

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.594 OF 1998  
Cuttack this the 13<sup>th</sup> day of July/2000

Babaji Charan Mohanty ... 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 Central Administrative Tribunal or not ?

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

13.7.2000  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

10

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.594 OF 1998  
Cuttack this the 13<sup>th</sup> day of July/2000

CORAM:

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

\*\*\*

Sri Babaju Charan Mohanty,  
aged about 31 years,  
S/o. Late Baidhar Mohanty  
(worked as Gangman, Gang No.45  
under P.W.I./CWC) At-Birikhunti  
PO: Mahimagadi, PS: Gandia  
Dist - Dhenkanal -  
at present staying at C/o. Krushna Ch.Behura  
At/PO: Byree, Dist: Jajpur

\*\*\*

Applicant

Mrs. U.R.Padhi  
Mr. A.K.Sethy

-VERSUS-

1. Union of India represented by the General Manager, S.E.Railway, Garden Reach, Calcutta
2. The Divisional Railway Manager, S.E.Railway, Khurda Road  
PO: Jatni, Dist : Khurda
3. Sr.Divisional Personnel Officer, S.E.Railway, Khurda Road,  
PO: Jatni, Dist - Khurda

\*\*\*

Respondents

By the Advocates

M/s.D.N.Mishra  
S.K.Panda

\*\*\*

2  
O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL) : In this Application seeking compassionate appointment, applicant's father late Baidhar Mohanty died on 18.12.1975 while serving under the Respondents. By then the applicant was 8 years old. His case is that after the death of his father, his mother (since deceased) had applied to the Respondents for compassionate appointment for herself. This was followed by several reminders till 30.10.1984. There was, however, no response from the respondents. After the applicant attained majority in the year 1985 he submitted series of representations from 12.6.1985 to 11.3.1997 to the Respondents seeking compassionate appointment. In letter dated 9.10.1998 (Annexure-2) Respondents disallowed the claim of the applicant for compassionate appointment stating that his case was not a fit case for consideration. Hence this Application.

2. In their counter Respondents though admit that father of the applicant died while in service on 18.12.1975 after putting 11 years 4 months and 15 days service deny <sup>receiving</sup> any representations/ applications received either from the applicant or his mother on any date prior to 11.3.1997 seeking compassionate appointment. On 11.3.1997, the applicant preferred <sup>the</sup> application enclosing a Legal Heir Certificate No.115/97 issued by Tahasildar, Gondia, District - Dhenkanal and some certificates showing his date of birth as 11.6.1967 and about his education upto Class - X. In other words, according to Department, an application for compassionate appointment from the applicant was received after 11 years 9 months of attaining majority on 11.6.1985. Since the main object of providing appointment under compassionate ground is to enable the family to overcome the financial crisis on account of sudden demise of the sole bread earner, there was no reason

for providing employment assistance on compassionate grounds to the applicant when the crisis occurred 23 years prior to his representation made in the year 1997. Thus the application is hopelessly barred by limitation. Still the case was put up before the competent authority for taking a decision, but as the applicant's case was not a deserving case for providing compassionate appointment the same was rejected and the said rejection order was duly communicated to the applicant.

2. Rejoinder filed by the applicant is reiteration of the case made out in the Original Application through an argumentative way.

3. We have heard Mrs. U.R.Padhi, learned counsel for the applicant and Shri D.N.Mishra, learned Standing Counsel appearing for the Respondents(Railways). Also perused the records so also the written notes of argument filed by Mrs. Padhi.

4. There is no dispute that the death of the applicant's father occurred on 18.12.1975 and the applicant attained majority on 11.6.1985. His representation of March, 1997 seeking compassionate appointment was received and dealt by the Respondents and this representation was submitted after 11 years & 9 months after attaining majority by the applicant. We are aware that the case of the applicant is that even his mother immediately after the death of his father had been representing now and then upto the year 1984 to the Respondents seeking compassionate appointment for herself, and since after the applicant attained majority he has also been representing now and then to the Respondents for compassionate appointment under Annexure-1 series. This fact is disputed by the Department.

5. Question for consideration is even assuming such representations were made to the Department and the Department

did not respond, there is no explanation as to why either the mother or the applicant himself after attaining majority did not approach either the High Court or this Tribunal after its Establishment in 1985 seeking appropriate directions on the respondents.

6. Mrs. Padhi in this connection relied on the decision of a Single Bench of this Tribunal decided by the then Hon'ble Vice-Chairman in Original Application No.51/91 disposed of on 18.11.1992 in the case of Maidhar Mandia v. Union of India. In that case death in harness occurred on 22nd June, 1966. The applicant by then was a minor. The mother of the applicant moved the competent authority for compassionate appointment for the applicant (Baidhar) in the year 1982. The prayer was renewed, but without any response. In the counter the Railway Department took the stand that applicant's mother having not made the application within five years from the date of death of the regular Government servant, Rules did not permit to allow the prayer for compassionate appointment. Further stand was taken that the application was barred by limitation. The then Hon'ble Vice-Chairman disallowed the objection of the Department that the application was barred by limitation on the ground that prayer for seeking compassionate appointment is a continuing cause of action, by observing that the Court cannot lose sight of the fact that after the death of Brundaban the widow and her son would have been living a hazardous life and their poverty must have stood in their way to approach the Bench readily. Accordingly direction was given to the Department.

