

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 836 of 2016

Present: Hon'ble Mr. Swarup Kumar Mishra, Judicial Member
Hon'ble Mr. T.Jacob, Administrative Member

Kandha Swain, aged about 51 years, S/o Late Dhulia @ Dhulamani Swain, at present working as Choukidar-III, under SSE (P.Way)/E.Co.R/Dhanmandal, permanent resident of Vilolage-Ramchandrapur, PO-Saragada Makundpur, PS-Dharmasala, Dist-Jajpur.

.....Applicant

VERSUS

1. Union of India, represented through its General manager, East Coast Railway, E.Co.R. Sadan, Chandrasekhpur, Dist-Khurda.
2. Senior Divisional Personnel Officer, East Coast Railways, Khurda Road Division, At/PO-Jatni, Dist-Khurda.
3. Senior Divisional Operating Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist-Khurda.

.....Respondents

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

For the respondents: Mr.M.K.Das, counsel

Heard & reserved on : 26.2.2021 Order on :27.04.2021

O R D E R

Per Mr. Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

“(a) To quash the order of rejection dtd. 12.10.2016 under Ann. a/10;

(b) And to direct the Respondents to place the applicant in PB-1 with GP of Rs.1800/- w.e.f. October, 2015 and pay the differential arrears;

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 every pray.”

2. The facts of the case in brief are that the father of the applicant while working as Gangman became medically de-categorised and retired from service w.e.f. 1.4.1997. After retirement the father of the applicant submitted an application before the respondents to provide employment to his son on compassionate ground. The applicant was directed to produce certain

documents to examine the request of the retired employee. As the matter was delayed, the father of the applicant submitted another application on 13.9.2001. Vide letter dated 4.10.2001, the Headmaster, Ramchandrapur Primary School was requested for verification of the Transfer Certificate of the applicant and after receiving the verification report the request for providing employment in Railway on compassionate ground was rejected. Being aggrieved by the order of rejection the applicant approached this Tribunal in OA 23/2002 which was disposed of on 17.8.2003 with a direction to the respondents to consider the grievance of the applicant for an employment on compassionate ground. The respondents went to Hon'ble High Court in WP(C) No. 5091/2004, challenging the order of this Tribunal and the writ petition was turned down with certain further positive observation in favour of the applicant. The respondents further filed review petition before Hon'ble High Court which was also dismissed. After dismissal of review petition, the applicant submitted representation before the respondents praying for appointment on compassionate ground. Since no action was taken, the applicant again approached this Tribunal in OA 748/2010 which was disposed of with a direction to the respondents to reconsider the case of the applicant. This time also his prayer was turned down by the respondents and the applicant approached this Tribunal in OA 199/2011 which was disposed of on 15.11.2012 quashing the rejection orders. The matter was remitted back to the respondents for reconsideration. In compliance of the order of this Tribunal, the respondents again issued order of rejection dated 23.12.2012. Challenging this order of rejection the applicant filed OA 14/2013 which was disposed of on 10.3.2014 (Annexure A/1). This order was challenged before Hon'ble High Court by the respondents in WP(C) No. 20434/2014 and Hon'ble High Court vide order dated 3.7.2015 (Annexure A/2) confirmed the order passed by this Tribunal. After the order of Hon'ble High Court in WP(C) No. 20434/2014, the respondents issued office order dated 23.9.2015 and advised the applicant to attend recruitment section with all original documents for verification by screening committee. Finally vide order dated 12.10.2015 the applicant was

