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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 261/2001

Cuttack this the 29 day of July, 2003.

Arjun Sahoo, aged about 20 years son of
late Anukul Sahoo of Village-Kurunti,
P.S.-Motanga, PO-Kusupanga, Dist. Dhenkanal

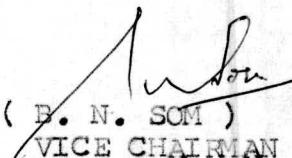
.....Applicant

Versus

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? 78
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 150


(B. N. SOM)
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 261/2001

Cuttack this the 2nd day of June, 2003

CORAM : THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN

Arjun Sahoo, aged about 20 years son of
late Anukul Sahoo of Village-Kurunti,
P.S.Motanga, PO-Kusupanga, Dist.Dhenkanal

...Applicant.

Advocate for the Applicant : Mr.T.K.Mohanty,
Advocate

Versus

1. Union of India, represented through
Secretary, Ministry of Railway, Rail Bhawan
New Delhi-1
2. General Manager, South Eastern Railway,
Garden Reach, Kolkata-43
3. Senior Division Railway Manager,
South Eastern Railway, Khurda Road,
PO/PS-Jatni, Dist.Khurda
4. Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
Jatni, Dist.Khurda

....Respondents.

Advocate for the Respondents : Mr.P.K.Mishra,
Advocate
Mr.B.K.Beura, Advocate.

ORDER

MR. B. N. SOM, VICE CHAIRMAN : This Original Application has been filed by Shri Arjuna Sahoo, son of late Anukul Sahoo, who was working as Gangman under Section Engineer (P.W.), Dhenkanal when he expired on 24.08.1992. The grievance of the Applicant is that he has not been given appointment under Rehabilitation Assistance Scheme framed by the Respondents and therefore has approached this

Tribunal to quash the letter issued by the Respondents dt.5.10.1999 at Annexure-6 and to direct the Respondents to give him appointment in Grade 'D' post on compassionate ground.

2. In a nut shell, the facts of the case are that after the death of the father of the Applicant, who was a Railway servant, the mother (widow) had submitted application dt.31.08.1993 to the authorities to provide her a job on compassionate ground. But no action was taken by the Respondents in this regard. Thereafter, in the year 1998 when the Applicant(3rd child) of the deceased Railway servant attained majority, the widow again applied to the Respondents seeking a job for the Applicant on compassionate ground. That was followed by further representations from the widow. But the Respondents rejected the application of the widow vide their letter dt.5.10.99 (Annexure-6) on the ground that the Applicant did not possess the minimum educational qualification required for recruitment to the post in terms of R.B.E.No.277/98. The Applicant has alleged that the action of the Respondents in rejecting the prayer of the Applicant on the ground as stated by them at Annexure-6, is illegal being contrary to the Railway Board letter dt.29.07.1999. In the said letter, the Railway Board had instructed all concerned that the educational qualification of Class-VIII pass for appointment to Gr.'D' post would not apply to those cases which were under scrutiny or under process for compassionate appointment prior to 04.03.1999.

3. The Respondents have contested the application by filing counter. They have submitted that the widow did not apply for employment assistance immediately after the death of her husband

husband. It was only after a lapse of 06 years that she gave representation in August, 1998 for employment assistance on compassionate ground in favour of her only son, i.e., the Applicant in this Original Application. Thereafter, the sister of the Applicant had submitted an application dt. 29.12.98 expressing her unwillingness for employment assistance followed by another application from another elder sister of the Applicant dt. 09.01.1999 stating that she was not interested in any employment assistance from the Respondents. The Respondents have reiterated that the Applicant cannot be appointed on compassionate ground as he does not possess the minimum educational qualification of Class-VIII pass. They have also disclosed that on receipt of the Railway Board's instruction dt. 01.08.2000 not to insist upon the minimum educational qualification of Class-VIII pass in those cases processed prior to 04.03.1999, the case of the Applicant was reopened and put up before the competent authority but the said authority rejected the prayer on due consideration of the merit of the case. The competent authority had found no merit in the application on two grounds as communicated to the mother of the Applicant (Annexure R/6) firstly, that the employment assistance was being sought in favour of the 3rd child and that the employment assistance had been sought after over of 6 years of death of the Railway servant and much after attaining majority of the 2nd child.

4. On the above grounds, the Respondents have submitted that the Application is devoid of any merit and should be rejected in limine.