7. We regret for our inability to follow this decision of the Single Bench because of subsequent pronouncements of the

14

of the Apex Court in the matter of compassionate appointments, which are as follows :

- 1) 1994(4) SCC 138 (Umesh Kumar Nagpal v. State of Haryana)
- 2) 1994(4) SCC 448 (State of Haryana v. M.K.Bali)
- 3) 1996 SCC (L&S) 816 (Haryana State Electricity Board v. Naresh Tanwar)
- 4) 1998(4) SLR 306 (Director of Education v. Puspender Kumar)
- 5) AIR 1999 SC LAB. IC 220 (Dhallram v. Union of India)
- 6) 1999(1) All India SLJ 114 (Haryana State Electricity Board v. Hakim Singh)
- 7) 1999 SCC (L&S) 721 (Orissa State Electricity Board v. Rajkumar Panda)

On perusal of these decisions of the Apex Court the following legal positions emerge.

- i) Appointment on compassionate ground is not a method of recruitment, but is a facility to provide for immediate rehabilitation of the family in distress
- ii) The whole object of granting compassionate employment is not to give a member of such family a post much less a post held by the deceased - but to enable the family to tide over the sudden crisis occurring on account of the death of the sole bread earner of the family
- iii) Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment the family would not be able to meet the crisis that a job is to be offered to the eligible member of the family. Such appointment cannot be given after long years of death
- iv) Compassionate appointment is an exception to general provisions of appointment and it should not be taken as opening and alternative mode of recruitment to public employment, and it should not unduly interfere with the rights of other eligible persons for appointment to seek employment. Compassionate appointment can be given only when vacancy exists and not otherwise

In view of the aforesaid legal positions we cannot agree that cause of action for claiming compassionate appointment

15

is a continuing one to run even after expiry of several years from the date of death of the bread earner. The mother, as the pleadings reveal, died in the year 1996. At least she could have approached the Court within few years, if not months, after the death of her husband seeking compassionate appointment when there was no response from the side of the Department to her representations. If indeed the son, i.e., the applicant in the present Original Application started representing to the Respondents, since he attained majority in the year 1985, nothing prevented him also from approaching the Court seeking appropriate relief, within the time limit as prescribed under Section 21 of the Administrative Tribunals Act, 1985 with reference to his first representation made in the year 1985, which according to him, went unresponded. Law is well settled that repeated representations will not save limitations.

In *Haryana State Electricity Board v. Naresh Tanwar* reported in 1996(2) SLR Page-11 decided by the Apex Court, it was held that compassionate appointment cannot be granted after a long lapse of reasonable period after the financial crisis occurred due to sudden death of the employee is over. In that case the employee died in the year 1972. Son attained majority in 1992. Application for compassionate appointment was made in the year 1992 itself. Under the relevant rules such application was to have been made within three years of the death. The Apex Court did not sustain the decision of the concerned High Court (Punjab & Haryana) allowing compassionate appointment in such circumstances. Again in *Haryana State Electricity Board v. Hakim Singh* reported in All India SLJ 1999(1) Page 114, the Apex Court reiterated the same. Further the Apex Court held that compassionate appointment is neither a lien nor a lien of succession and if

family members of the deceased employee could manage for 14 years after his death one of his legal heirs cannot put forward a claim as though it is a lien of succession by virtue of right of inheritance. Mrs. Padhi, the learned counsel, however, advanced spirited arguments explaining the concept of Right to Life under Article 21 of the Constitution. What we gathered from her argument is compassionate appointment could be ordered even at a belated stage on equitable grounds. We are not impressed <sup>with</sup> upon this type of argument. In this connection it is useful to quote Paras 10, 11 and 12 of the Apex Court decision in the case of L.I.C. of India v. Mrs. Asha Ramachandran Ambekar reported in AIR 1994 SC 2148 dealing with compassionate appointment, which are as follows:

"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals ~~cannot~~ cannot confer benediction impelled by the sympathetic consideration. No doubt Shakespeare said in Merchant of Venice :

"The quality of mercy is not strain'd; It droppeth, as the gentle rain from heaven Upon the place beneath it is twice bless'd; it blessth him that gives, and him that takes;."

11. These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.

12. At this juncture we may usefully refer to Martin Burn Ltd. v. Corporation of Calcutta, AIR 1996 SC 529. At Page 535 of the Report the following observations are found :

"A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes result or not." "

17

These observations of the Apex Court ruled out equitable considerations in case of an application for compassionate appointment preferred after a considerable delay running to several years.

9. In view of our discussions held above, we do not see any irregularity or legal infirmity on the part of the Respondents in rejecting representation dated 11.3.1997 made by the applicant seeking compassionate appointment.

10. In the result the Original Application fails and it is accordingly dismissed leaving the parties to bear their own costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

13-7-2000  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

B.K.SAHOO//