

**CENTRAL ADMINISTRATIVE TRIBUNAL,**

**CUTTACK BENCH, CUTTACK.**

ORIGINAL APPLICATION NO. 474 OF 2000  
Cuttack, this the 21st day of November, 2001

Trilochan Sasmal ....

**Applicant**

Vrs.

Union of India and others.... 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.*

SOMNATH SOM  
VICE-CHAIRMAN  
21.11.201

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 474 OF 2000  
Cuttack, this the 21st day of November, 2001

CORAM;

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....

Trilochan Sasmal, aged about 22 years, son of Kailash Chandra Sasmal, a resident of Barapada, P.O-Godiput Matiapada, Via-Delanga, Dist.Puri

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Applicant

Advocates for applicant - M/s B.Mohanty-I  
S.Patra  
P.K.Majhee

Vrs.

1. Union of India, represented through General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal
2. Railway Board, represented through its Secretary, Rail Bhawan, New Delhi.
3. Senior Divisional Personnel Officer, South Eastern Railway, Khurda Road, Jatni, Dist.Khurda.
4. Senior Divisional Railway Manager, Khurda Road, South Eastern Railway, East Coast Railways, Jatni, Dist.Khurda.
5. Secretary to Government of India, Ministry of Railways, New Delhi

.....

....Respondents

Advocate for respondents - Madam S.L.Patnaik  
Railway Advocate  
ORDER  
SOMNATH SOM, VICE-CHAIRMAN

*S. J. M.*  
In this O.A. the petitioner has prayed for quashing the order dated 25.8.2000 (Annexure-4) rejecting his prayer for compassionate appointment. The second prayer is for a direction to the respondents to give compassionate appointment to the applicant.

2. The case of the applicant is that his father was working as Caretaker in the office of Loco Foreman, S.E.Railway, Khurda Road. In 1999 he fell ill and had to undergo treatment at Railway Hospital, Jatni and Central Hospital, Garden Reach, Calcutta. Father of the applicant was examined by Medical Board, Central Hospital, Garden Reach, on 8.9.1999 and he was declared invalid for further service for all categories in the Railways. Copy of the letter of the Medical Superintendent recommending invalidation of the applicant's father for further service for all categories in Indian Railways is at Annexure-1. Accordingly, the applicant's father retired on 8.9.1999. After retirement of the applicant's father, the financial condition of the family became bad and the applicant's father prayed for giving compassionate appointment to his son, the present applicant. His representation is at Annexure-A/3. The applicant has stated that on 16.3.2000 his case was recommended for consideration, but in order dated 25.8.2000 (Annexure-4) his prayer was rejected. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant's father was declared medically unfit for further Railway Service by the Medical Board and he retired on 8.9.1999. The date of birth of the applicant's father is 10.2.1944 and on the date of his retirement, the age of the applicant's father was 55 years six months and 28 days. The respondents have stated that the applicant's has put in 35 years 7 months and 22 days of service. After retirement he was given DCRG, Provident Fund, CGHS dues,

J. J. M.



etc. The representation of the applicant for compassionate appointment was also processed. But as the applicant's father was invalidated beyond the age of 55 years his case was referred to Chief Personnel Officer and the Chief Personnel Officer rejected the prayer for compassionate appointment keeping in view the judgment of the Hon'ble Supreme Court in Umesh Kumar Nagpal v. State of Haryana. In the context of the above, the respondents have opposed the prayers of the applicant.

4. The applicant in his rejoinder has stated Umesh Kumar Nagpal's case does not relate to the Railways. It is further stated that the impugned order at Annexure-4 is not a speaking order. It is further stated that sons of Sri Raghavalu and Ananta Dakua had been considered and given appointment. In case of Ananta Dakua he had only 1 year 8 months of service left when he was medically declassified. It is stated that as the Railways have given compassionate appointment to wards of several Railway employees who had crossed 55 years of age at the time of their invalidation, the applicant has been discriminated against by rejection of his prayer.

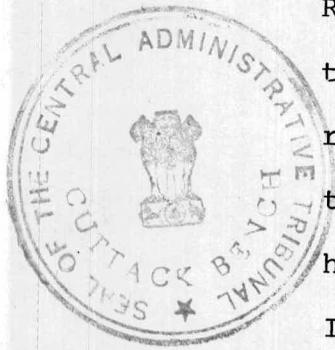
5. I have heard Shri B. Mohanty-I, the learned counsel for the petitioner and Madam S.L. Patnaik, the learned Railway Advocate for the respondents and have perused the record.

6. The relevant circular of the Railways for the present purpose is Establishment Serial No. 86 of 1996 which has been enclosed by the respondents at Annexure-R/1 of the counter. In this circular it has been mentioned that all cases of medically declassified staff beyond the age of 55 years have to be referred to Headquarters for



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obtaining General Manager's personal approval for appointment of wards of the ex-employee with the personal recommendation of the Divisional Railway Manager concerned. From this it is clear that unlike Central Government employees, in case of Railway Employees compassionate appointment can be considered for the ward of a Railway employee even when he is retired on invalidation beyond the age of 55 years. In view of this, the contention of the respondents that the case of the applicant was rejected because at the time of retirement his father had crossed the age of 55 years by itself cannot be accepted. Respondents have not denied the averment of the applicant that the financial condition of the family is bad after retirement of the father. The averment of the applicant that his case was recommended by the Divisional authorities has also not been specifically denied by the respondents. It is no doubt true that in Umesh Kumar Nagpal's case the Hon'ble Supreme Court have laid down that compassionate appointment is not a vested right. But when the Scheme is there, all persons claiming benefit under the Scheme have to be treated in an evenhanded manner. Hon'ble Supreme Court in the case of Smt. Kamala Gaind v. State of Punjab and others, 1992(5) SLR 864 have observed that even if it is compassion, unless there be some basis there is no justification for discriminately extending the treatment. The applicant has stated that in the case of Ananta Dakua compassionate appointment has been given to his ward even though Sri Dakua retired when he had only one year and eight months of service left.. The case of Sri Dakua has been mentioned by the applicant in his rejoinder and the



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respondents did not get an opportunity to state their case in respect of the case of Sri Dakua. But the fact remains that the scheme of the Railways provides for consideration of the case for compassionate appointment even if the Railway employee has been invalidated beyond the age of 55 years. The case of the applicant was recommended by the Divisional Railway Manager as has been mentioned by the applicant and not denied by the respondents. There is nothing in the impugned order as to why the case has been rejected. In view of this, I quash the impugned order at Annexure-4 and remit the matter back to the General Manager, S.E.Railway (Respondent no.1) to consider the prayer of the applicant for compassionate appointment afresh in the light of Establishment Serial No.86/96 and the cases of S/Sri Ananta Dakua and Raghavalu and take a view in the matter. This action should be taken within a period of four months from the date of receipt of copy of this order.

7. In the result, therefore, the Original Application is allowed. No costs.

*Somnath Som.*  
(SOMNATH SOM)  
21.11.2001  
VICE-CHAIRMAN

AN/Ps