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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 797 OF 1995

Cuttack, this the 30th day of June, 1997

Sri Rabindra Behera

...

Applicant

Vrs.

Union of India and others

....

Respondents.

(FOR INSTRUCTIONS)

- 1) Whether it be referred to the Reporters or not? Yes
- 2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? no

Somnath Sin.
(SOMNATH SIN.)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 797 OF 1995
Cuttack, this the 30th day of June, 1997

C O R A M:

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN

...

Sri Rabindra Behera,
son of late Narayan Behera,
Village-Sergarh, PO-Sergarh,
District-Balasore

....

Applicant.

Vrs.

1. Union of India, represented by
General Manager, S.E. Railway,
Garden Reach, Calcutta.
2. Divisional Personnel Officer,
S.E. Railway, Kharagpur,
At/PO-Kharagpur, Dist. Midnapur (W.B.).
3. Chief Yard Master, S.E. Railways, Nimpura,
At/PO-Nimpura, Dist. Midnapur (W.B.) ... Respondents.

Advocates for applicant - M/s P.C. Pradhan, S.K. Pradhan
and K.C. Dehury.

Advocates for respondents - M/s D.N. Misra & S.K. Panda.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application, the petitioner has prayed for a direction to the respondents to consider him for compassionate appointment under the Railways.

2. The case of the petitioner is that he is the son of late Narayan Behera, who was working as Token Porter under Chief Yard Master, S.E. Railway, Nimpura (Respondent No. 3). As explained by the learned counsel appearing on behalf of the respondents, Token Porter is a regular job under the Railways. Narayan Behera died while in service on 24.9.1974 leaving his widow, three daughters and a son. The petitioner's mother applied

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in August 1985, i.e., eleven years after the death of her husband, to give compassionate appointment to her son, the applicant. Both the widow and the son, who belong to Scheduled Caste, made repeated representations. The petitioner also met the Hon'ble Railway Minister who assured him to consider his case. As no relief was given to him, he came up in O.A.No.738 of 1993, which was disposed of in order dated 25.7.1994. The Tribunal noted that the applicant had received a letter dated 4.4.1994 calling upon him to appear in the office of Senior Divisional Personnel Officer, S.E.Railway, Kharagpur, along with his mother and produce certain documents in support of the request for compassionate appointment. Accordingly, the applicant appeared before the concerned officer, but no final order was passed on his representation for compassionate appointment. O.A.No.738 of 1993 was disposed of with a direction to the Railway authorities to take a suitable decision in the matter as per law and the rules as also the judicial pronouncements within a period of 45 days from the date of receipt of copy of the order. In obedience to the above order, the Divisional Personnel Officer in his order dated 7.2.1995 rejected the prayer on three grounds; viz., (i) the first daughter attained majority in 1984 but no application was made for giving compassionate appointment to her; (ii) the prayer for compassionate appointment twenty years after the death of the deceased Railway employee cannot be considered; and (ii) a large number of project casual labourers are waiting for regular absorption in Open Line and there are also surplus staff in the Railways. On these grounds, the Divisional Personnel Officer held that there are no special features or circumstances to recommend the

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applicant's case to the General Manager, S.E.Railway, for employment assistance. As the prayer of the applicant has been rejected in the above order, he has come up in this O.A. with the prayer referred to earlier.

3. The respondents in their counter have stated that eighteen years after the death of the deceased Railway employee, on 7.2.1992 a representation was received from the widow for considering her son for an appointment on compassionate grounds. In obedience to the order of the Tribunal in O.A. No.738/93 the matter was considered by the Senior Divisional Personnel Officer, S.E.Railway, Kharagpur, but it was felt that the matter need not be recommended to the General Manager. It has also been stated that appointment on compassionate ground is not a matter of right to be exercised at any time in future. It is also stated that the first representation has been made two years after the applicant attained majority. Because of this and also because of long delay, the prayer has been opposed by the respondents.

4. I have heard the learned lawyer for the applicant and Sri D.N.Misra, the learned counsel appearing on behalf of the respondents, and have also perused the record. The various contentions of both the sides raised in course of hearing before me are considered below.

5. The respondents have opposed the prayer on the ground that immediately after death of the deceased Railway employee, the widow could have applied for compassionate appointment, or in 1984 the first daughter after attaining majority could

*Verdict dm
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have applied. But as they have not applied at the relevant time, the request for compassionate appointment made in 1992, i.e., 18 years after the death of the ~~deceased~~ Railway employee, cannot be entertained. The Rules, in this regard, provide that a minor son on attaining majority can apply for compassionate appointment. Obviously, the widow burdened with three daughters and a small ~~son~~ child, the present applicant, at the time of death of her husband, was not in a position to go in for a regular employment under the Railways. It has been mentioned in the application that the widow worked as a maid servant in different households and maintained herself and the family. From this, it does appear that the family is in indigent circumstances and also provides a reason why the widow could not apply for employment assistance for herself. As the instructions provide that a minor son after attaining majority can apply for employment assistance on compassionate ground, the fact that the widow did not apply for employment assistance cannot be a reason for rejecting the case of the applicant.

6. The second ground on which the prayer has been rejected is that at the time of death of his father in 1974, the applicant was two years old. Thus he attained majority in 1990 but came up with an application only in 1992. The reason why he did not apply immediately after attaining majority has not been explained. It has been submitted by the learned lawyer for the applicant that even though the petitioner was around two years old at the time of death of his father, while joining the school his date of birth has been recorded as 7.6.1974. As such on the basis of record, he attained majority only in 1992 and immediately

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applied for appointment on compassionate ground. This shows that the applicant has truthfully mentioned that he was two years old at the time of death of his father. But because by 1990 he had not attained majority as per school records he could not apply and therefore, he applied only in 1992 when taking his year of birth as 1974 according to the High School Certificate he attained majority. Thus, I feel that the petitioner has satisfactorily explained the reason why he came up with an application in 1992. According to the records, that was the year when he attained majority and he immediately applied for employment assistance on compassionate ground.

7. The third ground on which the prayer for compassionate appointment has been rejected is that such prayer has been made eighteen years after the death of the ~~deceased~~ Railway employee. The Rules lay down that the purpose of compassionate appointment is to provide immediate succour to the indigent family of the deceased employee and the very fact that the family has managed somehow to live for long period without any employment assistance might militate against the prayer and such cases should be considered with a great deal of circumspection. It has also been laid down by the Hon'ble Supreme Court in several cases that where the family has somehow managed to carry on for some years, the need for compassionate appointment is not established. In this case, however, the widow, as earlier noted, had been burdened with three daughters and a son and by working as maid servant in different households she has managed to live and she has also given education to her son. The passage of years

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Spent in poverty and hardship for the mother, in this case, does not go to establish that the family is not in indigent circumstances. In the rejection order referred to earlier, it has also not been held that the family is not in indigent circumstances. In consideration of the above, I feel that this case should have been recommended to the General Manager, South Eastern Railway, for him to consider the facts and circumstances and take a view. It is, therefore, ordered that the case of the applicant for compassionate appointment, along with all the materials at the disposal of the Railway authorities, should be placed before the General Manager, South Eastern Railway, who will take a view within a period of 3 (three) months from the date of receipt of ^a copy of this order.

8. In the result, the Original Application is allowed in terms of the direction given in paragraph 7 of this order. There shall be no order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE - CHAIRMAN 30.6.97