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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 51 of 1991

Date of decision: November 18, 1992

Baidhar Mandia Applicant

Versus

Union of India and others Respondents

For the Applicant : M/s P.K. Rath & M. Dash, Advocates.

For the Respondents : Mr. L. Mohapatra, Standing Counsel
(Railway).

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CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN

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1. Whether reporters of local paper may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? /N
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays for a compassionate appointment.

2. Shortly stated the case of the Petitioner is that his father Brundaban Mandia while serving as Fireman-I in the Loco Department stationed at Khurda Road died in harness on 22nd June, 1966. Since the Petitioner was then a minor, and the only son of Brundaban, mother of the petitioner applied to the competent authority for a compassionate appointment of the Petitioner Shri Baidhar Mandia in the year, 1982. Later the prayer was also renewed as there was no response. The Prayer not having been allowed, the Petitioner has come up with this application.

3. In their counter, the Opposite Parties maintained that the Petitioner's mother had made an application in the year 1982 and since the application was not made within five years from the date of death of a regular Railway Government Servant, rules did not permit to allow the prayer for compassionate appointment and therefore, the mother of the Petitioner was informed accordingly. It is further maintained by the Opposite Parties that the case is grossly barred by limitation as the Petitioner did not approach this Bench soon after the request of the Mother of the Petitioner was turned down.

4. I have heard Mr. P.K.Rath, learned counsel appearing for the Petitioner and Mr. L.Mohapatra learned

Standing Counsel(Railway) for the Opposite Parties.

4. Neither the Petitioner nor his mother could have made an application during the minority of the Petitioner. The Petitioner was born on 11th June, 1962 and therefore, the Petitioner was eligible for appointment in the year 1980-81. In the year 1982, the Petitioner had made an application which was turned down on the ground that such an application was not made within five years from the date of death of his father. Neither the Petitioner nor his mother could have made an application within five years from the date of death because the application could have been in limine dismissed on the ground that the Petitioner was then a minor. There was no dispute relating to the fact that the present Petitioner is the only son of Brundaban. Therefore, on attaining majority in the year, 1982-83, the Petitioner had made an application which in my opinion should have been favourably considered waiving the technicalities of the rule relied upon by the Opposite Parties especially keeping in view that the Petitioner was ineligible for consideration for appointment on compassionate ground because he was then a minor. True it is as contended by Mr. Mohapatra, the Petitioner should have come up to this Bench soon after the year 1983 and there may not be any justification on the part of the petitioner to have come up in the year 1991 but the court cannot lose sight of the fact that after the death of Brundaban the widow and her son would have been living a hazardous life and their poverty must have stood on this way to approach this Bench readily. I am of further opinion that the

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It is a Continuing Cause of action.
cause of action accrued in the year 1981. The contention of Mr. Mohapatra learned Standing Counsel that the case is grossly barred by limitation is unacceptable. I am of further opinion that the case of the Petitioner should be favourably considered for a compassionate appointment to any post commensurate with his educational qualification. Age bar , if any, is hereby relaxed and I hope and trust the competent authority would bear in mind the observations of Their Lordships of the Hon'ble Supreme Court in the case of Smt. Phoolwati Vs. Union of India and others reported in AIR 1991 SC 469 quoting with approval the observations made by Their Lordships in the case of Smt. Sushma Gosain Vs. Union of India and others reported in AIR 1989 SC 1976.

5. Thus, the application stands allowed leaving the parties to bear their own costs.

[Signature]
18.11.92
VICE CHAIRMAN

Central Admn. Tribunal
Cuttack Bench, Cuttack/
18.11.1992/K.Mohanty.

