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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 342 OF 1998  
Cuttack this the 14th day of January, 2000

Krupasindhu Jena

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*.

*Somnath Saha*  
(SOMNATH SAHA)  
VICE-CHAIRMAN  
17.1.2000

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.342 OF 1998  
Cuttack this the 14th day of January, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

...

Sri Krupasindhu Jena  
aged about 35 years  
S/o. of Kanheri alias Kahnai Jena  
resident of Village/Po: Haripur, PS: Jankaia  
Dist: Khurda

...

Applicant

By the Advocates : M/s.K.C.Kanungo  
S.Behera

-Versus-

1. The General Manager,  
South Eastern Railway,  
Garden Reach, Calcutta-43
2. Divisional General Manager(Personnel)  
South Eastern Railway, At/Po/Dist: Khurda
3. Assistant Engineer,  
South Eastern Railway  
At/Po/Dist: Khurda

...

Respondents

By the Advocates : Mr.P.K.Mishra  
Addl.Standing Counsel  
(Central)

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ORDER

*J Som*  
MR.SOMNATH SOM, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for direction to the respondents for grant of compassionate appointment to him. The second prayer is to quash the order dated 30.9.1997 at Annexure-1 rejecting his prayer for compassionate appointment.

Most of the facts of this case are not in

controversy. The applicant's father one Kanhai Jena was a Gangman. He was medically decategorised on 4.7.1996. He was offered alternative appointment, but he opted to retire and to that effect he filed a representation seeking voluntary retirement. The application of the father of the applicant for voluntary retirement was accepted by the competent authority on 16.7.1996 and vide order dated 16.10.1996, ~~accordingly~~ applicant's father retired on being medically decategorised with effect from 16.7.1996. After his retirement on 29.11.1996 applicant's father filed a petition for giving compassionate appointment to his son, the present applicant in this Original Application. According to departmental rules, normally, compassionate appointment can be given to wards of persons, who take retirement on medical decategorisation provided at the time of such retirement they ~~should~~ have three years or more service left according to their normal date of superannuation. The date of birth of the applicant's father was 15.3.1939 and therefore, he was due to retire on 31.3.1997, as against which he voluntarily retired on 16.7.1996 thus foregoing ~~having~~ less than eight months of service till the date of retirement on superannuation. The departmental instructions also provide that under certain conditions in such case where a railway employee takes voluntary retirement on being medically decategorised having left less than three years of service till the date of superannuation compassionate appointment to wards of such employee can be considered by the General Manager. In this connection Circular dated 5.5.1994 at Annexure-R/1 lays down that in such cases personal approval of the General Manager has to be obtained before

*J. V. S.*

the offer of appointment is made on compassionate ground. The case of the applicant was considered by the Divisional Railway Manager and was ~~re~~ recommended to the General Manager, but this was rejected by the General Manager in order dated 30.9.1997 at Annexure-1. Hence this application with the prayers referred to earlier.

2. I have heard Shri K.C.Kanungo, learned counsel for the applicant and Shri P.K.Mishra, learned Addl.Standing Counsel appearing for the respondents and also perused the records.

3. It has been submitted by the learned counsel for the petitioner that since the case of the applicant was recommended by the Divisional Railway Manager, S.E.Railway, Khurda Road normally the General Manager should have accorded approval for <sup>compassionate</sup> appointment and that the ~~the~~ order at Annexure-1 does not indicate the reason for rejecting the recommendation of the Divisional Railway Manager. It ~~is~~ also submitted by the learned counsel for the petitioner that the only ground for consideration of cases of this nature is indigent condition of the family. It is stated that in this case no such enquiry has been made with regard to financial condition of the family. In view of this learned counsel for the petitioner has prayed that order at Annexure-1 rejecting the prayer for compassionate appointment should be quashed and a direction should be issued to General Manager to consider the case of the applicant.

It is submitted by Shri P.K.Mishra, learned Addl.Standing Counsel appearing for the respondents that under the rules, the authority <sup>competent</sup> to take a decision in the

*S. J. Das*

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 matter of compassionate appointment to wards of the employees who have less than three years of service left by the time of their voluntary retirement due to medical decategorisation is the General Manager. The Divisional Railway Manager merely forwarded the application for compassionate appointment to the General Manager, who has the discretion to <sup>allow</sup> ~~consider~~ or reject the prayer for compassionate appointment. It is also stated that in this case the petitioner's father took voluntary retirement when less than eight months of service left for him till the date of normal superannuation and therefore, this was not a fit case where the General Manager should have exercised his discretion in granting compassionate appointment in favour of the applicant. Thirdly it is stated that the applicant's father voluntarily retired on 16.7.1996 and applied for compassionate appointment for his son, the present applicant in this O.A. only on 29.11.1996. It is further stated by the learned Addl. Standing Counsel that claim for compassionate appointment is an after-thought and the law is well settled that compassionate appointment cannot be claimed as a matter of right. On these grounds learned Addl. Standing Counsel has opposed the prayer of the applicant.

*J. Som.*  
 5. Before considering submissions of learned counsel <sup>look</sup> for bothsides, it will be necessary to look into the provisions of the Department circulars enclosed by the respondents along with their counter.

