

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 485 OF 1998  
Cuttack this the 15<sup>th</sup> day of March/2001

Suresh Chandra Patra

...

Applicant(s)

- VERSUS -

Union of India & Others

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to all the Benches of the N.D. Central Administrative Tribunal or not?

(SOMNATH SOM)  
VICE-CHAIRMAN

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 485 OF 1998  
Cuttack this the 15th day of March/2001

CORAM:

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

...

suresh Chandra Patra, aged about 34 years,  
S/o. Late Gundicha Patra, At/PO-Tirimala,  
Dist - Khurda

...

By the Advocates

Applicant

M/s. Biswajit Mohanty  
Sadasiv Patra

-VERSUS-

1. Union of India represented through  
General Manager, South Eastern Railways,  
Garden Reach, Calcutta, West Bengal
2. Railway Board represented through its  
Secretary, Rail Bhawan, New Delhi
3. Chief Personal Officer, East Coast Railways  
Bhubaneswar, Dist - Khurda
4. Divisional Railway Manager (P), Khurda Road  
South Eastern Railway/Eastcost Railways,  
Jatni, Dist - Khurda

...

By the Advocates

Respondents

M/s. Surath Ray,  
A. Khan

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this Original Application seeking appointment on compassionate grounds, the applicant's father, Gundicha Patra died in harness on 2.11.1968, while serving under Respondent No.4, i.e. Divisional Railway Manager (P) S.E. Railway, Khurda Road. By then the applicant, i.e. son of the deceased railway employee was 4 years and 8 months old. He attained majority in February, 1982. The case of the applicant is that his mother represented to the Railway authority on 2.8.1982 praying for compassionate appointment in respect of her son, the present applicant. As there was no response, she

again represented on 16.7.1985 (Annexure-A/1) indicating ~~xxx~~ precarious financial condition of the family. Several other representations also followed. Only on 24.3.1995, Respondent No.4 instructed her vide Annexure-A/2 to appear before him on 31.3.1995 along with the applicant and necessary certificates. This was duly complied. Thereafter on being further instructed income certificate issued by the Tahasildar, Bhubaneswar in Misc.Case No.2752/96 dated 24.7.1996 (Annexure-A/3) was also produced. Respondent No.4 sent all these documents for consideration of the Chief Personnel Officer, S.E.Railway, Khurda Road (Res.3) vide letter dated 11.12.1996 (Annexure-A/4). In letter dated 17.2.1998 (Annexure-A/5) Respondent No.4 intimated her that the competent authority did not find this to be a fit case for recommending to the Railway Board for sanction of employment assistance on compassionate grounds. A similar such letter dated 23.2.1998 (Annexure-A/6) was received from the C.P.O. office, Bhubaneswar.

The grievance of the applicant is that such rejection is discriminatory inasmuch as some persons have been appointed on compassionate grounds by the Railways even after lapse of 30 years, as per instance, the case of one Nalini Kanta Mohanty, appointed in the year 1992 on compassionate grounds at Cuttack Railway Station even though his father died on 15.5.1962 in harness. Applicant's mother could not seek ~~for could not seek~~ <sup>under</sup> employment / compassionate appointment scheme as she is a Pardanishin lady. It is only after the applicant attained majority, representations were given for his appointment under compassionate scheme.

2. Respondents (Department) in their counter challenge

this Original Application on the ground of maintainability as well as limitation. The applicant having attained majority sometime in February, 82, and that the cause of action having accrued to him by that time to seek appointment under compassionate scheme, this Tribunal cannot assume the jurisdiction since the cause of action arose prior to three years preceding the date of commencement of functioning of the Tribunal with effect from 1.11.1985 onwards. In fact applicant's mother Smt. Tava Bewa first represented on 11.10.1985 (Annexure-R/1), wherein she mentioned that she had already made representation on 20.8.1982 seeking compassionate appointment. Even assuming she made her first representation on 20.8.1982, her representation was barred by time as the death of her husband occurred 14 years prior to 1982. Her representation was duly considered and rejected and the order of rejection was communicated to her in letter dated 13.11.1985, through Signal Inspector, Jajpur-Keonjhar Road (Annexure-R/2). Thereafter, she made another representation on 10.3.1988 to the Commissioner, Rail Coordination and Ex-officio Special Secretary, Government of Orissa, for appointment on compassionate ground in favour of the applicant (Annexure-R/3). This was duly forwarded to the concerned authority and in letter dated 2.6.1988 she was intimated that her case did not come under the purview for consideration for appointment under compassionate appointment scheme. She again sent a memorial to the Minister of State for Railways and the matter was received in the Office of Respondent No.4 from the Headquarters Office, Calcutta. Thereafter, she was advised to submit the required documents under Annexure-A/2 dated 24.3.1995 and this letter under Annexure-A/2 is not with



reference to her earlier representation, which stood rejected long back.