posted as Choukidar without Grade Pay. The applicant is at present working as Choukidar and receiving pay in PB-IS (Rs.4440-7440/-) without any Grade Pay. The applicant submitted an exhaustive application to respondent No.2 to reconsider his case to bring him under old pension scheme and grant of PB-I with GP Rs.1800/-. It is the specific case of the applicant that had his case would have been considered in 2003 then he could have been appointed in the Railways in 2003 and at that point of time all the services were pensionable services. It is further stated that in 2003 there was no specific qualification prescribed for appointment in Railway on compassionate ground. Since no action was taken by the respondents to place the applicant in PB-I with GP of Rs.1800/-, the applicant filed OA 539/2016 before this Tribunal. This Tribunal vide order dated 8.8.2016 (Annexure A/9) disposed of the said OA with a direction to the respondent No.2 to consider the representation of the applicant and pass a reasoned and speaking order. In compliance with the order of this Tribunal, respondent No.2 vide order dated 12.10.2016 (Annexure A/10) relying upon RBE No. 166/2011, rejected the claim of the applicant for placing him in PB-I with GP of Rs.1800/- since he does not possess the minimum qualification. The applicant has submitted that since his claim pertains to the year 1997, RBE No. 166/2011 is not at all applicable in his case. Being aggrieved by the rejection order dated 12.10.2016 the applicant has filed the present OA.

2. The respondents have filed their Counter stating that after being medically de-categorized from B-1 medical category to C-2 medical category on 20.10.1996, the father of the applicant took voluntary retirement and thereafter applied for employment assistance on compassionate ground in favour of his son, the present applicant. During the course of inquiry in order to process the employment assistance case, it was revealed that the candidate had passed only Class III whereas the minimum educational qualification for appointment in Group D post was Class VIII pass. The case was further inquired and it was noticed that the applicant is the adopted son of the ex-employee but no adoption deed was executed and the ex-employee has also not

informed the respondents about adoption of the present applicant. Hence the case was regretted. The applicant approached this Tribunal several times and the department has also approached Hon'ble High Court challenging those orders and lastly in obedience to the order of this Tribunal passed in OA 14/2013, the applicant was called for to appear for screening for Group D post on compassionate ground. Since the applicant was not having requisite qualification for appointment in a Group D post, he was issued with offer of appointment on 28.9.2015 for acceptance for provisional appointment as erstwhile Group D post/Trainee in pay scale of Rs.4440-7440/- without Grade Pay and the applicant also accepted the terms and conditions as mentioned in the offer of appointment without any protest. After acceptance of the offer of appointment under Annexure R/9, the applicant was posted as Chowkidar in Engineering Department vide office order dated 12.10.2015 (Annexure A/3) and the applicant joined without Grade Pay and without any protest. After being posted as Chowkidar, the applicant filed OA 539/2016 for a direction to place him in PB-1 with GP Rs.1800/- and to pay him the consequential benefits. The OA was disposed of vide order dated 8.8.2016 (Annexure A/9) with a direction that if the applicant is found to be entitled to the claim laid in his representation, the same shall be granted within a period of 2 months. Respondent No.2 vide order dated 12.10.2016 (annexure A/10) rejected his claim and being aggrieved with the said order the applicant has filed the present OA. It is submitted by the respondents that there is no such existing Railway Board's guidelines which permits to bring the applicant under the Old Pension Scheme and place him in PB-1 with Grade pay Rs.1800/- and to pay the consequential benefits on the basis of the applicant's assumption that he could have been provided employment assistance during 1997-98. Throughout the entire period of litigations, the applicant has never prayed for compassionate appointment retrospectively from 1997-98. The applicant has relied on RBE No. 160/08 but the same is applicable to the regular staff as on roll on 1.1.2006. Since the applicant has been appointed under compassionate ground in October 2015, RBE No. 160/08 is not applicable to him and the

applicant was accordingly placed under the New Pension Scheme. Therefore the applicant's request to consider him under the Old Pension Scheme is devoid of any merit. The respondents have therefore prayed for dismissal of the present OA.

4. The applicant has filed Rejoinder to the Counter filed by the respondents.

5. We have heard the learned counsels for both sides and have gone through the pleadings on record.

6. The father of the applicant retired voluntarily on 20.10.1996 on the ground that he became medically de-categorized from B-1 medical category to C-2 medical category. The applicant was given compassionate appointment in the year 2015 as per order of appointment dated 12.10.2015 vide Annexure A/3. No grade pay was given to him. It was submitted by learned counsel for the applicant that the applicant was placed in the scale of pay of Rs.4440-7440/- . The applicant had earlier filed OA 23/2002 which was disposed of on 17.8.2003. Against the said order of the Tribunal the respondents filed WP(C) No. 5091/2004 before Hon'ble High Court and the said writ petition was dismissed on 2.9.2008. Thereafter the respondents successfully filed review petition REVWPT No. 20/2009 which was dismissed on 6.8.2010. The applicant again approached this Tribunal by filing OA 14/2013 which was allowed on 10.3.2014 vide Annexure A/1. The respondents filed WP(C) No. 20434/2013 against the said order of this Tribunal and the said writ petition was dismissed by Hon'ble High Court vide order at Annexure A/2 dated 3.7.2015. Thereafter the respondents department issued the appointment order vide Annexure A/3 dated 12.10.2015.

