

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 104 of 2017**

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)**

1. Dhorapudi Mutyalamma, aged about 56 years.
2. Shri D.Ganga Raju, aged about 27 years.

Both are widow and son of Late D.Thata, Ex-Trackman under SE (P.way)/S.Kota, resident of Veerabhadrapeta Village, Po-Jami, L.Kota Mandalam, Dist.-Vizianagaram, Andhra Pradesh.

.....Applicants.

VERSUS

1. Union of India, represented through the General Manager, E.Co.Rly., E.Co.R.Sadan, Chandrasekharapur, Bhubaneswar, Dist.- Khurda.
2. Divisional Railway Manager/E.Co.Rly./Waltair Division, At-Dondaparti, Visakhapatnam, Andhra Pradesh.
3. Senior Divisional Personnel Officer/ E.Co.Rly./Waltair Division, At-Dondaparti, Visakhapatnam, Andhra Pradesh.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 17.2.2020

Order on : 19.2.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

This OA has been filed with the prayer for the following reliefs:-

- “(i) To quash the order of rejection dtd. 22.2.2012, 21.5.2012 & 9.1.2017 under Ann. A/4, A/5 & A/7 respectively.
- (ii) And to direct the Respondents to consider the case of the applicant No.2 for appointment in Railway on compassionate ground.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice;

And for which act of your kindness the applicant as in duty bound shall ever pray.”

2. Learned counsel for the applicant was heard. He submitted that the husband of the applicant No. 2 died in harness on 18.4.2009 after about 18 years of service under the respondent-railways. Applicant No. 2, son of the applicant No. 1 submitted an application for compassionate appointment on 10.12.2010, which was rejected by the respondents by order dated 22.2.2012 (Ann.-A/4 of the OA). Learned counsel for the applicant submitted that only ground mentioned in order dated 22.2.2012 was that the applicant passed 10<sup>th</sup>

Class after death of his father. Another representation was submitted which was rejected by order dated 21.5.2012 (Ann.-A/5) on the ground that the applicant could not write the name of a school. The applicant submitted an appeal dated 20.12.2016 to the respondent No.1 (Ann.-A/6) which was also rejected by order dated 9.1.2017 (Ann.-A/7) by the CPO.

3. It was further submitted by the applicant's counsel that the respondents have enclosed the instructions of the Railway Board dated 9.2.2005 (Annexure-R/2) with the Counter filed by them in the case. **Applicant's case, in brief, is that his case has not been considered as per the circular of the Railway Board at Annexure-R/2 of the Counter and the circular dated 13.5.2005 (Annexure-R/1) issued by the CPO of the East Coast Railways in pursuance to the circular at Annexure-R/2 of the Counter.** Learned counsel for the applicant also submitted that as per these circulars no written examination is to be held for screening of the applicant No. 2 who had applied for Group D post and that since the orders dated 22.2.2012 (A/4), 21.5.2012 (A/5) and 9.1.2017 (A/7) have been impugned in this OA, he has filed the MA No. 87/2017 to condone delay in filing the OA on the part of the applicant.

4. Learned counsel for the respondents was heard. He pointed to the para 3 of the Counter in which the facts are mentioned and submitted that as the applicant No.2 had acquired the educational qualification of 10<sup>th</sup> class pass after death of his father who was a railway employee, it raised doubt about the genuineness of the qualification. It was submitted that while the matter was under consideration, the applicant approached the DRM (respondent No. 2) who rejected the case as per the impugned order dated 22.2.2012 (A/4). Similarly, applicant's representation to the respondent No.1 was also rejected as the applicant could not write an application. It is further stated that the applicant was examined by the competent authority and was regretted as communicated to him. It was further submitted by learned counsel for the respondents that the applicant did not agitate the matter in time after rejection of his case in 2012 and that the order dated 9.1.2017 (A/7) cannot be taken as a fresh cause of action as the reason mentioned for rejection in order dated 9.1.2017 was earlier rejection of his case by the respondent No. 1 and 2 in 2012, which and such orders at Ann.-A/4 and A/5 were not challenged by the applicant within time as stipulated under section 21 of the A.T. Act, 1985, for which the OA was barred by limitation as stated in para 2 of the Counter.

