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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 373 OF 1996

Cuttack, this the 28th day of October, 1999

Srimati Gupta Suna 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.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
28/10/99
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Srimati Gupta Suna, wife of Satrughna Chhatria,
At/PO-Tusra-767 030, District-BolangirApplicant

Advocates for applicant - M/s Basudev
Pujari,
A.K.Jena
U.K.Mishra.

Vrs.

1. Union of India, represented by the Secretary, Railway Board, Rail Bhavan, New Delhi.
2. General Manager, South Eastern Railway, Garden Reasch, Calcutta.
3. Waltair Division S.E.Railway, represented by the Divisional Personnel Officer, Waltair ...
.....
Respondents

Advocate for respondents -Mr.R.Ch.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to give an appropriate job to the applicant or to her husband Satrughna Chhatria with retrospective effect from 1987 with consequential benefits.

2. The applicant's case is that her father Chandra Suna was working as Gangman. While he was posted at Deogaon Railway Station, he died while in service by being run over by a goods train when he was watching a bridge over river Simgadh in the night of 22/23.4.1987. The applicant's father left behind the applicant and his widow Ratna Suna as the only survivors

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as per legal heir certificate (annexure-1) issued by Tahasildar, Titilagarh. It is stated that the widow of the deceased Railway employee, Ratna Suna was earlier married to one Fagu Mahanan and through this marriage Ratna had 4 issues. After the death of Fagu, Ratna married Chandra Suna, the deceased Railway employee and through this marriage the applicant was the only issue. Chandra got the applicant married to one Satrughna Chhatria who became the illotem son-in-law of Chandra Suna as the applicant is the only issue of the deceased Railway employee Chandra Suna through his marriage to Ratna Suna. The applicant has read upto Class VIII and her husband is a Matriculate and belongs to SC community. After the death of Chandra Suna, the petitioner applied to the Railway authorities for compassionate appointment. In spite of sending many representations, no reply was received. On 18.1.1994 Divisional Personnel Officer, Sambalpur, wrote to Divisional Personnel Officer, Waltair, in his letter at Annexure-6 for dealing with the applicant's claim for compassionate appointment as the matter related to April 1987 when Deogaon Railway Station was under Waltair Division. Divisional Personnel Officer, Waltair, asked the applicant to submit application with details and this was also complied with. Ultimately, the applicant was informed in letter dated 16.7.1994 from Divisional Personnel Officer, Waltair (annexure-7) that the applicant's mother had applied for compassionate appointment for herself. The applicant thereupon wrote to Divisional Personnel officer, Waltair, at Annexure-8 stating that her mother is aged 72 years and after the death of the father, had gone back to her children by her

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first marriage leaving the applicant to fend for herself.

It is also stated that the applicant is in indigent condition because of her having been burdened with five minor children. Ultimately, Divisional Personnel Officer in his letter dated 9.1.1995 (Annexure-9) informed the petitioner that her request for compassionate appointment has been rejected. Thereafter the applicant submitted a further representation dated 2.1.1996 at Annexure-10 but without any result. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents in their counter have denied that Chandra Suna, father of the applicant died while performing his duties in watching over a bridge in a train accident. It is submitted that this is not a case of death by accident while on duty. It is further stated that the Railway Board in their letter 30.4.1979 had provided for employment assistance on compassionate ground for the dependant relatives of those Railway employees who died in harness. It has been laid down that the definition of "dependant" would be the same as definition of "family" in the S.E.Railway Pass Manual. This definition does not include the married daughter as a member of the family. Accordingly, admittedly, the applicant being the married daughter of the deceased Railway employee does not come within the definition of "family" and is not entitled to employment assistance. Secondly, it has been stated that the applicant's father died in 1987 and the applicant approached the Railways only in 1993, six years after the death and therefore the application cannot be entertained because of the

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unexplained delay of six years. The respondents have admitted that Chandra Suna was a Gangman in Gang No.73 Deogaon under Permanent Way Inspector, Santhala. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in her rejoinder has contested the statement of the respondents that her father did not die by way of accident while on duty. She has stated that after the death of the father the Railway authorities did not pay financial dues in respect of her father late Chandra Suna to her. Because of this, she issued a notice under Section 80 of Code of Civil Procedure and subsequently moved the court of the learned Subordinate Judge, Titilagarh, for permission to sue the General Manager, S.E.Railway, as indigent person under Order 33, Rule 1 C.P. Code. In that case, the Divisional Railway Manager, Waltair was respondent no.2. The petition was allowed on contest in order dated 22.2.1989. The applicant has quoted paragraph 6 of the order dated 22.2.1989 in which it has been mentioned that Chandra Suna died in a train accident while doing her duty. In view of this, it is stated that the respondents cannot now say that her father did not die in a train accident while performing his duties. It is further stated that the applicant's Money Suit No. 5 of 1989 in the court of the learned Subordinate Judge, Titilagarh, for a share in the retiral dues of late Chandra Suna was allowed. This was contested by the Railway authorities as also the "step-mother" of the applicant. The learned Subordinate Judge directed the Railways to pay Rs.20,243/- towards half share of the dues of late Chandra Suna and Rs.20,000/- towards half share in the compensation against