7. It was inter alia submitted by learned counsel for the applicant that although no qualification was prescribed for the post in question in the year 1997 when the father of the applicant took voluntary retirement as he became invalid, still then the respondents rejected his prayer for compassionate appointment. It was further submitted by learned counsel for the applicant that the applicant has been posted in temporary post and has not been given permanent post. There was delay of about 13 years by the respondents in

issuing the appointment letter. It was further submitted by learned counsel for the applicant that there was no fault on the part of the applicant and it was the respondents who have caused undue delay and harassment to the applicant, who had no other option but to know the door of this Tribunal on many occasions. It is therefore prayed that the applicant should have been allowed the benefit under Old Pension Scheme.

8. Learned counsel for the respondents had earlier taken the stand that since the applicant is not the biological son of the deceased employee, he is therefore not entitled for appointment on compassionate ground. Further the respondents have submitted that since the applicant did not possess the minimum educational qualification for the post i.e. Class VIII pass, he has not been given grade pay and rightly he was given the scale of pay as per his qualification. Learned counsel has drawn attention of this Tribunal to the speaking order dated 12.10.2016 (Annexure A/10) which reads as under :

“4. However, as per orders of the competent authority in compliance to the order passed by the Hon’ble High Court, Cuttack in WP(C) No. 20434 of 2014, the applicant was offered appointment as Chowkidar in the Railway to honour the direction given by Hon’ble High Court. Since the applicant was not in possession of minimum educational qualification of 10th pass or equivalent at the time of appointment, he has been appointed in (-1S) PB without GP in terms of RBE No. 166/2011 which states as follows :

- I. The issue of minimum educational qualification of candidates belonging to the categories of compassionate appointment, land loser, accident victims, LARSGESS and substitutes in line with recommendations of the sixth Pay Commission as accepted by the Government of India has been under consideration for some time.
- II. Accordingly, it has now been decided by the Ministry of Railways (Railway Board) that in exceptional circumstances, wherever grant of appointment is considered to any of those persons in categories mentioned above, not in possession of prescribed educational qualification for the post, such persons will be recruited/engaged as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum educational qualification prescribed under the recruitment rule. The emoluments of these trainees during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the -1S pay band without any grade pay. The period spent in the -1S pay band by the future recruits will not be counted as the service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs.5,200-20,200 along with grade pay of Rs.1800/-.”

9. Learned counsel for the applicant had submitted that there was no requirement of any essential qualification for the post in question on the date his father died i.e. the date from which the applicant was entitled for appointment on compassionate ground. He also submitted that the applicant

was entitled from that date and as a necessary corollary he was entitled to the scale of pay w.e.f. the date i.e. the date when his father died. Learned counsel for the applicant has not produced any circular, rule or decision in his favour to show that even though he joined the post in question in 2015 in pursuance to the offer of appointment at Annexure A/9, he will be entitled to grade pay w.e.f. the date his father expired. Infact the respondent department had not insisted that the applicant should possess any minimum qualification for getting the job in question. Therefore this Tribunal finds that the applicant is not entitled to higher scale of pay. However, the applicant may file a fresh representation before the respondents or the competent authority so that in case the applicant in the meantime acquire the required qualification for the post in question, he may be entitled to the particular scale of pay to which he will be entitled. The respondents department may consider the time limit by giving the necessary scope in this regard to the applicant to acquire the required qualification if the same is permissible.

10. Therefore the OA is disposed of with the above observation. There will be no order as to costs.

(T.JACOB)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

I.Nath