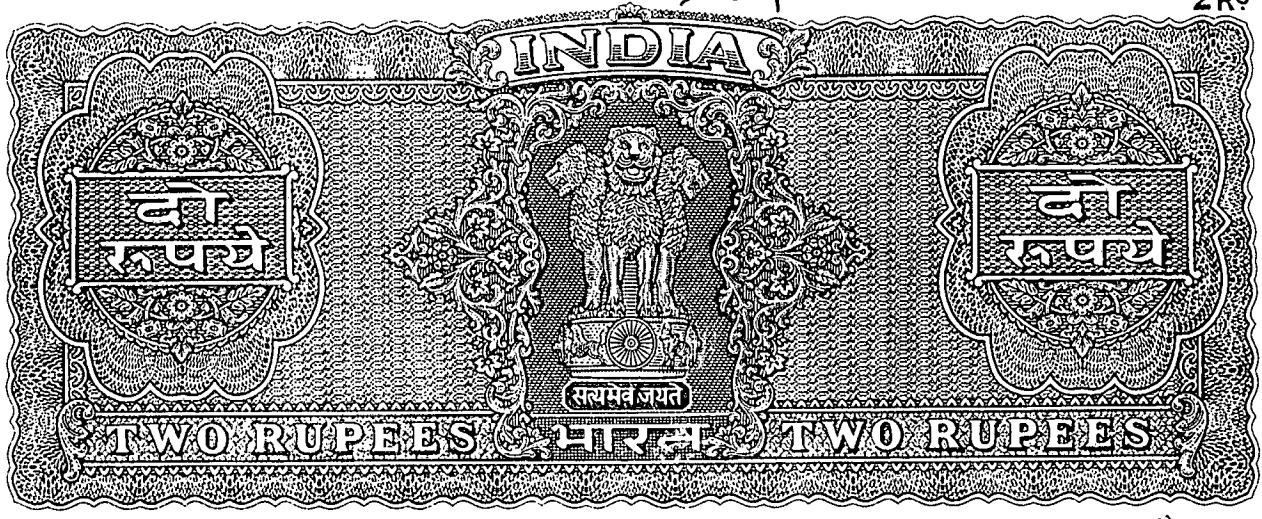
Solemnly affirmed and declared before me by the deponent who is identified by *M. Sarma* Advocate, Guwahati on this 11 th April, 2006 at Guwahati.

11/4/06
Magistrate, Guwahati.
RAMESH



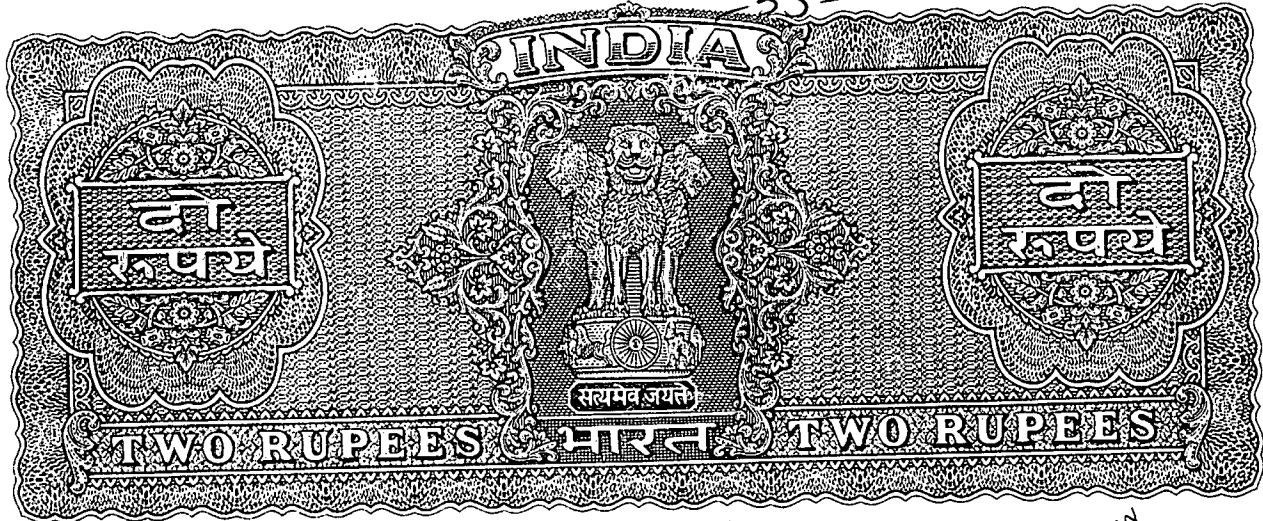
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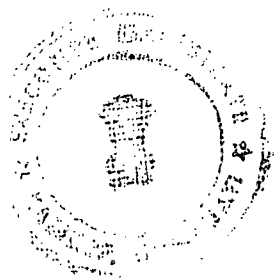


