

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

For Hearing

b/108

Bench

On. Dr. 28.07.04

For Hearing

b/108/04

Bench

On. Dr. 11.8.04

For Hearing

b/108

Bench

File recd. on 13.8.04

b/108/04

Order dt. 11.08.04

On the prayer made by Mr. B.K. Maghi, Ld. Counsel appearing for the applicant, the matter is adj. to 18/08/04.

Member (5)

Order dt. 18.08.04

Heard Mr. P.K. Majhee, Ld. Counsel appearing for the Applicant and Mr. P.K. Mishra and Mr. O.N. Ghosh, Ld. Counsels appearing for the Respondents/Railways and perused the material placed on record.

2. Applicant Gadai @ Gadadhar Behera has filed this Original Application seeking direction (to the Respondents/Railways) for providing him employment on compassionate grounds.

3. It is the case of the Applicant that his father, who died prematurely on 09.07.1977, was in Railway services since 24.01.1968; that his mother also died prematurely during the year 1987; that the Applicant, who claims to have attended majority on 01.03.1992, was granted family pension benefits from 03.10.1992 to 02.10.1999 ( vide pension/order dated 26.08.1996); that the Applicant, who claims to be a member of Schedule Caste ( in Orissa known as "Kaibarta Caste") and has read up to Class-X, submitted representations (under Annexure A/4 and Annexure A/5 on 16.08.2000) and income certificate (under Annexure A/3 dated 18.10.01, which goes to show that his annual income to be Rs.8,500/-) seeking an employment on compassionate ground. Finally it has been pointed out by the Applicant that although Group 'D' posts (earmarked for SC candidates) are lying vacant under the Respondents, he has not been provided with an employment, under compassionate grounds;

10  
NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

for which he has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985. In this O.A., the Applicant has pointed out that his elder brother is presently gainfully employed under the Railways but is living separately.

4. By filing a counter, the Respondents/Railways have pointed out that under the Rules governing the field the applicant ought to have claimed a compassionate employment within two years after attaining majority and that, in the present case, the Applicant having claimed compassionate appointment long after attaining majority, his claim for compassionate employment is barred by limitation. It is also the case of the Respondents that a case of delayed claim (for compassionate appointment) is available to be considered by the General Manager of the Railways concerned within a period of 20 years and, since in the present case the death of (the Rly. employee) occurred in the year 1977, the claim for compassionate appointment having raised long after lapse of 20 years, the same is also not available to be entertained.

5. By filing a rejoinder, the Applicant has placed on record Annexure A/6 dt. 21.11.94, which goes to show that a case of the present nature (where delay is beyond 20 years) is also available to be entertained subject to the prior approval of the Ministry of Railways. The relevant portion/para-6 of Supplementary Master Circular No.12 to M.C. No.16 (No. E (ENG) II/84/RC-1126 dated 21.11.1994; RBE 100/94) reads as follows:-

"Where ever in individual cases of merit, it is considered that a justification exists for extending consideration to cases falling beyond the above time limits i.e. where death took place over 20 years ago and where the applications for appointment is made after over two

years after attaining majority, or where the application is made for other than first child/first son/first daughter; the prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and reasoned recommendation of the General Manager in the prescribed pre-forma circulated vide Board's letter No. E(NG)II/87/RC-1/143 dated 19.04.1988".

6. It appears the present Applicant belongs to SC community and his brother (who is gainfully engaged under the Railways) has withdrawn himself from the family. In the said premises, he is to maintain himself with a paltry sum of Rs.8500/- per annum (which comes to Rs.700/- per month) and, therefore, he is, certainly, in a distressed condition. It appears, for the reasons of social background he could not know the rule position and for that reason he could not approach the Railways in time for providing him a compassionate appointment. Thatapart, when his brother having not supported him, the Applicant had to approach the authority to give him an employment assistance for his sustenance.

7. In the above said premises the Railways, Respondents who are under obligation to act prompt, should cause an enquiry to find out the details of the Applicant (and, while doing so, they should also verify as to whether the brother of the Applicant has been gainfully engaged under the Railways and, if so, as to whether he has separated himself from the Applicant) and if enough materials are available in-terms of para-6 of the Master Circular dated 21.11.94 (Supra), then, notwithstanding the delayed approach, his case should receive due consideration of the General Manager of the Railways and that of the Ministry of Railways of Govt. of India.

8. In the above premises, this O.A. is disposed of with a direction to the Respondent to examine/re-examine the case of the Applicant

14  
NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

by keeping in mind the provision of the Master Circular dated 21.11.94 as extracted above and do needful by obtaining necessary clearance from General Manager ( Ministry of Railways). Entire exercise, in the peculiar circumstances, should be undertaken within a period of six months from the date of receipt of copies of this Order.

AFR

Locality  
18/08/04  
Member (Judicial)

Copies of order  
Dr 18/8/04 issued to  
Counsel for both sides.

SH  
19/8/04