It is further pleaded in the counter that this application is hopelessly barred by limitation. Compassionate appointment, as per rulings of the Apex Court, cannot be granted after lapse of reasonable period. Consideration of such employment is not a vested right which can be exercised at any time after the death of the sole bread-winner. The main object of making appointment under compassionate appointment scheme is to enable the family of the deceased to tide over the sudden financial crisis on account of the untimely death.

3. In the rejoinder the applicant denies that his mother having sent any representation under Annexure-R/3. The application is maintainable and not barred by limitation, because the cause of action for filing this application arises out of rejection orders communicated to his mother under Annexures-A/5 and A/6 during the year 1998. In fact the Railway Board had made provisions for taking cognizance of cases which are more than 20 years old and for considering cases of minors after they attained majority. Annexure-A/7, according to applicant is that relevant circular of the Railway Board. The reply waivd to have been given by the Railways under Annexure-R/2 was never received by the mother of the applicant.

4. As against this the respondents filed a reply making mention of Railway Board's instruction in letter dated 30.4.1979 (not enclosed as Annexure) and pleaded that as the case was not under process prior to 30.4.1979, it could not be reopened. To this reply the applicant filed additional rejoinder clarifying the said instructions dated 30.4.1979 along with someother factual aspects. At this stage, it is to

be noted that neither of the party filed a copy of those instructions for reference and appreciation of this Tribunal. Hence, we will not take note of the reply of the Department to the rejoinder filed by the applicant and also the additional rejoinder of the applicant, so far as these instructions are concerned.

5. We have heard Shri Biswajit Mohanty, the learned counsel for the applicant and Shri S.Ray, the learned Addl. Standing Counsel appearing for the Respondents (Railways). Also perused the records.

6. There is no dispute that father of the applicant, while serving in the Railways died on 2.11.1968. The applicant's own version is that by then he was 4 years and 8 months. In other words, as per his own admission he was born sometime in March, 1964 and attained majority in March, 1982. The Legal Heir Certificate (Annexure-A/8) filed along with additional rejoinder discloses that it was issued on 14.5.1990 by the concerned Tahasildar, Bhubaneswar. This certificate reveals that the deceased railway servant left behind his widow, applicant and another son. By May, 1990, when the Legal Heir Certificate was issued, the applicant's mother was 45 years. In other words, in the year 1968, she was about 23 years of age.

7. It is not the case of the applicant that his mother is illiterate and not eligible for any appointment under the Railways. On the other hand her representation under Annexure-A/1 and another representation under Annexure-R/1(not disputed in the rejoinder) contain her signatures in Oriya, which indicates that she was not illiterate. Hence she could have as well applied to the Railways for her appointment under compassionate scheme,



soon after the death of her husband. It is true that in the Original Application the applicant mentioned that his mother is Paradashin lady and as such she could not take up any employment in the Railways. But in her application dated 16.7.1985 (Annexure-A/1) she had never taken the plea of Paradashin. She also did not mention any reason for not applying for employment for herself on compassionate grounds. All that she mentioned that as her children were minor by the time her husband died, representation for appointment of the applicant under compassionate scheme could not be made earlier. But in her representation dated 11.10.1985 under Annexure-R/1, which has not been countered in the rejoinder or in the additional rejoinder, she mentioned that she has been applying for employment assistance since more than 15 years first for herself (underlining ours) and subsequently for her son named Suresh Chandra Patra (applicant). Hence it is clear, if not immediately after the death of her husband in 1968, she has been representing for her employment under compassionate scheme at least since 1970 and subsequently for her son, apparently <sup>after</sup> he attained majority. It is the case of the Department that for the first time only in November, 1985 (Annexure-R/2), she was intimated that she was not eligible for such employment assistance. In other words her first representation for compassionate appointment for herself made sometime in the year 1970 was not responded to by the Department for more than a decade. She could have as well moved the competent Court of Law during that time at the earliest point of time for appropriate direction to the Department to offer her employment assistance on compassionate ground. Admittedly she did not choose to do so. On this score itself this Original Application is not maintainable.

