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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 316 OF 1996
Cuttack this the 30th day of March, 2000

Karmal Baral @ Oram ...

Applicant(s)

-Versus-

Union of India & Ors. ...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 47
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

30-3-2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 316 OF 1996
Cuttack this the 30th day of March, 2000

CORAM:

THE HON'BLE SHRT G.NARASTHAM, MEMBER(JUDICIAL)

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Karma Baral @ Oram,
S/o. Late Ratia Oram
Village: Lalo Bringa, PO: Kalo Sihiria
PS: Biramitrapur, Dist: Sundergarh
(Orissa)

...

Applicant

By the Advocates : M/s.R.B.Mohapatra
S.Sarkar
N.R.Routray

-Versus-

1. Union of India represented by its General Manager, South Eastern Railway, At: Garden Reach, Calcutta - 43(W.B.)
2. Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, At/Po: Chakradharpur Dist: Singhbhum (Bihar)
3. Divisional Railway Manager(Recruitment) South Eastern Railway, Chakradharpur Division, At/Po: Chakradharpur, Dist: Singhbhum (Bihar)
4. Assistant Engineer(PWI) South Eastern Railway, At/Po: Rourkela, Dist: Sundergarh (Orissa)

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Respondents

By the Advocates : Mr. S.Roy,
Addl. Standing Counsel
(Railway)

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ORDER

MR.G.NARASTMHAM, MEMBER(JUDICIAL): In this application praying for compassionate appointment, the facts in not in controversy are that the applicant Karmal Oram is the son of the deceased railway employee while in service through the second marriage. The death occurred on 23.1.1990 on account of illness. The first wife Salgi Oram had no issues who died on 29.3.1994. The second wife Smt.Agni died on 12.4.1992. Prior to their death the railway was moved for appointment of the applicant under rehabilitation scheme by the ~~second wife~~^{widow}. This application was turned down by the Department in order dated 5.5.1999 on the ground that as per rules, children of second wife could not be provided appointment under compassionate appointment scheme (Annexure-A/3).

2. The case of the applicant is that after attaining majority he had applied for appointment under rehabilitation scheme on 26.4.1994. The benefit of compassionate appointment is extended to near-relatives and the applicant being related to the deceased employee through blood is a near relative and as such is eligible for consideration for appointment on compassionate grounds.

3. Respondents in their counter denied that the applicant had applied on 26.4.1994 for compassionate appointment. But they admit that on 24.6.1991 both the ~~widows~~ had put in a joint application seeking compassionate appointment for the applicant. However, as the deceased employee had married for the second time without seeking permission from the Railway Board, as per Railway Board's circular dated 20.1.1992(Annexure-R/2),

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appointment on compassionate ground in case of children of second wife is not to be considered unless the administration has permitted the second marriage in special circumstances taking into account the personal law etc.

So far as provision for compassionate appointment to near relative(s) is concerned, the same has been deleted under Railway Board's letter dated 13.12.1995, a xerox copy of which has been filed by the learned Addl. Standing Counsel appearing for the Railways during hearing.

4. In the rejoinder the applicant takes the plea that Railway Board's letter dated 13.12.1995 deleting the provision for appointment of near-relative is prospective in nature and the application for appointment on compassionate ground having been made much prior to this deletion, the Department is bound by the original provision for providing compassionate appointment to near relatives. This apart, the railways themselves admit about the sonship of the applicant by granting 50% of the family pension to him by order dated 14.2.1995 under Annexure-A/9. Having made such admission, it is not right on the part of the Department to deny compassionate appointment to the applicant.

5. I have heard Shri R.B.Mohapatra, learned counsel for the applicant and Shri S.Roy, learned Addl. Standing Counsel appearing for the respondents-railways. Also perused the records.

6. Facts as stated earlier are not much in controversy. It is not in dispute that the applicant is the son of deceased railway employee through his second wife. It is also not in dispute before contracting second marriage,

the deceased employee had not sought permission of the railway authorities as required in pursuance of Annexure-R/2, which lays down that while settlement dues may be shared by both the widows due to Court's order or otherwise on merits of each case, appointments on compassionate ground to the second widow and her children are not to be considered unless the Railway Administration has permitted the second marriage in special circumstances taking into account the person law etc. In view of this circular the applicant is not entitled for consideration for compassionate appointment even if 50% of the share of family pension has been sanctioned in his favour. The question then arises whether the applicant can come under the expression 'near-relative'. At this stage it should not be forgotten that circular dated 13.12.1995(xerox copy of which filed in course of hearing) does not mention that the same is retrospective in operation. Hence deletion of the expression 'near-relative' through this circular is not relevant for the purpose of this case wherein the death occurred in the year 1990 and the application for compassionate appointment was made in the year 1991. As earlier stated the applicant is the son of the deceased employee through second wife. In other words, he is related to the deceased employee through blood. Hence he can verywell come under the expression 'near-relative' for consideration for compassionate appointment.

Question then arises whether the applicant is in fact entitled for compassionate appointment. Law is well settled by a series of decisions of the Apex Court that appointment on compassionate ground is not a method of

recruitment, but a facility to provide for immediate rehabilitation of the family in distress, for relieving the dependent of the family members of the deceased employee from destitution. Thus the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis, then a job is to be offered to eligible member of the family. In other words, appointment under compassionate scheme is not automatic due to the death of the employee in harness. I have carefully gone through the pleadings. There is no mention anywhere that the family was indeed in distress. On the other hand the applicant has been sanctioned family pension (Annexure-A/9) at the rate of Rs.242.80 with effect from 24.1.1990 plus A.R. with effect from 24.1.1990 till 14.1.1997 and thereafter Rs.257.50. This shows that the applicant who is the surviving member of the deceased employee is not in financial distress to be accommodated in a job depending on his qualification to make both the ends meet.

In the result, I do not see any merit in this application, which is accordingly dismissed, but without any order as to costs.

31-3-2006
(G.NARASIMHAM)
MEMBER(JUDICIAL)

B.K.SAHOO