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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.118 OF 2001
Cuttack this the 26th day of November/2001

G. Subbaraju ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
26.11.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.118 OF 2001
Cuttack this the 26th day of November/2001

CORAM :

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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G.Subbaraju, aged about 30 years,
S/o. G.Krishna Rao, At-Srikrishna Nagar, 4th
Lane, PO;Berhampur, Dist-Ganjam

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Applicant

By the Advocates

M/s.A.K.Rout
P.N.Patro
Miss.N.Rath
Mrs.P.Nayak

-VERSUS-

1. Union of India represented through the General Manager South Eastern Railway, Garden Reach, Calcutta
2. Divisional Railway Manager, South Eastern Railway, Kharagpur, West Bengal
3. The W.P.O. (W/S) The Work Personnel Officer (Workshop) South Eastern Railway, At/PO-Kharagpur, West Bengal

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Respondents

By the Advocates

Mr.S.R.Pattnaik
Addl.Standing Counsel

O R D E R

MR .SOMNATH SOM, VICE-CHAIRMAN: In this Original Application the petitioner has prayed for a direction to respondents to consider his case for compassionate appointment in accordance with the circular dated 2.7.1997 at Annexure-5.

2. The case of the applicant is that his father, G.Krishna Rao was working as a Shunting Master under the jurisdiction of Work Personnel Officer (Workshop), S.E.Railway, Kharagpur. His father took voluntary retirement on medical

ground and requested the departmental authorities to give compassionate appointment to his eldest son, G.Adinarayan.

Accordingly G.Adinarayan, the elder brother of the applicant was appointed as Trained Skilled Moulder under Respondent No.3. Applicant's brother G.Adinarayan died on 18.5.1997. Applicant has stated that after the death of his elder brother G.Adinarayan there is no other earning member to look after the family and the pension amount received by his father is not adequate to maintain the family. It is stated that his elder brother was bachelor. Applicant's father prayed for compassionate appointment to be given to G.Subbaraju vide representation under Annexure-3.

Applicant has stated that even though there are instructions that in case of a railway servant dying as a bachelor/spinster, his/her dependant/relative can be considered for compassionate appointment. In-spite of this no consideration has been shown to the applicant nor any decision has been taken and communicated to the applicant. In the context of the above the applicant has come up with the prayers referred to earlier.

2. Respondents in their counter have opposed the prayer of the applicant. It is stated that the cause of action has arisen in 1997 consequently on the death of the applicant's brother. But this O.A. has been filed after a lapse of more than four years and therefore, the application is barred by limitation. It is further stated that after voluntary retirement of Shri G.Krishna Rao, elder G.Adinarayan, the brother of the applicant was appointed as a Trained Skilled Artisan on compassionate ground in

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a stipendary scale of Rs.900-940 on condition that G.Adinarayan had to undergo six months training and on successful completion of that training he would be absorbed against a Skilled Artisan post. Copy of the order dated 9.5.1995 is at Annexure-R/1. After completion of the training G.Adinarayan was tradetested but he was found unsuccessful. Shri G.Adinarayam remained unauthorisedly absent from 2.5.1996. Subsequently he sent a Private Medical Certificate on 21.5.1996 in support of his sickness from 2.5.1996. Thereafter inspite of directing him to join his duties he never turned up nor sent any intimation. Therefore, notice was sent to him through Regd.Post with A.D. which was acknowledged by him on 15.7.1996. It is further stated that on the date of death of G.Adinarayan on 18.5.1997 he was not serving under the respondents as a railway servant as his services were terminated in order dated 28.11.1996 vide Annexure-R/2. Respondents have stated that as his brother was not in railway service when he passed away, the applicant is not entitled to consideration for compassionate appointment.

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3. Applicant in his rejoinder has stated that from 1997 he has been making correspondences with the respondents time and again after the death of his brother, but no communication has been received by him and therefore, this application cannot be taken to be barred by limitation. Applicant has further not stated in the rejoinder that under Annexure-R/1 it was mentioned that on his brother failing to qualify the trade test his services would be terminated and therefore, he should have been given further chance to improve upon his performance. It is further stated that Late G.Adinarayan was not on

unauthorised ~~absent~~ from 2.3.1996 to 21.5.1996. During that period he was sick and therefore, he could not attend his duties. His services were terminated without following the provision of Article 311 of the Constitution and, therefore, termination cannot be said to have been legally done. In the context of the above the applicant has reiterated his prayer in the rejoinder.

4. I have heard Mrs.P.Nayak, learned counsel for the petitioner and Shri S.R.Patnaik, learned Addl. Standing Counsel for the Respondents and perused the records. In view of the above pleadings of the parties the sole question for consideration is whether on the date of ^{death of} G.Adinaraya he was in railway service. I have carefully gone through the order dated 3.9.1995 at Annexure-R/1. In this order applicant's brother was approved for appointment on compassionate ground, but he was put in a stipendary scale of Rs.900-940, and it was mentioned in this order that he has to undergo six months training and on successful completion of training he would be absorbed against a Skilled Artisan post. From this it is clear that during the period of training he only got stipendary scale of Rs.900-940/-. He was not given a regular appointment to the post of Skilled Artisan. On the contrary it was specifically mentioned that he would be so absorbed on his successful completion of training. It is also the admitted position that in the trade test conducted after six months of training G.Adinarayan did not qualify and the proposal for extension of the training was turned down by the authorities. From this it is clear that in order at Annexure-R/1 applicant's brother was not given appointment as Skilled Artisan. He was

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only given training with stipendary scale and on successful completion of training he would have been appointed. In the order at Annexure-R/2, addressed to the brother of the applicant it has been specifically mentioned that G. Adinarayyan ^{on} remained ~~unauthorised~~ absence from 2.5.1996 and even though he was asked to report to his duties he did not turn up even though he acknowledged the letter. In consideration of this in order at Annexure-R/2 he was terminated from railway service in Gr.'C' Category and he was also directed to report before the A.W.O., Kharagpur for further appointment in Gr.'D' Category. Admittedly the applicant's brother did not report before A.W.O. for getting appointed in Gr.'D' category. From this it is clear that the applicant's brother was not in service under the railways when he passed away on 18.5.1997. It is submitted by the learned counsel for the petitioner that the fact that his brother was not successful in the training and his services were terminated was not within the knowledge of the applicant. I am unable to accept this because at Annexure-3 applicant himself has enclosed a representation by his father dated 25.11.1997 in which applicant's father has mentioned that G. Adinarayyan was not successful in the training course and he was subsequently posted in Gr.'D' category. But he could not join the said post and ultimately expired on 18.5.1997. From this it is clear that the fact that proposed proposal of engagement of applicant's brother in Gr.'C' category was dropped and his brother could not join the Group 'D' post were within the knowledge of the applicant's father. In view of this, it is clear that applicant's brother on the date of his death

was not in railway service. In view of this the applicant cannot claim for consideration of his case for compassionate appointment.

It has also to be noted that applicant's brother passed away in May, 1997. Applicant has stated that he represented for compassionate appointment. He should have approached the Tribunal within one year after passage of six months from the date of his representation. But he has come up only in 2001. In view of this the O.A. is barred by limitation.

In view of the discussions held above, the O.A. besides being barred by limitation, is held to be without any merit and the same is rejected, but without any order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
20.11.2001

B.K.SAHOO//