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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 92 OF 1999
Cuttack, this the 26th day of February, 2003.

SRI M. V. NARASIMHULU. APPLICANT.
:VERSUS:
UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

1. WHETHER it be referred to the reporters or not? Yes.
2. WHETHER it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)
26/02/2003

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 92 OF 1999
Cuttack, this the 26th day of February, 2003.

C O R A M:-

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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Sri M. V. Narasimhulu, Aged about 28 years,
S/o. M. Rajulu of Village-Moyyavani peta,
P.O: Sadavaram, District: Srikakulam (AP),
at present C/o. P. Narayananamma of
Chhatrapur, PS: Chhatrapur, Dist. GANJAM.

..... APPLICANT.

By legal practitioner: M/s. Manoj Mishra,
Besudev Mishra,
D. K. Patnaik,
Anil Nayak.,
Advocates.

: Versus:

1. Union of India represented through Chairman,
Railway Board, Rail Bhawan, New Delhi.
2. General Manager,
South Eastern Railway,
Garden Reach, Calcutta-700043.
3. Divisional Railway Manager,
South Eastern Railway,
Khurda Road Division,
Khurda Road,
PO: Jatni,
Dist: Khurda.
4. Senior Divisional Personnel Officer,
South Eastern Railway,
Khurda Road Division,
Khurda Road,
PS: Jatni,
Dist: Khurda.

.... RESPONDENTS.

By legal practitioner : Mr. R. C. Rath,
Rlys. Standing Counsel

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O R D E R
(ORAL)

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

P. Rambabu, a Railway employee, while working as P. W.I (Permanent Way Inspector), Gr. III in Chhattrapur under Khurda Road Division died prematurely (on 06-03-1988) leaving behind his widow and one daughter. After the death of the Railway employee, P. Rambabu (who was the only bread winner of the family), his widow applied for providing appointment to her married daughter in order to tide over the sudden crisis of the situation and for removal of the distress condition of the family. Subsequently, when the widow felt that her daughter can not take up any job due to her sickness, she applied for providing an appointment (on compassionate ground) to one of her near relative (Applicant) describing him to be the adopted son. When nothing was communicated to the Applicant, he took shelter of this Tribunal in O.A.No.935/1996 which was disposed of on 26-02-1997. Ultimately, under Annexure-A/4 dated 16.11.97 and under Annexure-A/5 dated 15-01-1999 the prayer of the Applicant was turned down by the Respondents on the grounds as extracted below:-

"ANNEXURE-A/4 dated 16-11-1997:

In compliance to the Hon'ble CAT/CTC's order no. 3 dated 26-02-1997 passed in the above case, your representation dated 19-08-1994 was examined in detail and it is to inform you that the employment assistance to the near relative cannot be considered as per Railway Board's instructions".

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ANNEXURE-A/5, dated 15-01-1999. :-

Your representation has been examined in detail and it is informed that the employment assistance to the near relative cannot be considered as per Railway Board's instructions. This fact has already been informed to you under this office letter under reference*.

Again O.A.No. 251/1998 was filed by the Applicant; but the same was withdrawn on 01-03-1999.

2. Now in this third journey, the Applicant (in the present Original Application under Section 19 of the Administrative Tribunals Act, 1985) has prayed for quashing of the order under Annexures-A/4 and A/5 to the Original Application with prayers for direction to the Respondents to provide appointment (on compassionate ground) to the Applicant.

3. Respondents have filed their counter objecting to the prayers of the Applicant on the following grounds:-

- a) Providing employment on compassionate ground to near relative is no more available in the Railways, in view of the instructions of the Board dated 13-12-1995;
- b) Applicant/widow submitted application for providing appointment/employment on compassionate ground after 12 years;
- c) though cause of action arose as back as 1988, this application has been filed in the year 1999 and, therefore, this O.A. is not maintainable in view of the law of limitation.

4. Having heard the learned Counsel for the Applicant and Mr. R. C. Rath, Learned Standing Counsel for the Railways, I have been called upon to examine as to whether the Applicant is entitled to be considered for employment on compassionate

ground, in view of the facts enumerated in his Original Application (on the face of the three objections raised by the Respondents in the counter) and as also during the submissions made by the Respondents in the counter) and as also during the oral hearing of this case, by both the parties.

