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O.A.NO.313 OF 2001

ORDER DATED 08-01-2003.

One Dibakar Champati, while working in the
as a Gangman
South Eastern Railway/died prematurely in harness on
29.03.1990, leaving behind the widow and two minor sons.
It is the case of the Applicant that he is the elder
son of the deceased and after the death of his father,
the family was in indigent condition; as he was the only
earning member of his family. Since the mother of the
Applicant is an illiterate and could not take up any job,
moreso being the only member to lookafter the minor
children, did not apply for providing compassionate appoint-
ment to the Respondents/Railways and, on attaining the
majority, the first son has applied to the Respondents/
Railways for providing appointment on compassionate
ground. No heed having been paid to such request of the
Applicant, he has filed this original Application U/s.19
of the Administrative Tribunals Act, 1985 praying for a
direction to the Respondents to provide him an appointment on
compassionate ground.

Respondents have filed their counter inter-alia
stating therein that since the mother of the Applicant
had not applied for such appointment earlier and since
the present applicant has come forward for getting such
benefit at a belated stage, such request cannot be acceded to.
In support of this plea, they have also relied on the

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decision of the Hon'ble Apex Court of India rendered in the case of Umesh Kumar Nagpal vrs. State of Haryana and others (reported in 1994(4)SCC 138) and I have gone through the said decision carefully.

Having heard Mr. Biswajit Mohanty, learned counsel for the Applicant and Mr. C.R. Misra, learned Additional Standing counsel for the Railways, appearing for the Respondents, I have perused the pleadings of the respective parties. During the hearing, Mr. Mohanty, learned Counsel for the Applicant has also produced a copy of the Circular dated 21.11.1994 issued by the Respondents in the matter of appointment on compassionate ground and the time limit for appointment which has also been taken note of.

Scheme of compassionate appointment is a beneficial scheme and this has been introduced in the Govt. service in order to tide over the sudden jerk/crisis and to redress the distress and indigent condition of the family due to the demise of the immediate bread earner in the family. The sole aim of the scheme for providing compassionate appointment is to remove the distress and indigent condition of the deceased family. On a perusal of the counter filed by the Respondents, nowhere it has been stated that the case of the Applicant has been considered independently, to find out as to whether the distress/indigent condition of the family still in existence. Merely stating that

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since the Applicant has come up at a belated stage his case cannot be considered is of no consequence on the face of the Circular dated 21.11.1994 produced by the learned Counsel for the Applicant and on the face of the fact that the Applicant has applied for consideration of appointment on compassionate ground, on attaining the age of majority. In support of the case of the Applicant's plea, learned counsel for the Applicant has also cited the case of one Nalini Kanta Mohanty, who is continuing as Token Porter at Cuttack Railway Station on being appointed on compassionate ground during 1992-93, even after 30 years of the death of his father. The Hon'ble Supreme Court of India, in the case of SMT. KAMALA GAIND VRS. STATE OF PUNJAB AND OTHERS have been pleased to observe that " EVEN IF IT IS COMPASSION, UNLESS THERE BE SOME BASIS THERE IS NO JUSTIFICATION FOR DISCRIMINATINGLY EXTENDING THE TREATMENT." The Circular relied upon by the learned Counsel for the Applicant also envisages that power have been conferred with the General Manager of South Eastern Railway to condone the delay in making the application for providing compassionate appointment in order to remove the distress/ indigent condition of the family. In support of the distress/ indigent condition, Applicant has produced the income certificate.

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granted by the competent Revenue authority, under Annexure-5, showing the income of the family to be Rs.9,800/- per annum.

From the pleadings of the parties it show that there was gross discrimination in the case of the Applicant and the case of the Applicant had not been properly considered by the Respondents/Railways.

In the said premises, the Respondent No.1, i.e. General Manager, South Eastern Railway, Garden Reach, Kolkata, West Bengal is directed to consider the case of the Applicant ^{by} taking into consideration the Circular dated 21.11.1994 and the uncontroverted facts raised in the Original Application and other documents, at an earliest, preferably within a period of 3(three) months from the date of receipt of a copy of this order, for providing employment/appointment to the Applicant, on compassionate ground.

Copies of this order alongwith copy of the Original Application, counter, rejoinder, date-chart and circular dated 21.11.1994 (which learned counsel for the Applicant, Mr. Mohanty, undertakes to submit alongwith the postal requisite) be sent to the Respondent No.2 for consideration.

*Requisites a/w
Postages not filed
with ref. to
order dt. 8.11.03.*

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Free copies of this order be given to learned counsel for both sides.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER(JUDICIAL)
08/01/2003

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