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accidental death of Chandra Suna to the present petitioner who was the plaintiff. The Railway sought a review of the judgment in MJC No. 7 of 1990, but the Review Petition was dismissed. The applicant also filed Execution Case for getting the decree executed. The Railways went to the learned District Judge, Bolangir, in CR Nos.33 and 40 of 1992, but both the revision petitions were rejected in order dated 21.8.1993. Thereafter the decree passed in Money Suit No. 5 of 1989 has been implemented by the respondents. The second point made by the applicant in her rejoinder is that the respondents are factually ~~incorrect~~ in stating that she applied for compassionate appointment only in 1993 for the first time, six years after the death of her father. She has stated that immediately after the death of her father on 22/23.4.1987 after performing the last rites the petitioner applied for compassionate appointment to her or to her husband on 20.6.1987 and several times thereafter. She has enclosed copy of her representation at Annexure-11. She has also enclosed copies of acknowledgement due cards received from two of the officers under the respondents addressed to the petitioner. According to the applicant, the acknowledgement cards indicate receipt of the applicant's representation dated 20.6.1987 by the officials of the Railways. In view of this, the applicant has stated that she had applied for compassionate appointment well in time. The third point made by the applicant in the rejoinder is that a married daughter cannot be excluded from getting compassionate appointment. According to her, the circular dated 30.4.1979 at Annexure-R/1 relied upon by the respondents themselves indicates that where the

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Railway employees lose their life in course of duty, dependant relatives should be offered appointment and the definition of "dependant" for this purpose will be same as per Pass Rules. It is furtherstated that where no such dependant is available, a close relation like a nephew or any other relative who can be expected to function as the breadwinner of the family may be offered appointment under personal orders of General Manager. In view of this, it has been submitted that the existing rules do not exclude appointment of a married daughter in the facts and circumstances of the case.

5. We have heard Shri B.Pujari, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned panel counsel for the respondents and have also perused the records. The learned counsel for the petitioner has filed written note of submissions which has also been taken note of.

6. The first point to be noted from the pleadings of the parties is that the respondents have denied that the applicant's father died in harness in a train accident while performing his duties. The applicant has enclosed a copy of the order of the learned District Judge, Balangir, in CR Nos. 33 and 40 of 1992 in which General Manager, S.E.Railway; Divisional Railway Manager, Waltair, etc. were the petitioners and the applicant and her mother were the opposite parties. The learned District Judge has noted that the father of the applied died in a Railway accident leaving behind his widow and the married daughter, i.e., the present petitioner. The learned District Judge also noted that the present petitioner claimed her share over the service benefits of

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her late father and over the compensation towards the accidental death. It further appears that the accident claim amounting to Rs.40,000/- was allowed of which Rs.20,000/- was decreed to be paid to the applicant by the learned Subordinate Judge. From this it is clear that the applicant's father died in a Railway accident while performing his duties. The second point to be noted is that the Railways have stated that while the Railway employee passed away on 22/23.4.1987, the applicant came up for compassionate appointment only in 1993, i.e., more than five years after the date of death. The petitioner in her OA as also in the rejoinder has stated that she applied in June 1987. In support of this she has enclosed certain documents at Annexures 12/1, 12/2 and 12/3 stating these to be AD cards. From a close perusal of these documents, it is seen that these are not AD Cards but these are Post Cards addressed to the applicant and these at best may show that there was some correspondence between the applicant and certain Railway officials and do not show that these Post Cards addressed to the applicant were concerning the prayer of the applicant for compassionate appointment. Along with the OA the petitioner has enclosed a representation dated 25.11.1993 at Annexure-5 seeking compassionate appointment. In this representation she has vaguely mentioned that she had prayed a number of times from 22.4.1987 when his father died but no response has been received from the S.E.Railway authorities. From this it does not appear conclusively that the petitioner did apply for compassionate appointment prior to 25.11.1993. The respondents, on the other hand, had informed the

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applicant in letter dated 16.7.1994 (Annexure-7) that after the death of Chandra Suna, her widow had applied for employment to herself on compassionate ground. From this it appears that after the death of Chandra Suna, his widow had applied for compassionate appointment. The petitioner has pointed out in her further representation that the widow is aged 72 years and is not entitled to compassionate appointment. It also appears from the legal heir certificate issued in 1987 that at that time the widow was aged 65 years. The petitioner's case is that the deceased Railway employee left behind the widow and the daughter, the present petitioner. According to the petitioner, the widow has gone back to her children through her first marriage and therefore the widow is no longer a member of the family of the deceased Railway employee. It also appears that the petitioner and her mother are not in good books of each other. The petitioner has filed case claiming her share of the retiral benefits as also compensation independent of her mother and the same has been allowed. The applicant also does not say that she will look after her widowed mother. So far as the applicant herself is concerned, she was married during the life time of her father. Even though she has stated that her husband remained as an illotem son-in-law along with her deceased father, she has not brought anything on record to prove this. Moreover, from the averments of the appliation and from her representation, it appears that the applicant has five children. Obviously, at the time of issuing of legal her certificate in 1987 which showed her age as 21 years, she could not have been blessed with five children. Therefore, the applicant's family has increased after the

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death of her father. As she is a married daughter she cannot be taken to be a member of her father's family. It is also difficult to accept the proposition that she is in indigent condition because of death of her father when the applicant and her husband have five children. It has been stated by the respondents that as the applicant is the married daughter, she is not included in the definition of "family" of the deceased Railway employee. The applicant, on the other hand, has pointed out that even according to the circular at Annexure-R/1, near relative can be given appointment. But such appointment is subject to the condition that the relative would look after the family of the deceased Railway employee. Here the family consists primarily of the widow who has gone back to her children through first marriage, according to the petitioner herself. The widow has also not given any declaration for providing employment assistance to the petitioner. The petitioner's husband and children are not members of the family of the deceased Railway employee. In view of this, the petitioner is not entitled to compassionate appointment even as a near relative of the deceased Railway employee.

7. In view of our above discussion, we hold that the applicant has not been able to make out a case for the relief claimed by her. The Original Application is accordingly rejected. No costs.

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

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VICE-CHAIRMAN

28.10.99.