5. As regards the point of limitation it is worthwhile to mention here that the Applicant has initially filed an Original Application in this Tribunal in the year 1996 raising the grievances pertaining to the inaction of the Respondents in not giving consideration to the grievances of the Applicant for providing employment on compassionate ground, even though the same has been provided under the Rules of the Railways. The Railways kept quite for a considerable long time and only after intervention of this Tribunal on 26-2-1997 in O.A.No.935/1996, the Railways/Respondents rose from their slumber and rejected the grievance of the Applicant under Annexure-A/4 on 16.11.1997. When the Rule envisages for providing appointment, there was no impediment on the part of the Respondents/Railways to sleep over the matter for years together and come out with the plea of limitation. Further while rejecting the claim of the Applicant (under Annexure A/4 and A/5) no such plea was taken by the Respondents. Learned Counsel for the Applicant has also during hearing of the matter, has exhaustively explained the reason for approaching this Tribunal belatedly. There are also instructions issued by the Railway Board for overcoming such an eventuality; which envisages that the General Manager of the Railways concerned has the power to condone the 48

delay (for providing employment on compassionate ground) in order to remove the distress condition of the family. In view of the above, I am satisfied that this application cannot just be thrown on the point of delay. Hence, the above plea of the Respondents is over-ruled.

6. As regards the point that the Circular for providing employment on compassionate ground to near relative of deceased employee has been modified in the year 1995, it is to be noted that this plea/ground is not applicable to the case of the Applicant; since the death of the Railway servant had occurred in the year 1988 and, at that relevant time, for providing employment assistance (on compassionate ground) to "a near relative" was very much in vogue; as communicated in Railway Board's letter dated 25-03-1980 and 12-02-1990 and the same was only modified on 13-12-1995. Had the case of the Applicant been considered at that relevant time (when death occurred and applicant made representation) then his case ought not to have been thrown on the ground that the circular for providing appointment to a near relative, has been amended w.e.f. 13.12.1995. Law is well settled that executive instructions/Circulars cannot have retrospective effect. There is no mention in the said letter/circular/executive instructions dated 13-12-1995 that the same should take effect retrospectively also. As such, the Respondents ought not to have rejected the claim of the Applicant by applying the circular which had not seen the light of the day when the death occurred or representation

was made.

7. More surprising in this case is to note that while rejecting the claim of the Applicant (under Annexures-A/4 and A/5), the Respondents have only pointed out that in view of the Circular in question (debaring the near relatives to be appointed on compassionate ground) the case of the Applicant had been rejected; while contesting the present O.A., the Respondents have raised many grounds; though the same are not available to be raised in view of the decisions of the Hon'ble Apex Court of India rendered in the case of COMMISSIONER OF POLICE, BOMBAY-VRS. - GORDHANDAS BHANJI (reported in AIR (39) 1952 SC 16) and in the case of MOHINDER SINGH GILL-VRS. - CHIEF ELECTION COMMISSIONER (reported in AIR 1978 SC 851); wherein it has been held that public orders, publicly made in exercise of a statutory authority, cannot be construed in the light of explanations subsequently given, and that, when a statutory functionary makes an order, based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order which is bad in the beginning may by the time it comes to Court, on account of being challenged shall get validated with aid of additional grounds and such a situation, in ordinary situation, is not to be sustained.

8. In view of the foregoing discussions made above, I am of the view that the Circular dated 13-12-1995, basing on which the case of the Applicant has been rejected, is not ✓

applicable to the case of the Applicant and, accordingly, Annexures-A/4 and A/5 are quashed (especially, because it is not the case of the Respondents that there are no indigent situation) and the matter is remitted back to the Authorities/Respondents to place the records before the General Manager of South Eastern Railway (Garden Reach, Kolkata-43) who is Respondent No. 3 in this case and who has been conferred with the power to meet such an eventuality for condoning the delay to give fresh consideration. The entire exercise should be completed within a period of 90 (ninety) days from the date of receipt of a copy of this order.

9. In the result, therefore, this O.A. is disposed of as above. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 26/3/03

KNM/CM.