

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.97 OF 1996
Cuttack, this the 28th day of January, 1998

Purna Chandra Bhujabal 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 Som
(SOMNATH SOM)
VICE-CHAIRMAN
28/1/98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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Purna Chandra Bhujabal,
aged about 23 years,
son of late Lingaraj Bhujabal,
At-Jharpada,
P.O-Godiput Matiapada,
District-Puri

Applicant.

By the Advocates -

M/s Biswajit Mohanty
& Patra.

Vrs.

1. Union of India,
represented through General Manager,
South Eastern Railway,
Garden Reach,
Calcutta,
West Bengal.
2. Railway Board,
represented by its Secretary,
Rail Bhawan,
New Delhi.
3. Senior Divisional Personnel Officer,
Khurda Road Division,
South Eastern Railway,
Khurda Road,
Jatni,
District-Khurda

Respondents.

By the Advocate -

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 come up
with a prayer for quashing the order dated 28.9.1995

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(Annexure-A-3) rejecting his representation for employment on compassionate ground. There is also a prayer for a direction to the respondents to give compassionate appointment to the applicant.

2. Case of the applicant, as it appears from the petition, is that his father Lingaraj Bhujabal was appointed as a Khalasi in S.E.Railway on 24.12.1969. He was working under Inspector of Works, Khurda Road, Khurda. He was initially officiating in the scale of Rs.70-85/-. Subsequently, on the basis of recommendation of the Third Pay Commission, with effect from 1.1.1973, the scale was revised and he was put in the scale of Rs.196-232/- and his pay was fixed at Rs.199/-. It further appears that originally his pay was to have been fixed at Rs.196/-, but his pay was stepped up with effect from 3.1.1973 to the level of Rs.199/- with reference to one Govinda, son of Sudama, another Khalasi. All these facts appear from pay fixation statement which is at Annexure-1. The applicant's father died in harness on 12.5.1974 leaving behind his widow, two minor daughters and the only son, the applicant who was aged about 10 months. After the death of the applicant's father, the financial condition of the family became very precarious. The applicant's mother passed away in 1989. With great difficulty,

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the applicant passed the Matriculation Examination in 1990. He attained the age of 18 years during 1991 and immediately thereafter made a representation for considering his case for compassionate appointment. The two sisters of the applicant have not been given in marriage and the family is pulling on with great difficulty. It is stated by the applicant that even though he was assured initially that his case for compassionate appointment would be considered, in the impugned order dated 28.9.1995 his representation for compassionate appointment was rejected.

3. Respondents in their counter have pointed out that provision for compassionate appointment of a member of the family of a casual labourer who died in harness was made in December 1986 and this was made applicable to those casual labourers who died on or after 31.12.1986. The response of the respondents is that the petitioner's father having died in 1974 before coming into force of the circular of December 1986, his case for compassionate appointment has been rightly rejected in the order at Annexure-3. As a matter of fact, in the order at Annexure-3 it has been specifically mentioned that "the cases of such employment, where the death of an employee has taken place prior to 31.12.1986, are not reviewed".

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4. I have heard the learned lawyer for the

applicant and the learned counsel, Shri R.Ch.Rath appearing on behalf of the respondents, and have also perused the records.

5. Learned lawyer for the petitioner has urged that the applicant's father was not a casual worker. He has been given temporary status. His pay was revised after introduction of Third Pay Commission's report and his pay was also stepped up with reference to other employees. All these go to show that the applicant's father was not a casual labourer. Moreover, it has been submitted that in the Memo for Settlement of Cases dated 3.6.1974, it has been clearly mentioned that the father of the applicant was governed by Pension Rules. In view of this, it is submitted by the learned lawyer for the petitioner that his father was not a casual labourer and therefore, the circular of December, 1986 making provision for compassionate appointment of the wards of those casual labourers who died in harness on or after 31.12.1986 is not applicable to him. Moreover, it has been submitted by the learned lawyer for the petitioner that one V.Krishna, son of late Jangam, who worked as a Casual Helper and died in harness in 1979, has been appointed as a Khalasi on attaining majority and he has been working in the office of Inspector of Works, Khurda Road. Learned counsel appearing

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on behalf of the respondents has taken a further stand that the death has occurred in 1974 and as the family has somehow managed all these years, there is no case for compassionate appointment after 23 years of the death of the Railway employee.