5. In reply to the ground of delay, the applicant's counsel submitted that the applicant has filed the MA for condoning delay in filing the OA. The ground mentioned in the MA is that the applicant's case was not considered on merit as his candidature was rejected in the manner not in accordance with the

circulars at Annexure-R/1 and R/2, which have been furnished by the respondents with the Counter and that his case is to be examined judicially on merit.

6. The pleadings as well as the submissions by both the parties were duly considered by me. Regarding delay, the applicant has mentioned in the MA that his case had never been examined on merit as per the Railway Board instructions. It is also mentioned in para 4.7 of the OA that the GM has been given power to condone delay upto 20 years as per the Railway Board's instructions at Annexure-A/8. In the Counter, nothing has been mentioned to disprove such contentions in para 4.7 of the OA regarding power of the GM. It is noticed from the letter dated 18.10.1999 of the Railway Board as stated at Annexure-A/8 of the OA, the GM has been vested with the power to condone delay in submission of application for compassionate appointment under specific conditions. The scheme of compassionate appointment as per the Railway Board circulars furnished before us has a number of provisions which are lenient for the candidates for compassionate appointment like relaxation in educational qualifications and relaxation in written examination/screening for Group D post etc. and there is no ceiling on the number of posts to be filled up through compassionate appointment every year as per the Railway Board circulars, as against a ceiling of 5% of direct recruitment vacancies stipulated as per the DOPT circulars on compassionate appointment in establishments other than Railways.

7. In view of the above, taking into account the circumstances of this case and the provisions in the circulars of the Railway Board relating to compassionate appointment particularly with regard to the question of delay, I consider the grounds mentioned by the applicants in the MA No. 87/2017 for condoning delay to be satisfactory. Hence, the MA No. 87/2017 is allowed and delay in filing the OA is condoned.

8. Considering merit of the OA, the contention of the applicants that the matter was not considered in accordance with the Railway Board circulars has been denied by the respondents on the ground that senior officers like DRM and GM have considered the case directly and rejected vide orders at Annexure A/4 and A/5 of the OA. The circular dated 13.5.2005 (Annexure-R/1) clearly states that no written examination will be conducted for candidates eligible for Group D post. The circular at Annexure-R/2 states that the screening for Group D compassionate appointment will be by the screening committee and the testimonials be verified before seeking approval. There is nothing in the impugned orders or the in the Counter to show that the case of the applicant No.2 was examined by the screening committee before rejecting his case. No

rule or guidelines of Railway Board stipulating examination or selection by the DRM or GM has been furnished by the respondents. Hence, I am unable to accept the pleas of the respondents that the case of the applicant No.2 cannot be considered since his case was rejected by the DRM and the GM vide orders at Annexure-A/4 and A/5. It is clear that the argument of learned counsel for the applicants that the applicant's case was rejected without following the procedure specified in the circulars at Annexure-R/1 and R/2 of the Counter, has some force and cannot be rejected outright. Rejection of the applicant's case as per the orders dated 22.2.2012 (A/4) and dated 21.5.2012 (A/5) is not as per the Railway Board's instructions for which these orders are not sustainable.

9. In view of the discussions above, the orders dated 22.2.2012 (Ann.-A/4), dated 21.5.2012 (Ann.-A/5) and dated 9.1.2017 (Ann.-A/7) are set aside and the matter is remitted to the Respondent No.1 to reconsider the appeal dated 20.12.2016 (Ann.-A/6) of the applicant No.2 for compassionate appointment afresh on merit in accordance with the circulars/letters of the Railway Board at Annexure A/8 of the OA, Annexure- R/1 and R/2 of the Counter and to pass a speaking order under intimation to the applicant No.2 within three months from the date of receipt of a copy of this order.

10. The MA No. 87/2017 is allowed as discussed earlier and this OA is allowed in terms of the paragraph 9 of this order. There will be no order as to costs.

(GOKUL CHANDRA PATI)  
MEMBER (A)