

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Order No.14, dated 22.2.2001

Heard Shri Satya RanjanDas, the learned counsel for the petitioner and Madam S.L.Patnaik, the learned Railway Advocate for the respondents in part. It is submitted by Shri S.R.Das, the learned counsel for the applicant that he wants to give certain citations on the next date. In view of this, the matter is posted to 2.3.2001 to be listed as a part-heard matter.

For Admission  
as a  
part-heard matter

Vice-Chairman  
20/2/2001  
Member (J)

15 ORDER DATED 2-3-2001.

This matter has been listed today as a part heard matter. On the last occasion we have heard Shri S.R.Das, learned counsel for the applicant and the matter was posted today to enable the learned counsel for the applicant to cite certain decisions. Today Shri B.C.Panda, learned counsel for the applicant wanted to make further submission. In view of this we have heard Mr. Panda, learned counsel for the applicant and Madam S.L.Patnaik learned Addl. Standing Counsel for the Respondents and have also perused the records. Learned counsel for the applicant has filed written note of submission with copy to other side, which has also been taken note of.

2. In this Original Application, the applicant has prayed for a direction to the Respondents to appoint the applicant to any post on compassionate ground. Respondents have filed counter opposing the prayer of applicant and the applicant has filed the

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rejoinder. We have gone through these records. Facts of this case fall within a small compass and are mostly admitted. It is the admitted position that the applicant's father one Dinabandhu Chanda was working as Jamadar Peon and later on as Signal Peon in the Office of the Divisional Accounts Officer. He suffered from T.B. in October, 1991 and was on leave from 30.8.1991 to 11.10.1991. On 31.1.1992 he gave a notice for voluntary retirement (Annexure-R/1) in which he mentioned that he has put in 20 years of service, his family problems as well as his own health condition did not permit him to serve up to the retirement. He therefore prayed that this letter should be taken as notice for voluntary retirement. Accordingly this letter at Annexure-R/1 was taken as notice and the applicant was retired from service on 30.4.1992. He was granted pension as admissible under Liberalised Pension Rules on 1.5.1992. On 20.12.1992 i.e. about eight months after his retirement applicant's father applied to the concerned authority for appointment of his son on compassionate ground. This was followed <sup>up</sup> ~~up~~ by the applicant himself <sup>^ & down</sup> by filing representation on 18.1.1993 but as no favourable order was passed applicant has come up in this Original Application with the prayer referred to earlier.

3. Respondents have resisted the claims on the ground that under the rules the applicant as the son of Dinabandhu Chanda is not entitled to be considered for compassionate appointment because applicant's father took voluntary retirement and he was not retired on invalidation ground. Departmental rules provide ~~that~~ facility of compassionate appointment is available to rehabilitate a family

J. J. M.

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in the indigent condition while the serving Govt. servant dies in harness or goes on invalidation retirement. In case of invalidation retirement there is a further rider that on the date of retirement an employee should have atleast another three years of service till his regular date of superannuation. It is submitted by learned counsel for the petitioner that admittedly the applicant's father was suffering from T.B. and in his letter at Annexure-R/1 he has mentioned that because of his health ground as also family problems, he does not want to serve any further. As he was an illiterate employee he did not know that he has to go on invalidation retirement to be entitled to get compassionate appointment for his ward and therefore this notice for retirement at Annexure-R/1 should be taken as one for invalidation retirement and the father of the applicant's retirement should be taken as retirement on invalidation ground. We have considered the above submission carefully and we are unable to accept the above submission. Hon'ble Supreme Court have held in many cases that compassionate appointment should be given only in terms of the scheme which is in force in the Department. In the instant case the admitted position is that under the scheme the ward of a Railway servant who dies in harness or goes on invalidation retirement losing thereby atleast three years of service is entitled to be considered for invalidation ground. We find that in this case ~~that~~ the applicant's father after giving notice for voluntary retirement ~~he~~ was retired in terms of the notice. We also find that in the notice at Annexure-1 he has specifically mentioned that this letter at Annexure-1

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should be taken as three month's notice. This shows that he was aware of the position that for voluntary retirement three month's notice is necessary which is not required so far as invalidation retirement is concerned. Moreover, it is only after eight month <sup>of</sup> his retirement applicant's father came up for the first time seeking compassionate appointment. All these go to show that at the time of retirement he was not asking for compassionate appointment for his son. He has given a notice for voluntary retirement and even though one of his grounds given as because of his own illness and the applicant's father was actually suffering from TB at that time, on this ground it is not possible to hold that voluntary retirement takes the character of invalidation retirement. Pension Rules for voluntary retirement and invalidation retirement are also different. In consideration of the above we hold that the applicant's father having allowed ~~on~~ voluntary retirement applicant is not entitled to be consider for compassionate appointment. This prayer is accordingly rejected.

4. It is submitted by learned counsel for the applicant that the applicant's father is in highly indigent condition and a direction should be issued to the Respondents to consider the case of applicant as a fresh applicant and not on compassionate ground. It is not possible on the part of the Tribunal to act as a recommending authority to the Respondents to consider the case of applicant. Applicant if he is so advised may apply to the Respondents

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~~for appearing the examination~~ to be considered as  
per rules and on merit. *Jm*

5. With the above discussions, the O.A. is  
rejected. No costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

*Sominath Som*  
(SOMNATH SOM)  
VICE CHAIRMAN

For copies of final  
order dt. 2.3.2001  
issued to counsels  
for both sides.

ANM/CM.

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26/3/01

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S.O. (J)