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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

Original Application No. 486 of 1999
Cuttack this the 20th day of April, 2001

Binapani Panda

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Applicant(s)

_ Vrs _

Union of India and others

Respondents.

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

20.4.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.486 of 1999

CUTTACK THIS THE 20th DAY OF APRIL, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

THE HON'BLE SHRI G. NARASIMHAM, MEMBER (J)

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1. Binapani Panda, aged about 39 years,
D/o Late J.N. Panda, Village/
Post- Dandamukundapur, Dist-Puri,
Orissa.

Applicant

By the Advocate:-

M/s K.C. Kanungo
S. Behera

- VERSUS -

1. General Manager, South Eastern Railways,
Garden Reach, Calcutta.
2. Chief Personnel Manager, South Eastern Railways,
Garden Reach, Calcutta.
3. Divisional Railways Manager, South Eastern Railways,
Khurda Road Division, At/Po- Jatni, Dist-Khurda.
4. Divisional Railways Manager, South Eastern Railways,
Chakradharpur Division, At/Po-Chakradharpur, Bihar.
5. Divisional Personal Officer, South Eastern Railways,
Khurda Road Division, At/Po-Jatni, Dist- Khurda.
6. Senior Divisional Personnel Officer (Engg.)
South Eastern Railways, Chakradharpur Division,
At/Po-Chakradharpur, Bihar.

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RESPONDENTS.

By the Advocates

M/s R. Sikdar
A. Sikdar
A. Singh.

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O R D E R

G. NARASIMHAM, MEMBER (JUDICIAL) : Applicant Binapani Panda daughter of a Railway employee Shri Jagannath Panda who retired on 01.10.1981 on superannuation, under Chakradharpur Railway Division, earlier approached this Tribunal in O.A.565 of 1994 praying for employment under the scheme issued by the office of the Divisional Railway Manager, Chakradharpur on 28.09.1981 (Annexure 3 of O.A.565/94). Under that Scheme IOWS and PWIS of the Division were intimated to give wide publicity, in order to consider a case for engagement of wards of retired employees so that retired employees would apply for fresh employment of their wards addressed to Senior DPO/Chakradharpur with the required information mentioned in that letter and that application must reach by 04.10.1981. The applicant's father did apply on 04.10.1981 for the employment of the applicant. Since there was no response he made several representations till his death. There after the applicant filed O.A.565/94 for issue of directions to the Railway Authorities to consider her case for employment under that Scheme.

2. That application was vehemently opposed on various grounds of which 2 important grounds are limitation and that the applicant's father declared in his application none of his son/daughter is under Railway employment, though his son was very much in Railway employment.

3. After hearing the then Member (Administrative) allowed the application on 08.12.1995, rejecting the plea of limitation set up by the Department. The Department's other plea that the son of the applicant's father was in Railway service was

also disbelieved. In the order portion the following direction was given:-

"In the light of the above observations, I direct the 1st Respondent, viz. General Manager, South Eastern Railways, Garden Reach, Calcutta, to examine the case of the applicant afresh without treating it as outside the limit of 04.10.1981 and without treating the applicant as overaged. In order to enable him the applicant forwarded a set of representations with her bio-data within one month from the date of receipt of a copy of this order. The 1st respondent shall consider the representation as sympathetically as possible and pass appropriate orders within three months from the date of receipt of such representation made by the petitioner. The order passed by the 1st respondent shall be communicated to the applicant immediately thereafter".

1. In the present application it is submitted by the applicant that pursuant to the direction of this Tribunal, she made fresh representation to the General Manager on 29.12.1995 (Annexure 4). This representation was ultimately turned down by the General Manager in his order dated 19.02.1997 (Annexure 5). Hence she prefers this present application.

3. Her grievance is that the order of the General Manager under Annexure 5 being contrary to the directions and observations of this Tribunal cannot be sustained under law. She should have been offered any post suitable to her qualification and within the competence of the respondent. Hence, she prays for quashing of Annexure 5 and for issue of the directions to the respondent, to implement the order of

the Tribunal in the earlier O.A in letter and sprit so as to further the ends of justice, by condoning her overage for the purpose of employment as the delay in offering employment is attributable to the respondents. She filed this application on 10.09.1999 with an application for condonation of delay.

6. Railways in their counter oppose this application on the ground that the son of the applicant's late father is infact under Railway employment and was allotted the very quarter which was under the occupation of his father under father and son Rule w.e.f. 01.03.1982. Further, the Rehabilitation Scheme circulated by Chakradharpur Division on 28.09.1981 is obviously ment for Group 'D' post and this Scheme has since been banned by the General Manager in letter dated 26.11.1997 (Annexure R/1). Further order dated 19.02.1997 of the General Manager is in confirmity with this Tribunal's order and does not suffer from infirmity. However, in the counter no objection has been raised for condonation of delay. Hence MA 602 of 1999 filed along with the original application for condonation of delay is allowed.

7. Rejoinder of the applicant is in an argumentative form. According to her in view of her educational qualification she is entitled to a Group 'C' post. If indeed the circular dated 28.03.1981 is ment only for Group 'D' posts, she has to abide by the terms and conditions of this circular.

8. We have heard Shri K.C. Kanungo the Learned Counsel for the applicant and Mrs. R. Sikdar the Learned Additional Standing Counsel for the Railway Respondents. Also persued the record of O.A. 565/94. ^{On} Para 7 this Tribunal in the

earlier C.A dealt the issue whether the applicant's father had any son and whether such son has been employed in the Railways and came to a conclusion no such son has been under railway employment. This issue having been decided finally, the respondents in this original application cannot re-agitate it further. Moreover in the order of the General Manager under Annexure 5 there is no mention that applicant's claim for employment failed on this ground.

7. The plea of the respondents that the Scheme under such letter dated 28.08.1991 has since been banned cannot also be accepted because in the order under Annexure 5 passed by the General Manager there is no such mention. Further Annexure R/1 over which reliance has been placed in this connection is dated 26.11.1997 i.e. much after disposal of O.A. 565/94. Even this Annexure nowhere mentions about the letter dated 28.09.1981. Hence we are not inclined to disallow the claim of the applicant on this ground urged by the respondent.

19. It is next to be considered whether the impugned order of the General Manager passed on 19.02.1997 under Annexure 5 is really in compliance of the directions of this Tribunal of O.A.565/94 in letter and spirit. The previous O.A. was based on the letter dated 28.09.1981. On the basis of that letter the original application was allowed with the direction to the General Manager as quoted above. In other words as per the direction of this Tribunal the General Manager was to have considered the representation of the applicant for compassionate appointment with reference to

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the letter dated 28.09.1981 but curiously there is no mention of this letter at all in the ^{impugned} ~~interim~~ order of Annexure 5.

We therefore cannot sustain the order of the General Manager under Annexure 5 which is accordingly quashed.

19. While allowing the original application we direct respondent No.1 i.e. General Manager S.E. Rly. to reconsider the representation dated 29.12.1995 of the applicant within the scope of the Employment Scheme mentioned in letter dated 28.09.1981 (marked as Annexure 3 in O.A.565/94) keeping in mind the directions and observations of this Tribunal made in O.A.565/94, and pass necessary orders on that representation and communicate the same to the applicant immediately thereafter. This exercise shall be completed within 60 days from the date of receipt of the copy of this order.

12. O.A. is allowed. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

20.4.01
(G. NARASIMHAM)
MEMBER (JUDICIAL)

K.B Steno