

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9221 of 2017**

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Gita Devi wife of Late Ashok Kumar Poddar, working as L.C.P. Under  
Station Manager, East Central Railway, Barauni, District- Begusarai  
(Bihar). .... Petitioner

Versus

1. The Union of India through the General Manager, East Central  
Railway, Hajipur, P.O.- Digghi Kala, P.S.- Hajipur, District- Vaishali at  
Hajipur (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur,  
P.O.- Digghi Kalan, P.S.- Hajipur, District- Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Sonapur,  
P.O.- Sonapur, District- Saran (Bihar).
4. The Divisional Personnel Officer, East Central Railway, Sonapur,  
P.O.- Sonapur, District- Saran (Bihar).
5. The Senior Divisional Operating Manager, East Central Railway,  
Sonapur, P.O.- Sonapur, District- Saran (Bihar).
6. The Senior Divisional Financial Manager, East Central Railway  
Manager, East Central Railway, Sonapur, P.O.- Sonapur, District-  
Saran (Bihar).

.... Respondents

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**Appearance :**

|                    |   |                                                                                                           |
|--------------------|---|-----------------------------------------------------------------------------------------------------------|
| For the Petitioner | : | Mr. Munna Pd Dixit (M.P. Dixit), Advocate<br>Mr. Sanjay Kr. Choubey, Advocate<br>Mr. S.K. Dixit, Advocate |
| For the Railways   | : | Mr. Bindhyachal Singh, Advocate<br>Mr. Manish Prakash, Advocate                                           |

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**And**  
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**



**Date: 31-08-2017**

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The order dated 19<sup>th</sup> January, 2017 passed by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna in Original Application (O.A.) No. 171/2013 had led to filing of two Writ Applications, one by the applicant before the Tribunal namely, Gita Devi and the other by the Railways which is CWJC No. 9915/2017. The two Writ Applications, to that extent, are inter-linked because they are based on the facts on which adjudication has been made by the Tribunal.

3. The husband of the present petitioner namely, Gita Devi died on 03.03.1999. The aforesaid O.A. was filed in the year 2013 for a so-called limited question whether she is entitled to family pension by virtue of being widow of a permanent Group-D employee despite having been appointed on compassionate ground. The Tribunal came to a conclusion, especially in paragraph-5 based upon the notification or the document dated 24.02.1999, which was annexed as Annexure-A/2 to the O.A. that the husband of



the petitioner became a regular employee in the year 1999, and, therefore, she was entitled for family pension from the date of death of the husband till she managed to get compassionate appointment.

**4.** The widow, therefore, filed the writ application for a relief that the order of the Tribunal limiting the benefit of family pension only till the date of her appointment on compassionate ground is erroneous, because there are rules in place especially Rule 18(3) of the Railway Services (Pension) Rules, 1993 which does envisage grant of pension to such employees.

**5.** The submission of the learned counsel has been very carefully analyzed and examined. The Tribunal has committed a patent error in the factual aspect of the matter which has led to passing of an erroneous order. The entitlement of pension will arise provided the status of the employee is clear and unambiguous.

**6.** We have taken note of Annexure-A/2, which is a list of candidates, who became eligible for empanelment for being made regular under the Railway Establishment. Mere inclusion of a candidate in the list of empanelled



candidates does not make a person a permanent employee of the Railway. Though, the list will surely become a foundational fact based on which the subsequent notification conferring the benefit of regular employment would emerge, or would be issued. This Court has been informed by learned counsel for the Railway that the candidates whose names figure in Annexure-A/2 were notified as regular employees only in the year 2001 onwards.

**7.** The death of the husband of the petitioner happened on 03.03.1999. Merely because the name of the husband of the petitioner figured in the list, as contained in Annexure-A/2, no right accrues. The final decision or notification showing conferment of permanent status is not in place because there was no notification as the employee was already dead. No such notification has been produced by the petitioner either in the O.A. or in the writ application which could establish the fact that the Railway did confer status of regular employee under them by such a decision.

**8.** The mistake committed by the Tribunal, therefore, is that Annexure-A/2 itself was treated as a



notification for conferment of regular status of the employee, which Annexure-2 is not.

9. If that be so then the conclusion to which the Central Administrative Tribunal jumped to that it is crystal clear that the husband of the petitioner has become a permanent employee is a mistake of fact and, therefore, any decision or direction for payment of family pension to her seems to be an erroneous decision based on wrong appreciation of fact.

10. The Court is grateful to the counsel for the petitioner for having brought to the notice of this court Rule 1515 of the Indian Railway Establishment Manual (Volume 1), which reads as under:-

***“1515. Rights and privileges admissible to the Substitutes. – Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.***

***Note. – The conferment of temporary status on the Substitutes on completion of four months continuous***



***service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.”***

**11.** Reading of the above Rule, therefore, reinforces the opinion of this Bench that the Tribunal was in error. The conferment of the regular status is *sine quo non* for grant of benefit of pension. Therefore, it was this reason that the Tribunal has gone wrong in jumping to the conclusion that permanent status was conferred on the husband of the petitioner, so the error in the order.

**12.** Learned counsel for the Railway has produced an order dated 07.01.2009 passed by the Hon’ble Supreme Court in Special Leave To Appeal (Civil) No(s). 19281/2007; where the Hon’ble Court has opined that a substitute cannot be deemed to be a Railway servant unless he is absorbed in the regular railway service. The Apex Court order reads as under: -

*“Heard learned counsel for the petitioner.*

*We are of the opinion that in view of Clause 26 of the Railway Services Pension Rules, 1993 (for short ‘the Rules’) a substitute cannot be*



*deemed to be a railway servant unless he is absorbed in the regular railway service. Admittedly, petitioner's husband, who had been appointed as a substitute, was never absorbed on regular basis. Hence, petitioner's husband cannot be treated as a railway servant. Consequently, this special leave petition is dismissed."*

**13.** The reason why the Hon'ble Apex Court opined so is evident from a reading of Clause 26 of the Railway Services Pension Rules, 1993 which has been adverted to. If the said is read with Rule 1515 of the Indian Railway Establishment Manual especially the Note, then, the view expressed by the Tribunal seems to be in conflict with of the observation of the Hon'ble Apex Court as well as the relevant Rule.

**14.** The writ application, therefore, is fit to be dismissed and is dismissed.

**(Ajay Kumar Tripathi, J.)**

**(Rajeev Ranjan Prasad, J.)**

Rajeev/-

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