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O.A.NO.630/2000

ORDER DATED 21ST DAY OF MAY, 2002.

Applicant's father, while in Railway Services, was medically de-categorised and, therefore, he took a premature retirement. Thereafter, the Applicant sought a compassionate appointment to cater the need of the distress condition of the family. Having found an indigent condition of the family, the Divisional Rly. Manager, referred the matter to the General Manager of South Eastern Railway. It became necessary to refer the matter to General Manager of South Eastern Railway; because, the father of the Applicant, had, by the time of his premature retirement, less than two years to go before his normal date of superannuation. No relief having been granted to the Applicant from the end of the General Manager of South Eastern Railway; the Applicant approached this Tribunal in Original Application No.342 of 1998; which was disposed of on 14-01-2000. The General Manager of South Eastern Railway apparently did not accept the case of the Applicant on the ground that the father of the Applicant took retirement within two years before the date of his normal retirement. The relevant portion of the order of this Tribunal rendered on 14-01-2000 in Original Application No.342/1998 is extracted below for a ready reference:-

APR

".....The reason which has promoted the General Manager in rejecting the recommendation of the D.R.M. and deny compassionate appointment has not been mentioned in order at Annexure-1. It is submitted by the learned Addl. Standing Counsel Shri P.K. Mishra that the case has been

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Rejected by the General Manager, because at the time of his voluntary retirement, applicant's father did not have three years of residual service which he had forgone by taking voluntary retirement. This is not a consideration germane to the issue, because the direction of the competent authority, under the Railway Board's instructions has to be exercised only in cases of those who had forgone less than three years of service by taking voluntary retirement. If the above contention of the learned Addl. Standing Counsel is accepted then in all such cases only order which the General Manager will pass is rejection of all such cases. In that event, granting discretion in such cases by the Railway Board will be futile".

As to the indigent condition of the family, this Tribunal observed as under:

".....I also note that the Divisional Railway Manager has recommended his case for giving compassionate appointment. While doing so he must have taken note of indigent condition of the family of the retired railway employee".

Thereafter, the Tribunal concluded the case (OA No. 342 of 1998) with the following words:

AFR

"Law is well settled that in the matter of compassionate appointment, the Tribunal can not direct for giving compassionate appointment to certain person. The Tribunal can only direct reconsideration of the matter. In view of this Original Application is disposed of with the direction to Respondents to reconsider the proposal of DRM, SE Railway, Khurda Road recommending grant of compassionate appointment to the Applicant in this Original Application strictly in terms of the circulars in force and take a decision in the matter within a period of 90 (ninety) days from the date of receipt of this order and intimate the result to the Applicant within 15 (fifteen) days thereafter".

With the above observations and directions, the Original Application is disposed of but there shall be no order as to costs".

In view of the aforesaid observations and directions, of this Tribunal, the case of the Applicant received reconsideration by the Respondents. The Respondents having again turned

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down the prayer of the Applicant, he has filed the Present Original Application. The case of the Applicant has been turned down by the Respondents again on the selfsame grounds (as before) that (a) by the time, the father of the Applicant faded premature retirement, he had hardly one and half years to retire from service and that (b) there are/were no financial dearth to treat the family of the Applicant to be in indigent/distress condition.

This Tribunal, in the earlier round of litigation, answered both the above points and, therefore, the General Manager of South Eastern Railway ought not have, again, raised the self same objections; which are hereby over-ruled.

Respondents, herein, have filed a counter contesting the case of the Applicant, mainly on the ground that the prayers made in the present Original Application are hit by the "principles of resjudicata". The Advocate for the Applicant points out that earlier the Original Application No. 342/1998 was disposed of by giving a simple direction to the Respondents to re-consider the case of the Applicant and that the case of the Applicant did not receive due consideration on merits, and, therefore, it can not be said that the present Original Application is hit by the principles of resjudicata. It is also the case of the Advocate for the Applicant that the fresh rejection of the case of the Applicant by the General Manager of the South Eastern Railway is a fresh and independent cause of action and, therefore, the principles of resjudicata should not stand on the way of the Applicant for redressal of his grievances in the present Original Application.

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For the reasons discussed in the foregoing paragraphs, the submissions of the Advocate for the Applicant are sustained and the objection of the Respondents are hereby over-ruled.

In course of hearing of this Original Application the Advocate for the Applicant pointed out that the Respondent No. 3 having been given compassionate appointment almost in the same circumstances as that of the Applicant, the Applicant should not have been discriminated. It appears from the counter that Respondent No. 3's father a person of Accounts Department of the South Eastern Railway, met with an accident, in course of employment and became 100% disabled and in the said premises, the Respondent No. 3 was given compassionate appointment. To this, the Advocate for the Applicant states that the disability also amounts to decategorisation in terms of medical assessment. Whether somebody faced 100% disability or partial disability should not weigh in giving or not giving compassionate appointment and that, the distress condition of the family should only weigh in the minds of the authorities for providing compassionate appointment.

AER
Hon'ble Supreme Court of India in a three Judge Bench in the case of SMT. KAMALA GAIND VRS. STATE OF PUNJAB AND OTHERS reported in 1992 (5) SLR Vol. 83 864 held 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 PCS Executive shall be provided to the appellant's son in lieu of the offer already made".

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Judging from any angle, the Applicant has been able to place on record a case of discrimination between the Applicant vis-a-vis the Respondent No.3, and therefore, it is incumbent upon the Respondents to give a fresh look to the case of the Applicant in order to remove the discrimination aspect of the matter.

It appears that the Railways, while reconsidering the matter, took into consideration the terminal benefits given to the father of the Applicant for determination of the indigent condition of the family; which they should not have done. By now, law is well settled in the case of BALBIR KAUR AND ANOTHER VRS. STEEL AUTHORITY OF INDIA (reported in 2002(2)ATT(SC) 255) ; of RANKANIDHI SAHJ VRS. UOI AND OTHERS (reported in 2002 (2)1 CJD(AT) 21) and of MINA KUMARI MOHANTY AND ANOTHER VRS. UNION OF INDIA AND OTHERS (reported in (1994) 2 ATT (CAT) 120) that while computing the indigent condition of the prematurely retired/deceased families the amount given as terminal benefits should not be taken into consideration.

In the conclusion, the Respondents are hereby directed to reconsider the case of the Applicant and provide him a compassionate appointment. While giving this direction (for reconsideration of the case of the Applicant) to the Respondents, the order passed in Annexure-2, dated 31.7.2000 is hereby quashed/set aside.

With the above observations and directions, this Original Application is allowed. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 21/05/2002

KNM/CM.

AFR