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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 443 of 1992.

Date of decision: January 12, 1993.

Nalinikanta Mohanty

... Petitioner

Versus

Union of India and others ... Opp. Parties.

For the Petitioner

.... M/s Devanand Misra,
Deepak Misra,
R.N.Naik,
A.Deo,
B.S.Tripathy,
P.Panda,
D.K.Sahoo,
Advocates.

For the Opp. Parties

.... Mr. D.N.Mishra, Standing
Counsel (Railways).

C O R A M:-

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

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
 2. To be referred to the reporters or not? No
 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 direction to the Opposite Parties to give a compassionate appointment.

2. Shortly stated the case of the petitioner is that his father Nabakishore Mohanty died in harness on 15th May, 1962 while working as a Group 'D' employee. The Petitioner Shri Nalinikanta Mohanty was born on 16th May, 1962. The petitioner did not make any application for compassionate appointment previously because he had not become a major. After the petitioner became a major, the petitioner made an application to the Railway Authorities. Such request was turned down. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that the Rules regarding appointment on compassionate ground came ^{into force} ~~in vogue~~ for the first time in the year, 1987. Regarding temporary status in the year 1962, there was no such rules in force. Therefore, the petitioner cannot claim any benefit. Apart from the above, it is pointed in their counter by the Opposite Parties that there are discrepancies in regard to the place of services rendered by the deceased Nabakishore. Hence the

case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Deepak Misra learned counsel appearing for the petitioner and Mr. D.N. Mishra learned Standing Counsel (Railway) for the Opposite Parties. True it is as contended by Mr. D.N. Misra that the relevant rule came into force in the year 1987 and I do accept the argument advanced by Mr. D.N. Misra that it has no retrospective effect but in cases of this nature no specific order for retrospective operation is necessary because cause of action in favour of the petitioner arose when he became a major and the rules came into force in the year 1987. The petitioner attained the age of majority on 15th May, 1980. Even if the rule would have ~~been~~ come into force prior to 1980 the petitioner could not have made an application as there was an age disqualification working against the petitioner. Therefore, after having attained majority and after the rules came in to force, the petitioner wants to obtain the benefit therefrom which does not amount to any illegality on his part, and I am sure ~~there is~~ ^{will be} no illegality ~~has been~~ committed by the appropriate authority if an appointment on compassionate ground is given to the petitioner. I am very sure, the administrative authorities of the Railway ~~are~~ ^{are} fully aware of the liberal view as taken by the

Hon'ble Supreme Court in the case of Phoolwati Vs. Union of India and others reported in AIR 1991 SC 469 quoting with approval the observations of Their Lordships in the case of Sushama Gosain Vs. Union of India reported in AIR 1989 SC 1976. Keeping all these in view that the petitioner is a Posthumus son of a particular employee who has died in harness, a compassionate view should be taken over the present petitioner and therefore, it is directed that a compassionate appointment should be given to the petitioner even by creation of a supernumerary post, if necessary, within 90 days from the date of receipt of a copy of the judgment.

5. Lastly it was contended by Mr.D.N.Mishra learned Standing Counsel that compassionate appointment lies within the discriminatory powers of the General Manager. I would not like to invade upon the discretion of the General Manager. But I would not agree with Mr. Misra that the courts are deprived of issuing in any direction without interfering with the discretion of the General Manager. I feel persuaded to say that the General Manager will be well advised to use his discretion in giving appropriate direction to his subordinate to implement the judgment within the stipulated time.

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

12.1.93
VICE CHAIRMAN

