

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

8. ORDER DATED 7-XI-2001.

Learned Lawyers for both sides have abstained from Court work protesting against the Law and Order incident at Puri involving Learned Lawyers and Constables. In this 1996 matter pleadings have been completed long ago. This relates to compassionate appointment which requires to be considered urgently. Moreover, Honourable Supreme Court in the case of Raman Services Private Limited vrs. Subash Kapoor reported in JT 2000 (Suppl. 2) SD 546 have strongly deprecated the practice of the Courts in granting adjournments on the ground of lawyers going on strike. In the concluding portion of the judgment, Their Lordships have been pleased to observe as follows:

The defaulting Courts may also be contributory to the contempt of this Court.

From the above it is clear that the Hon'ble Supreme Court have held that by granting adjournments on the ground of strike by the lawyers, the Courts will be contributing to contempt of Hon'ble Apex Court. In view of this also the matter can not be adjourned. Applicants are absent on call.

I have gone through the pleadings of the parties. In this Original Application, the applicant No. 1 is the widow of and applicant No. 2 is the son of Kanu Ojha, a casual worker with temporary status under the Rlys. who passed away in harness on 15.4.91. The deceased employee left behind his widow three sons and three daughters. As the family was in dire financial distress, applicant no. 2 represented for compassionate appointment. His case was also forwarded by the APO (Con.), Cuttack to the Chief

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Engineer, (Cen.) in the letter issued in August 1992 (Annexure-1) but no decision was taken and that is why, the applicants have come up in this Original Application with the prayers referred to earlier.

Respondents have filed counter copy of which has been served on the learned counsel for the petitioners on 21.4.1997. No rejoinder has been filed. It is not necessary to refer to all the averments made by the Respondents in their counter. These will be taken note of while considering the prayers of applicants.

The admitted position is that the father of applicant no. 2 was a casual worker with temporary status and he died in harness on 15.4.1991.

Respondents have stated in para-4 of their counter that the Ministry of Railways have decided that even if a casual labourer with temporary status dies while being engaged as such and if the case presents feature ~~for~~ constituting extreme hardship, meriting special consideration, the General Manager of a zonal Railway could exercise his personal discretionary power for offering employment to eligible and suitable ward of such casual labourer on compassionate grounds. Such employment would be in form of engagement as casual labourer (fresh face) or as substitute.

Respondents have further stated that from the scheme the wards of casual labourers can be appointed as casual labourer or as substitute and not as a Gr.D employee ^{as} asked for by the applicants.

[^] JMM
In other words, compassionate appointment can not be a level higher than what was being held by the deceased casual worker with temporary status. Respondents have stated that the applicants

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did not enclose any educational certificate nor his bio-data except mentioning that he is 21 years of age and his educational qualification is undermatric. It is stated that his case has been recommended to the Chief Personnel Officer, Calcutta for communicating the approval of the General Manager for giving compassionate appointment to applicant no. 2. In para-6 of the counter, the Respondents have made the following averments:

Applicant No. 2 will be informed about the actual employment within 2 to 3 months; he may be absorbed either in the construction or in the Open line of Khurda Road Division as casual labourer/substitute(fresh face).

Again in para-7 of their counter, the Respondents have made the following averments:

It is further submitted that it will take two or three months to absorb the applicant no. 2 as casual labourer/substitute(fresh face).

Counter has been filed in April, 1997 and there is nothing in the pleadings, if in the meantime, applicant no. 2 has been given compassionate appointment by being engaged as casual labourer or as a substitute(fresh face). In case he has already been given such engagement in the meantime, the first prayer of applicants has become infructuous. But as there is nothing in the pleadings if the compassionate appointment has actually been made in the meantime, the first prayer is disposed of with a direction to the Respondent No. 3 i.e. the Chief Engineer(Con) Cuttack, SE Railway/ to intimate to the applicants the present position of giving compassionate appointment to applicant no. 2 in case applicant no. 2 has not already been engaged.

Applicants have made a second prayer

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Free copy of the order dt. 7. XI. 91 given to the both Counsel.

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regarding payment of all settlement dues. With regard to this, Respondents have stated in their counter filed in April, 1997 that payment of dues are being considered and whatever dues are payable will be released at the earliest opportunity. I dispose of this prayer with a direction to the Respondents 2 and 3 that in case any due is payable to the applicants in respect of the service by the deceased casual worker and if the same has not yet been paid then the same should be paid within 30 (thirty) days from the date of receipt of a copy of this order.

With the above observations and directions, the Original Application is disposed of. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
19/11/91

KNM/CM.