6. From the pay fixation statement in which the pay of the applicant's father was refixed in the Third Pay Commission scale and was also stepped up, it appears that he was working as a Temporary Khalasi. This leads me to hold that the applicant's father could not have been a casual worker. According to the Railway rules, casual workers are not in regular service at all. In this case, in the pay fixation statement (Annexure-A/1) it has been mentioned that the applicant's father was initially in the scale of Rs.70-85/- and was put in the higher scale of Rs.196-232/-. His pay was also stepped up. The facility of stepping up of pay could not be available to a casual labourer. Moreover, the applicant has mentioned in paragraph 4.2 of the Application that in the Memo for Settlement Cases dated 3.6.1974 it has been mentioned that the applicant's father was governed under Pension Rules. To this, respondents in their counter have made clearly a bland denial that these are matters on record and the applicant is put to strict proof of the same. The Memo for Settlement Cases is in the hands of the respondents and it was for them to make a specific

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assertion in this regard. From all the above, I hold that there is a prima facie case that the applicant's father was not holding merely a post of casual labourer. As such, he would not be governed by the circular of December, 1986. For Railway employees other than casual labourers there were instructions prior to 1986 for providing compassionate appointment for rehabilitating the family of a Railway servant who dies in harness.

7. The second aspect is the case of V. Krishna, son of Jangam, ex-Casual Helper who died in 1979 and whose son was provided with compassionate appointment in 1982 on his attaining majority. The respondents in their counter have merely stated that the above assertion is not supported by any document and the applicant is put to strict proof of the same. From the assertion in paragraph 4.5 of the application, it is seen that the allegation is that V. Krishna was appointed in the office of Inspector of Works, Khurda Road, vide letter No. 15/82, dated 12.3.1982. This fact could have been easily ascertained by the respondents. It is obviously not possible for the applicant to produce the document relating to appointment of V. Krishna. This is also an aspect which has to be borne in mind.

8. The last point for consideration is the submission of the learned counsel appearing for the

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14 respondents that the death having occurred in 1974, the case of compassionate appointment after twenty-three years cannot be taken up for consideration. It is submitted by the learned lawyer for the petitioner that instructions do provide that a son or a daughter can apply for compassionate appointment after attaining majority, and immediately after attaining majority in 1991 the applicant had applied for compassionate appointment. His representation has been rejected solely on the ground that the death has occurred prior to 31.12.1986 as Annexure-3 clearly indicates. It is submitted by the learned lawyer for the petitioner that his representation has not been rejected on the ground of long passage of time and therefore, the respondents should not be allowed to raise this point at this juncture. In support of his stand, learned lawyer for the applicant has referred me to the case of Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR (39) 1952 SC 16, in which his Lordship, Justice Bose, speaking for the three-Judge Bench observed as follows:

".....We are clear that public orders, policy made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

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It is submitted by the learned lawyer for the petitioner that since this point was not considered by the respondents while rejecting his representation for compassionate appointment, this ground cannot be urged now in support of the impugned order. In any case, the instructions do provide for filing of application after attaining majority by the minor children of the deceased employee. In this case, the applicant has filed representation immediately after attaining majority and therefore, the above consideration regarding passage of time from 1974 to 1991 should not be the guiding factor in this regard. In consideration of the above, it is ordered that the respondents should consider the case of the applicant for compassionate appointment for rehabilitating the family of his father. While considering the case of the applicant, the respondents should come to a specific finding with reference to the documents in their position if the applicant's father was a casual labourer or not at the time of his death. They should also take into account the case of V.Krishna in whose favour apparently order of compassionate appointment has been issued under similar circumstances. The case of the applicant should accordingly be considered and disposed of within a period of 90 (ninety) days from the date of receipt of copy of this order and the result intimated to the applicant within 30(thirty) days thereafter.

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9. In the result, therefore, the Application is disposed of in terms of the observation and direction contained in paragraph 8 of this order. No costs.

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