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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 285 OF 1996
Cuttack this the 31st day of March, 2000

Bondita Roy

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75 -
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 75 -

31.3.2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(7)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 285 OF 1996
Cuttack this the 31st day of March, 2000

CORAM:

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Bondita Roy
aged about 26 years,
D/o. Sudhir Kumar Roy,
C/o. Gopal Prakash Samanta
of Village : Khadianga,
PO/PS/District: Kendrapara

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Applicant

By the Advocates : M/s.N.P.Samanta
B.S.Tripathy

-Versus-

1. Union of India represented through the
General Manager, S.E.Railway,
Garden Reach, Calcutta
2. Chief Personnel Officer
S.E.Railway, Garden Reach,
Calcutta - 43
3. Divisional Railway Manager,
S.F.Rly., Nagapur
At| Nagpur, Maharashtra

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Respondents

By the Advocates : M/s.B.Pal
O.N.Ghosh

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ORDER

MR.G.NARASTHAM, MEMBER(JUDICIAL): Applicant, Bondita Roy, having Post-Graduate qualification approached this Tribunal for certain time seeking compassionate appointment under Respondents(Railways) on the ground of death of her father while in service under the Department. There is no dispute that her father died while in service. Earlier she preferred Original Application No.359/94 claiming for compassionate appointment under the Railways Department as a Teacher in any Railway Schools under Khurda Road Division or any clerical post. This Tribunal by order dated 27.9.1994 disposed of application with the following direction.

"...This is a fit case in which the laches, if any, on the part of the petitioner should not go to disentitle her for being considered. This is also a fit case which the competent authority should take into consideration that here is a lady who was trying to get a job on compassionate ground. It is only necessary that the respondents or any other competent authority should consider her application and dispose it of expeditiously. The application shall be disposed of as far as possible within two months from the date of receipt of a copy of this order. In case the competent authority required any particulars the petitioner shall readily comply with the same, without any loss of time. On the submission made by the learned counsel for the Railways, Mr.Mishra, we direct the petitioner to send a fresh application with requisite attested copies as contained in Annexure-3/1 in order to avoid further loss of time and soon after the same is received the competent authority shall dispose of the same as directed above. This however, does not come in the way of the Respondents to dispose of her application now pending with them".

Thereafter there was some delay in compliance of this order of the Tribunal and the applicant had preferred a Contempt Petition against the departmental authorities. It is only thereafter she was called to appear for screening test to assess her suitability for a Class-III post vide letter dated 15.6.1995 under

Annexure-A/3. However, she was offered a post of Class-IV category in the scale of Rs.750-940/- which is a Group D post vide letter dated 6.7.1995(Annexure-A/4) on the ground that she was not found suitable for Class-III post. In this application the applicant challenges this offer of appointment and prays for modifying the same to the extent of Group C post. These facts are not in controversy.

2. The case of the applicant is that as per Establishment Serial No.158/85 dated 18.5.1985(xerox copy of Annexure-A/5) the standard for holding the suitability test in respect of Group C post for compassionate appointment should not be rigid and it is only to be ensured that the person concerned would be in a position to discharge the duties of the post being offered to him and also the test designed to assess the aptitude of the person for the particular job, if the ward possesses the prescribed minimum educational qualification he could be considered for appointment to Group C post for which he may be eligible and suitable. If however, he is found unsuitable for Group C post he should be offered alternative Group C post for which he is eligible and suitable. This being the departmental instructions the applicant should not have been offered a Group D post. Thus, according to her, offering her a Group D post besides being illegal and arbitrary is also mala fide.

3. Respondents(Railways) in their counter take the stand that as the applicant was found unsuitable in the screening test for Class-III post she was offered a Group D post. There is however no denial as to her Post-graduate qualification and the instructions in the

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circular under Annexure-A/5.

4.I have heard Shri B.Pal, learned senior counsel appearing for the respondents. Also perused the records. None from the side of the applicant appeared.

During hearing learned senior counsel for the respondents contended that this Original Application is hit under the principle of resjudicata, because, for the similar relief the applicant had earlier approached this Tribunal in O.A. 359/94 which was disposed of with suitable directions to the railway authorities and those directions have since been complied. I am not impressed by this contention, because, the relief claimed in this application is not the very same relief as claimed in the earlier Original Application. The cause of action for filing this Original Application is offering of a Group D post to the applicant who is a Post-graduate candidate and possesses the minimum educational qualification for Class-III post.

It is not clear from the counter as to what type of test was conducted and for which type of post, because, Class-III posts are of various categories, some of which are even technical in nature. It is also not clear from the counter that the test was conducted with reference to the guidelines as fixed in the instructions under Annexure-A/5. If indeed the applicant was found unsuitable in a particular type of Class-III post, she could have as well offered an alternative post in Class-III cadre instead of offering her a Class-IV post.

During hearing when questioned, the learned senior counsel for the respondents could not enlighten whether the applicant in fact accepted that Class-IV post. Even

if she had accepted and joined Class-IV post, I hold that offering of Class-IV post under such circumstance to the applicant was not in accordance with the instructions of the Department.

In the result, I direct the respondents to consider for offering an alternative Class-III post (Group C) within a period of 60(Sixty) days from the date of receipt of this order.

With the above observation and direction the application is disposed of, but no order as to costs.

31.3.2005
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO