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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 185 OF 1998
Cuttack, this the 15th day of October, 1999

Sri B.Prem Koteswar Rao 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)
VICE-CHAIRMAN
15.10.99

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CORAM:

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

.....
Sri B.Prem Koteswar Rao, aged about 26 years, son of
B.Laxman Swamy, at Padampur, P.O-Rajborasambar,
District-Bargarh Applicant

Advocate for applicant - Mr.G.B.Dash.

Vrs.

1. Union of India, represented through the Ministry of Railways, Rail Bhawan, New Delhi.
2. The Senior Divisional Personnel Officer, South Eastern Railways, Chakradharpur, At/PO-Chakradharpur, District-Singhbhum (Bihar).
3. The Loco Foreman, South Eastern Railways, Tata Nagar, At/PO-Jamshedpur, District-Singhbhum(Bihar).
4. General Manager, South Eastern Railways, Garden Reach, Calcutta-43 ... Respondents

Advocates for respondents - M/s B.Pal
A.K.Mishra
S.K.Ojha
P.Das

ORDER
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to give him compassionate appointment.

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2. The applicant's case is that his father was working as Fitter under Senior Divisional Personnel Officer (respondent no.2) in Loco Shed, Tatanagar. He joined service on 21.6.1943 and died on 25.10.1966. At the time of death of his father the applicant was a minor and the deceased Railway employee's widow, the applicant's mother being illiterate was not eligible for

employment. After the applicant became major, he applied for compassionate appointment in his application which is at Annexure-4. Respondent no.3 in his letter dated 24.12.1981 recommended the case of the applicant noting therein that the applicant's father expired on 25.11.1966. Respondent no.2 in his order dated 1.12.1982, which is at Annexure-6, directed the applicant to report to Senior Divisional Personnel Officer, Chakradharpur, on 20.12.1982 with all his documents. The applicant's mother being an illiterate widow had entrusted one T.Naraingha Rao to look into the matter on her behalf. T.Narasingha Rao committed mischief and on the basis of the letter at Annexure-6 asking the applicant to appear with his documents, managed to get his son appeared at the said interview. It is stated that T.Narasingha Rao got the letter at Annexure-6 from the post office. In 1984 the applicant came to know that son of T.Narasingha Rao was given appointment on compassionate ground instead of the applicant. Thereafter the applicant's mother and the applicant submitted a series of representations to all superior officers including the Railways Minister and the Prime Minister. One such representation was forwarded by the Member of Parliament to Minister, Railways. It is stated that on the basis of representation filed by the applicant's mother, one Case No.11468, dated 18.8.1989 was registered in the Ministry and an enquiry was conducted and it was found that appointment was given to a wrong person and the appointment was cancelled in 1991. Thereafter the applicant made several representations but no favourable order was received by him. The applicant has further

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stated that T.Naraingha Rao, who committed the mischief, was a close relation, being son-in-law of the widow and the deceased Railway employee and taking advantage of the helpless family, T.Narasingha Rao got his son T.Kulasekhar Alual appointed in the name of the applicant B.Prem Koteswar Rao. The applicant has further stated that T.Kulasekhar Alual was serving in the name of B.Prem Koteswar Rao and was getting his salary as well as other benefits in the name of B.Prema Koteswar Rao. It is further stated that T.Kulasekhar Alual, son of T.Narasingha Rao was serving in a Group-D post in Tin Plate Factory Side under the Chief Traffic Inspector, Tata, under respondent no.4. The applicant has stated that T.Kulasekhar Alual was dismissed from service but the applicant's case was not considered. That is why he has come up in this petition with the prayer referred to earlier.

3. The respondents in their counter have stated that the Railway Board in their letter dated 30.4.1979 introduced a system for compassionate appointment of one of the family members of the deceased Railway servants who have lost their life in course of duty or in harness or have been medically incapacitated. Normally such compassionate appointment should be made within three months subject to availability of vacancy. Where the widow cannot take up employment and children are minor such cases can be kept pending till the first son or daughter attains the age of 18 years subject to a ceiling limit of five years after which the claim would lapse and appointment would not be