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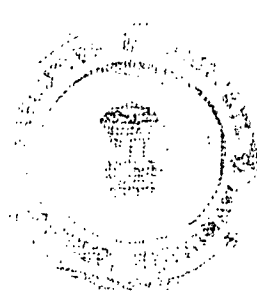
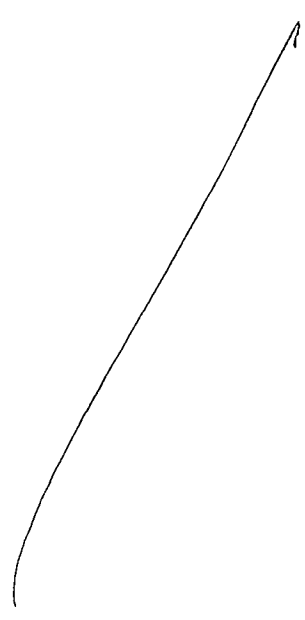


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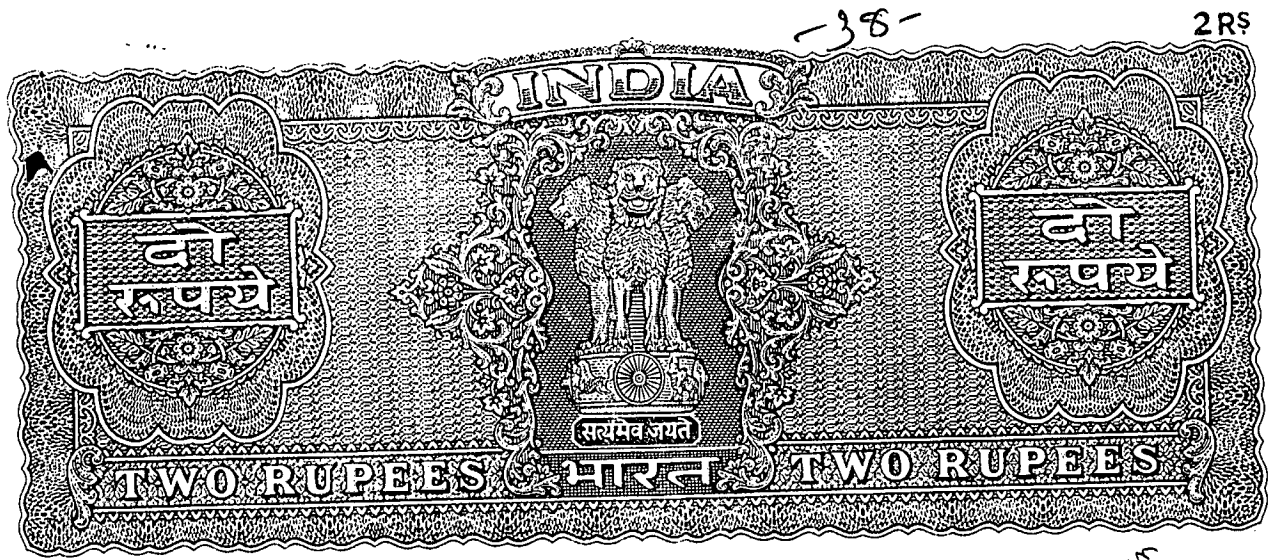
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R. T. I
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N. J. J. J. J.