§ . The main point made out in the application is that applicant attained majority in the year 1982 and thereafter representations were made by his mother for employment under compassionate ground. The applicant attained majority 14 years after the death of his father, i.e. in March, 1982. If his attaining majority is the cause of action for seeking appointment under compassionate scheme, then also this O.A. is not maintainable before this Tribunal.

Of course it has been mentioned in Para 4.2 of the O.A. that after attaining majority the mother of the applicant applied for compassionate appointment of her son on 2.8.1982 (copy not annexed). If indeed any such application was made on 2.8.1982, under Section 20(1)(b) read with sub section 2(b) of Section 21 of the A.T. Act, 1985, the period of limitation for filing an application of this nature expired on 2.2.1984, i.e., one year six months from 2.8.1982. Without moving this Tribunal at least by 2.2.1984, or prior to that the mother of the applicant represented to the Department under Annexure-A/1 and R/1, sometimes in the year 1985. Even if the contention of the applicant that this representation in the year 1985 was finally turned down in the year 1998 under Annexures-A/5 and A/6, this O.A. filed in September, 1998 cannot be entertained, because, prior to making representation in the year 1985, period of limitation expired on 2.2.1984, even on the assumption that a representation dated 2.8.1982 as mentioned in the O.A. was actually made. Viewed from this angle, this O.A. is barred by limitation.

As earlier stated the Department in their counter pleaded that the applicant's mother sent a representation to the



then Minister for State, Railways and the matter was received in the Office of Respondent No.4 from the S.E.Railway Headquarters at Calcutta. Thereupon she was asked under Annexure-A/2 dated 24.3.1995 to submit certain documents and ultimately that representation was turned down by orders under Annexures-A/5 and A/5. This apart, all the pleadings in the counter have not been denied in the rejoinder or in the additional rejoinder. As early as 1990, the Constitution Bench of the Apex Court in S.S.Rathore case, reported in AIR 1990 SC 10 made it clear that memorial sent to Ministers would not come under the expression 'representations or appeals mentioned under Section 20 of the A.T.Act. Even this is clear on a reading of Section 20(3) of the A.T.Act. Thus there is no dispute <sup>at all</sup> that the impugned orders under Annexures-A/5 and A/6, issued in February/98 by the Department refusing employment assistance to the applicant on compassionate ground were in response to the Memorial sent to the Minister of State for Railways by the applicant's mother and not in response to any appeal/representation under Section 20(1)(2) of the A.T. Act. This being the position these impugned orders under Annexures-5 and 6 will not save limitation.

9. Even on merits, the Department is not always obliged to wait for receiving an application for compassionate appointment till son or daughter of a deceased employee dying in harness attains majority. In this connection it is profitable to refer to the decision of the Apex Court in the case of Haryana State Electricity Board vs. Naresh Tanwar reported in 1996(2) SLR 11. The Apex Court reiterating the views expressed in Umesh Kumar Nagpal case reported in 1994 (2) SLR 677 (SC) held that consideration for compassionate appointment must be treated as an exception to the general rule for giving employment only

by making open recruitment and consideration of out of turn employment on compassionate ground is intended to enable a family to tide over the sudden crisis caused on account of the death of the earning member. The consideration for such employment is not a vested right which can be exercised at any time in future. The Apex Court also made reference to its earlier decision in Jagadish Prasad vs. State of Bihar (Civil Appeal No. 10182/95) disposed of on 13.11.1995). In Para-6 of the reported decision the Apex Court dealt with the facts and principles of law in Jagadish Prasad case. In that case, the question of appointment on compassionate ground to an applicant, who was four years old at the time when his father, an ex employee died in harness came up for consideration. It was contended before that Court that since the applicant was minor when his father died in harness, the compassionate circumstances having continued till the date he made an application for appointment, he was entitled to be appointed. Such contention was not accepted with the following observations.

" The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules".