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permitted. This time limit of five years was relaxed upto ten years in Railway Board's letter dated 18.4.1985 with the condition that such powers of appointment should be exercised personally by the General Manager if such request for compassionate appointment is submitted within a maximum period of six months after the first son or daughter becomes major. This period of six months was later on increased to one year in Railway Board's letter dated 18.4.1990. The respondents have stated that in this case after long lapse of many years no records are available. But from the averments made in the OA and its annexures it appears that the claim of the widow was forwarded by the Loco Foreman, Tatanagar, on 24.12.1981 for appointment of the petitioner, aged 21 years. It is also seen from Annexure-4 that the date of birth of the applicant is 1.7.1960 and thus he had attained the age of 18 years on 1.7.1978. Thus the application was made for compassionate appointment after more than three years after attaining the age of majority. It is further stated that from the legal heir certificate at Annexure-2 it appears that the applicant has an elder brother B.Surya Prakash Rao who had attained the age of 18 years in January 1977 much earlier than the present applicant, but he had not come up with the prayer for compassionate appointment. The respondents have stated that the allegation regarding giving appointment to another person in the name of the present petitioner could not be verified at a distant date and the same is denied. It is further stated that the applicant has approached the Tribunal after delay of 32 years and therefore his prayer should not be entertained.

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4. The applicant in his rejoinder has reiterated the averments made by him in the OA particularly regarding giving appointment to another person in the name of the applicant and on that basis he has reiterated in his rejoinder the prayer made in the OA.

5. The respondents have filed a further reply in which they have stated that from enquiry made it was revealed that one B.Prema Koteswar Rao was appointed as Hamal on 3.11.1983 and posted as Hamal in the Tinplate Company siding on 8.7.1985. While working there B.Prema Koteswar Rao took three days leave from 5.5.1987 and never turned up to join duty thereafter. He is still being shown in the Muster Roll as "absent" and not dismissed from service. It is further stated that B.Prema Koteswar Rao submitted an application on 19.5.1987 resigning from service but his name is still borne in the Muster Roll. The respondents have stated that from this it is clear that his resignation has not yet been accepted but the copy of the resignation and the record are not available and it cannot be said as to what happened to the resignation letter. In any event it is clear that on the representation of the widow of the deceased Railway employee, Smt.B.Laxmi Bai, B.Prema Koteswar Rao was appointed in service on 8.11.1983 on compassionate ground and only one compassionate appointment is permissible. It is stated that the candidature of B.Prema Koteswar Rao was sponsored by his widowed mother and if there has been any foulplay the Railways should not be made to bear the consequences without any fault

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on their part. On the above grounds, the respondents have opposed the prayer of the applicant in their further reply.

6. We have heard Shri G.B.Dash, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel (Railways) for the respondents and have also perused the records. The learned counsel for the petitioner has filed an order dated 5.10.1983 in which under serial no. 5 it is seen that Shri B.Prem Koteswar Rao, son of late B.L.Swamy, ex-Fitter under Loco Foreman, Tata, was ordered to be appointed as temporary grade Hamal against an existing vacancy under Chief Goods Supervisor, Tata.

7. From the above pleadings of the parties it is clear that the Railways after considering the representation of B.Prem Koteswar Rao, the present applicant, decided to give him a temporary appointment as Hamal in the Tinplate Company siding on 8.7.1985. The copy of the order submitted by the learned counsel for the petitioner shows that the office of Divisional Personnel Officer, Chakradharpur, in order dated 5.10.1983 had given appointment to B.Prem Koteswar Rao. The name of the present applicant is B.Prem Koteswar Rao. In view of this, when the Railways had issued orders for giving compassionate appointment to B.Prem Koteswar Rao, their contentions that he is not the eldest son and that he applied after an avoidable delay on getting majority, etc. are not relevant because the Railways themselves had considered the case of B.Prem Koteswar Rao and had given appointment to him. The applicant's case is that in the place of B.Prem Koteswar

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Rao, i.e., himself, one T.Kulasekhar Alual, who is the son of T.Narasingha Rao, son-in-law of deceased Railway employee and his widow, got the appointment posing himself to be B.Prem Koteswar Rao. The respondents have stated in their further reply that B.Prem Koteswar Rao joined the service in the Tinplate Company siding on 8.7.1985. On 5.7.1987, i.e., after about two years the said B.Prem Koteswar Rao applied for three days leave and absconded from duty and lateron resigned, but his name is still being borne in the Muster Roll. All this gives credenceto the case of the applicant that another person masquerading himself as B.Prem Koteswar Rao, the applicant, was working in pursuance of the appointment letter issued to B.Prem Koteswar Rao. In view of this, it will be just and proper for the Railways to make an enquiry about the identity of the present applicant and give him due appointment which has been given in order dated 5.10.1983 by Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur. It is so ordered. The above action should be taken within a period of 90 (ninety) days from the date of receipt of copy of this order.

8. In the result, therefore, the Original Application is allowed in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
15-10-99
VICE-CHAIRMAN