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17. ORDER DATED 16.8.2001.

Heard Dr. D. B. Mishra, learned counsel for the applicant and Madam R. Sikdar, learned Additional Standing Counsel for the Respondents and have also perused the records.

In this Original Application the applicant has prayed for a direction to the Respondents i.e. General Manager, South Eastern Railway, Res. No. 2 to consider the case of the applicant for giving compassionate appointment in terms of representation at Annexure-7 and the decision of the Tribunal in O.A.No. 51/91 disposed of in order dated 18.11.1992 at Annexure-8. Respondents have filed counter opposing the prayer of the applicant and the applicant has filed rejoinder.

For the purpose of considering this petition it is not necessary to go into too many facts of this case.

The admitted position is that applicant's father late Md. Issack while working as Driver 'A' Special under the Respondents was declared medically invalidated for further service in all category of Railways w.e.f. 21.10.1987. At that time he had put in 38 years 8 months and 20 days of service and was 53 years 9 months ^{of} aged. He had only 3 months and 11 days to retire on superannuation. Applicant applied for compassionate appointment and in order dated 14.6.2001 his representation was rejected. In the context of the above facts, he has come up in this petition with the prayer referred to earlier.

Respondents in their counter have taken the stand that as the applicant's father had only

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3 months and a few days to retire on superannuation and he had put in more than 38 years of service and had got full pension, this case does not justify granting of compassionate appointment. Applicant in his representation has cited the case of one Bakhar Khan, Driver A Special like the applicant's father who was medically invalidated just about two months earlier before attaining the age of superannuation. It has been ^{by the Respondents} stated that the son of Bakhar Khan, ^{^ Salim} namely Salim Khan applied for compassionate appointment but his case was also not considered by the competent authority for compassionate appointment. Applicant in his rejoinder has stated that the above statement that Salim Khan S/o. Bakhar Khan was not considered for compassionate appointment is not correct. He has enclosed at Annexure-10 the order of appointment dated 20.11.1987 issued to Salim Khan S/o. Bakhar Khan. In view of this statement of the Respondents in page-4 of the counter that in case of Salim Khan compassionate appointment has not been given can not be accepted. From the above we see that when applicant's father was medically invalidated he has three months and 11 days of service and according to the Respondents themselves that when Bakhar Khan was invalidated he had two months and a few days of service. We see no reason why in case of Bakhar Khan's son compassionate appointment was considered, ^{if} and why the same should not be considered in case of the applicant. Even though compassionate appointment is not a vested right but while considering the cases of compassionate

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appoint~~ment~~ the Departmental Authorities can not adopt a discriminatory approach. This matter came up before the Hon'ble SC in the case of Smt. Kamala Gaiind ~~Yes~~. State of Punjab and others reported in 1992(5) SLR vol. 83 page- 864. It is not necessary to refer to the facts of this case. While dealing with the case of the son of applicant before them Their Lordships of the Hon'ble Supreme observed as follows;

Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment. We, therefore, direct that within three months from now a suitable Class I post in P.C.S. Executive shall be provided to the appellant's son in lieu of the offer already made.

From the above it is clear that according to the law as laid down by the Hon'ble SC in the above case in the matter of compassionate appointment it is not open for the Departmental Authorities to adopt a discriminatory approach and in view of this we direct that in case Salim Khan S/o. B. Khan has been given appointment as is borne out by the appointment order at Annexure-10 to the rejoinder, then the Respondents should consider giving compassionate appointment to the applicant within a period of 90 days from the date of receipt of a copy of this order as in case of Salim Khan. With the above directions, the O.A. is allowed. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAMAN

KNM/CM.

Free copies of final order dt. 16.8.2001 issued to counsel for both sides.

Ans
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S.O.C.T)

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