5. I have heard Mr.T.K.Mohanty, learned counsel for the Applicant and Mr.P.K.Mishra, learned counsel for the Railways and perused the records placed before me by the parties. The Applicant has also submitted rejoinder.

6. The learned counsel for the Applicant has submitted during oral argument that the Respondents had rejected the application for compassionate ground on three different grounds. In the first instance, they, vide their letter dt.5.10.1999 (Annexure -6) rejected it on the ground of lacking in minimum educational qualification, then in the year 2001 by issuing their letter dt.22.12.01(Annexure R/6) they rejected the application on the ground of delay as also on the ground that appointment was being sought for the 3rd child in preference to the first two.

7. The learned counsel for the Applicant argued that by giving different reasons on different occasions, the Respondents have exhibited their bias against the applicant. In doing so, the Respondents had shown scant respect to the provisions of the scheme and also to the instructions issued by the Railway Board from time to time for adjudging the eligibility of the ward of the deceased employee for appointment under compassionate ground. In support of his arguments he placed before me the Railway Board instructions dt.1.3.85 and 18.4.85. In terms of these instructions, where the widow cannot take employment, the Railway can keep the case for appointment on compassionate grounds open to enable consideration of appointment of a minor son when he attains majority, even though at the time of occurrence of the event making compassionate appointment permissible, there is a daughter who has attained majority and/ or a major son who is already employed. It is also provided in the instructions dt.18.4.85 that whereas

normally the appointment on compassionate grounds would be made within one month/ 3 months of death of the Railway servant to a period of 5 years from the date of occurrence of the death, the period of eligibility of entitlement of appointment on compassionate grounds, may be relaxed upto 20 years with the approval of the General Manager. He then submitted that the case of the Applicant is squarely covered by these instructions. He also drew my notice to the order of this Tribunal (single bench) dt. 23.04.02 in O.A. No. 94/02 wherein it was held that the employment assistance cannot be denied on compassionate grounds to the ward of a deceased Railway servant merely on the ground that he/she does not possess the minimum educational qualification in terms of R.B. No. 277/98 dt. 4.12.98.

8. I have perused the Railway Board circulars governing the eligibility conditions for appointment on compassionate grounds, the decision of this Tribunal in O.A. No. 94/2002 as also in O.A. No. 621/98. In our decision in O.A. No. 621/98 we had observed the effect of delay of 15 years in applying compassionate appointment and stated that such a long delay ~~vitiates~~ ^{that} the cause of the application. Such a view was taken in the facts of ~~the~~ ² case. Further, neither of the parties in litigation had brought before us the Railway Board Instructions of 18.4.85 wherein the relevant rule relating to time within which the application is to be submitted for appointment on compassionate appointment was enshrined. As I have noted earlier that by virtue of that order of 1985, a period of 5 years from the date of occurrence of the death which was prescribed as the period of eligibility was allowed to be relaxed upto 20 years with the approval of the General Manager. In the said letter it was further provided that wherever in individual cases of merit, the period could be extended further

if the death had taken place 20 years ago and where the application for appointment are made for one other than the first son/daughter. It shows the flexibility of the scheme and the liberal provisions of the scheme.

9. In this case the Respondents had rejected the application on the grounds that it was submitted after 6½ years of the event, that the applicant was 3rd child and that widow had not applied for a job for herself immediately after the death of her husband. But none of these objections are valid according to the provisions of scheme framed by the Railway Board as would revealed from the Railway Board letters dt.1.3.85 and 18.3.85 referred to earlier.

10. In view of the above, rule position, I see lot of force in the arguments of the learned counsel for the Applicant that the objections raised by the Respondents are irrelevant and outside the scope of the Scheme and therefore must be rejected. I, therefore, direct the Respondents following the ratio of our judgement in O.A.No.94/2002 and the Railway Board Instructions dt.04.03.1999, that the case of the Applicant for appointment on compassionate grounds should be reconsidered by the Respondents by relaxing the educational qualification. It has been disclosed by the Applicant that he is Class-V pass. The Respondents should call upon the Applicant to produce the necessary certificate from the school where he studied last in support of his educational qualification and consider his case for giving appointment on compassionate ground against Group 'D' post within a period of 90 days from the date of receipt of this order. In the circumstances, this Original Application succeeds. No costs.


B. N. SOM
Vice Chairman