Thus the legal position is clear that even in the case of minor, who attains majority after several years, the Department is not obliged to consider his case for compassionate appointment on the ground that the cause of action for seeking



employment under compassionate appointment arose only after he attained majority.

10. We are aware that the applicant in his rejoinder placed reliance on Annexure-A/7, a circular of the Railway Department, issued on 21.11.1994. In that circular the conditions stipulated in Railway Board's letter dated 18.4.1985 finds mention. One such condition is that General Managers are empowered to consider cases of compassionate appointment beyond the limit of five years, but not more than 10 years from the date of death. The another condition subsequently incorporated in April/90 and further subsequent incorporation in August/91 in that circular dated 18.4.1985 is that case for compassionate appointment should be considered if received within six months from the son/daughter of the deceased employee attaining majority (as instructed in letter dated 18.4.1990) and subsequently in letter dated 7.8.1991, this period of six months was modified to one year. Thus the earlier instruction was further modified in Annexure-A/7 (circular dated 21.11.1994) enabling the General Managers to consider cases of compassionate appointments, which do not exceed 20 years from the date of death and also the request for such appointment, if received within two years of attaining majority of the 1st child. This circular of the Railway Board is dated 18.4.1985, which was to some extent modified in letter dated 18.4.1990, again in 7.8.1991 and under circular dated 21.11.1994 vide Annexure-A/7. As discussed earlier, the cause of action for filing an application of this nature arose in the case of the applicant in March, 1982 itself, i.e., three years prior to the earlier instructions of the Railway Board dated 18.4.1985. Hence this circular under Annexure-A/7 will not be of any help to the

applicant.

11. Shri Mohanty, the learned counsel for the applicant ultimately placed reliance on the decision of the Single Bench of the Karnata High Court in the case of Kum.A.G. Ramaya vs. Syndicate Bank reported in 2000 Lab. IC 3571, laying stress ~~to~~ his contention that the Railway Administration was duty bound to inform the applicant or his mother about the existence of compassionate appointment scheme. In this reported case, a scheme was introduced by the Syndicate Bank for appointment on compassionate grounds, and one of the clauses of that scheme is to keep offer of appointment open till minor attains the age of majority, on request by family of the deceased employee. As the Bank failed to bring this clause to the notice of the illiterate guardian of the claimant about the existence of such clause, the High Court held rejection of the claim of the applicant solely on the ground of being ~~related~~ <sup>such</sup> ~~related~~ was improper. No <sup>having been</sup> ~~provision~~ <sup>had been</sup> in force by the time of the death of the applicant's father in the year 1968, obliging the Department to keep offer of appointment on compassionate ground open till the applicant attains majority on a request made by the family of the deceased employee has been brought to out notice. Even <sup>if</sup> ~~such~~ a provision was in existence by then, it is not the case of the applicant that his mother immediately after the death of her husband requested the Railway Department to keep the offer of appointment under compassionate appointment scheme open till the applicant would attain majority. On the other hand, recital of Exhibit R/1, a representation addressed to the Department by the mother of the applicant on 11.10.1985 would make the position clear that that she was very much alive as to her eligibility to be

considered for appointment under compassionate appointment scheme by the Railway Department, even in the year 1970. Hence this decision of the Karnataka High Court being distinguishable on facts will in no way be helpful to the applicant.

12. We are aware that in Para-5.2 of the O.A. the applicant pleaded that one Nalinikanta Mohanty was appointed in 1992 on compassionate grounds being posted at Cuttack Railway Station even though his father died on 15.5.1962 while serving as Khalasi at Locl Shed, Bhadrak. In the counter filed by the Department this specific factual aspect has not been denied. The fact<sup>therefore</sup> remains that Shri N.K. Mohanty was appointed in the year 1992 on compassionate grounds. Even assuming such an appointment was made under compassionate scheme even after a passage of 30 years of the death of the deceased railway employee, it cannot be said that this singular instance will create a precedent in favour of the applicant. Apparently the appointment of N.K. Mohanty was made by ignoring law on the point. The appointment made contrary to law will under no circumstance can act as a precedent.

13. For the reasons discussed above, we are of the view that this Original Application, apart from being not maintainable is also hopelessly barred by limitation. The application is, therefore, dismissed, but without any order as to costs.

(SOMNATH SOM)  
VICE-CHAIRMAN

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K. SAHOO//