In circular dated 5.5.1994 (Annexure-R/1) it has been mentioned that where a railway employee is offered alternative appointment on the same emoluments after medical decategorisation, but the same is not accepted by

the employee and he chooses to retire from service, compassionate appointment to an eligible ward of the employee, if so required by him can be considered at the discretion of the competent authority. It is further provided that if the employee has less than three years of service before superannuation, i.e., if at the time of voluntary retirement, he has passed the age of 55 years, then personal approval of the General Manager has to be obtained before compassionate appointment is made. In this circular it has been laid down that in cases where the employees refuse to accept the alternative post on the same emolument, compassionate appointment is admissible as per Establishment Sl. 120/83. It is further laid down that in such cases on the refusal of the employee to accept alternative employment, his services can be terminated on medical ground with full benefits including compassionate appointment, curtailing the administrative procedure of screening and offering alternative appointment. In circular dated 11.7.1995 (Annexure-R/2) it has been laid down that where even before an offer of alternative employment is made to an employee, who is medically decategorised and seeks voluntary retirement, compassionate appointment to his children can be considered in those cases also.

J.S.M.  
Applying the provision of the above circular in the instant case I find, that mere fact that at the time of voluntary retirement applicant's father had less than three years of service is not a ground by itself to reject the prayer of the applicant for compassionate appointment. The circular does provide that in deserving cases with the personal approval of the General Manager

such appointments can be given even when an employee had taken voluntary retirement losing normal service period of less than three years. In view of this the case of the applicant comes within the benefit of the above circular. It has been submitted by the learned Addl. Standing Counsel that the applicant's father retired on 16.7.1996 and at that time he did not apply for compassionate appointment for his son, the present applicant in this O.A. He applied for compassionate appointment only on 29.11.1996. Because of the delay of about four months, it is submitted that this prayer for compassionate appointment by the father of the applicant is after-thought. I note from the averments of the respondents themselves that even though applicant's father voluntarily retired from service on 16.7.1996, order to that effect was issued on 16.10.1996. In view of this, the delay in applying for compassionate appointment by the applicant's father in favour of the applicant is only for over one month. In any case, this delay is not vital to the case of the applicant. The Divisional Railway Manager has considered the case of the present applicant and recommended the same to the General Manager. I am not prepared to accept the contention of the learned Addl. Standing Counsel that his case was merely forwarded by the D.R.M. and not recommended. Perusal of Para-5 of the counter (last para) it is seen that the respondents have made an averment that all cases of medically decategorised staff belong to the age of 55 years has to be referred to the Headquarters for obtaining personal approval of the General Manager for appointment of the wards of Ex-employees with the

J. Som.

personal recommendation of the Divisional Railway Manager concerned. From this it is clear that while referring such cases the D.R.M. concerned has to send his recommendations. In the next sentence in this para it has been averred by the respondents that the case of the applicant was recommended by the D.R.M., Khurda Division but his case was not considered by the competent authority. On a careful reading of these paras together it would <sup>be clear</sup> reveal <sup>to J.S.M.</sup> that the applicant's case was recommended by the D.R.M. Khurda Road for giving him compassionate appointment and the D.R.M. had not merely forwarded his case. Recommendation by its very nature means a specific view with regard to a particular case and in view of this it is clear that the case of the applicant was recommended for compassionate appointment by the D.R.M.

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Next point to be noted in this connection/that in the order at Annexure-1 applicant's case was rejected by the General Manager. It is nodoubt true that the circular provides that the General Manager has to be personally satisfied with regard to genuineness of a case before allowing compassionate appointment in a case of this nature, but such discretion has to be exercised judiciously in a case where the D.R.M., who is Officer in the field has recommended for granting of compassionate appointment. The reason which has promoted the General Manager in rejecting the recommendation of the D.R.M. and deny compassionate appointment has not been mentioned in order at Annexure-1. It is submitted by the learned Addl.Standing Counsel Shri P.K.Mishra that the case has been rejected by the General Manager, because at the time of his voluntary retirement, applicant's father did not

J.S.M.

have three years of residual service which he had forgone by taking voluntary retirement. This is not a consideration germane to the issue, because the discretion of the competent authority, under the Railway Board's instructions has to be exercised only in cases of those who had forgone less than three years of service by taking voluntary retirement. If the above contention of the learned Addl. Standing counsel is accepted then in all such cases the only order which the General Manager will pass is rejection of all such cases. In that event, granting discretion in such cases by the Railway Board will be futile.

It is submitted by the learned counsel for the petitioner that only consideration which would determine the eligibility of the applicant for compassionate appointment is indigent status of the family of the ex-railway employee. It is stated that no enquiry has been made with regard to indigent status of the applicant's family and therefore, it is prayed that direction be issued to General Manager to consider his case. In this case father of the applicant retired about four years ago. I also note that the Divisional Railway Manager has recommended his case for giving compassionate appointment. While doing so he must have taken note of indigent condition of the family of the retired railway employee. Law is well settled that in the matter of compassionate appointment, the Tribunal cannot direct for giving compassionate appointment to a certain person. The Tribunal can only direct reconsideration of the matter. In view of this this Original Application is disposed of with a direction to respondents to reconsider the

J. Sam.

proposal of the D.R.M., S.E.Railway, Khura Road recommending grant of compassionate appointment to the applicant in this Original Application strictly in terms of the circulars in force and take a decision in the matter within a period of 90(Ninety) days from the date of receipt of this order and intimate the result to the applicant within 15(Fifteen) days thereafter.

With the above observations and directions the Original Application is disposed of, but there shall be no order as to costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
14.1.2000

B.K.SAHOO