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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 207 of 2003
Cuttack, this the 20th day of Aug' 2004

M. Ammaji

.....

Applicant

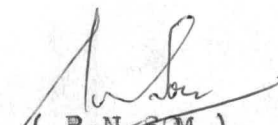
Vrs.

Union of India & Others.....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ye
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? yes


(B.N. SUM)
VICE-CHAIRMAN

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN

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Smt. M. Ammaji aged about 63 years wife of M.Appa Rao, missing since 20.3.75 while working as Driver, Loco/Bhadrak S.E.Rly., at present residing at C/o M.Venkat Rao, Door No. 5-1/3, Santosh nagar, Kothapalam, P.O. Gopalapatnam, Dist. Vishakhapatnam (A.P.)

..... Applicant

Advocates for the applicant - Mr. Achintya Das

Vrs.

1. Union of India service through General Manager, E.Co.Railway, Chandrasekharapur, Bhubaneswar.
2. Member Staff, Railway Board, Rail Bhawan, New Delhi.
3. Chief Personnel Officer, East Coast Railway, Chandrasekharapur, Bhubaneswar, Dist.Khurda.
4. Divisional Railway Manager, E.Co.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.
5. Divisional Railway Manager(P), E.Co.Railway, Khurda Road, P.O. Jatni, Dist. Khurda, PIN 752050.

..... Respondents

Advocates for the Respondents - Dr. C.R.Mishra, Mr. B.Pal.

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ORDER

SHRI B.N.SQM, VICE-CHAIRMAN

Smt. M.Ammaji has filed this O.A. being aggrieved by the order dated 3.12.02 issued by the Respondent No.5 (Annex-A/17). Her request for employment of her second son, Shri M.Durga Prasad (son of the deceased railway servant), was rejected on the ground that the widow is getting family pension, that the only daughter is already married and of the two sons, one son is already in service. Her representation was also rejected applying the ratio of the judgement of the Apex Court in the case of Shri Umesh Kumar Nagpal Vrs. State of Haryana. She has prayed for quashing the letter dated 3.12.02, issued by Respondent No.5 and to direct the Respondents to reconsider the case of her son, i.e. Shri M.Durga Prasad.

2. The facts of the case are that the deceased Railway servant, Shri M.Appa Rao, while working as Driver, Loco/Bhadrak was missing w.e.f. 20.3.75. Late Appa Rao was to retire on 30.6.92 on attaining age of superannuation. The widow by swearing an affidavit before the Executive Magistrate, Bhadrak on 13.1.87 declared that her husband was missing since 20.3.75. Thereafter, she submitted representation on 19.9.88 to the Divisional Personnel Officer, South Eastern Railway, Khurda Road seeking employment assistance for her second son, i.e., Shri M.Durga Prasad, whereupon she was advised by Senior D.P.O., Khurda by his letter dated 10/22;8;90 to lodge a F.I.R. and get a report from the police about the disappearance of her husband. She had filed the F.I.R. on 15.11.90. It was thereafter that Senior D.P.O. asked her to submit financial certificate

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in support of her financial status to enable him to process her application for employment assistance on compassionate ground. However, after considering her application the same was rejected on the grounds mentioned earlier. Being aggrieved by this decision of the Respondent Department, she has come up in this O.A. and has cited the following caselaws in support of her application.

(i) R.Rajamma and others Vrs. Senior Superintendent of Post Office, Kollam(Ernakullam Bench) .

(ii) Smt.Anar Kali and others Vrs. Union of India (2001(2) ATJ 387) .

(iii) Balbir Kaur Vrs. Steel Authority of India (2000(4) Scale 670) .

(iv) Nirmala Devi Vrs. Union of India(2002(1)ATJ 261) .

3. The Respondents have opposed the application by filing a detailed counter. The main thrust of the contention is that the husband of the applicant having been missing from duty without permission, was removed from service on account of his unauthorised absence w.e.f. 20.3.75 by the order dated 20.7.79, issued by the Division Mechanical Engineer, Khurda Road. Secondly, that her financial condition did not make out a case of a family in indigent condition. Thirdly, that applicant has sought for employment assistance in favour of her second son in the year 1997, when it was found on enquiry that her elder son was in employment in the Railway Department. Fourthly, that the applicant did not apply for employment when his second son was within the age limit for Government employment. It was a belated claim and therefore rejected.

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4. I have heard the Ld. Counsel for both the sides. I have also perused the records placed before me.

5. The Ld. Counsel for the applicant has found several loopholes in the argument putforth by the Respondents for rejecting the claim of the applicant. He has pointed out that the application could not have been rejected on the ground that the family is in receipt of pension and other retirement benefits, as observed in the case of R.Rajamma and others. Secondly, with regard to the objection raised, regarding first son being already in employment, he has drawn my notice to the judgement of this Tribunal in Nirmala Devi's case where it was held by a co-ordinating Bench of the Tribunal that as per Railway Board instructions for offering employment on compassionate ground "it need not to check up any son/daughter is already working". Thirdly, regarding delay in submission of the application for employment assistance he has submitted that the second son having been born in the year 1969 was not eligible for applying for the post till 1988 and that the applicant had applied for employment no sooner he attained majority in that year. However, she was asked to go through a number of processes by the Respondent Department and they did not consider her application till 1997-98. The delay has also been caused by the Respondents in annulling their order dated 7.5.79, removing her husband from service. Infact rules do not commend that missing person to be removed from service, an error which they corrected only during 1990. Thus it is not correct to find fault with her application on ground of delay.

6. Having carefully considered the rival claims, I

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I agree with the contention of the Id.Counsel for the applicant that there was no delay on the part of the applicant in seeking employment assistance for her second son which she did in the year 1988, but it's processing was delayed, for reasons beyond her control, like the Respondent Department had to be satisfied that her husband, i.e. the deceased Railway servant was missing for which police report was necessary and this report was available to them only on 15.10.93. It also took time to obtain financial certificate from the civil authority (Mandal Revenue Officer, Visakapattnam) which was received in August 2001. However, I find from the instructions issued from Railway Board from time to time, the Master Circular No.16, Compendium on appointment on compassionate ground, that while offering appointment on compassionate ground it is not necessary, whether another son, daughter is already working (E(NG) III/78/RC-1/1 dated 7.4.83), that delay in submission of application for compassionate appointment is permissible up to 20 years after the death of the Railway servant, whereas in this case the delay in application was less than 20 years. Cases of delay beyond 20 years and where the application for appointment is made after 2 years after attaining majority, that also could be considered with the approval of Ministry of Railways. In other words, the scheme of compassionate appointment in the Railways has been structured with the objective of providing employment assistance to an employee who dies while in service and every effort is to be made to secure employment to the bereaved family. That being the aim and objective of the Railway compassionate employment scheme, the Respondents' reliance on the

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ratio of Umesh Nagpal case, appears to be contradictory. Umesh Nagpal case is directly applicable to the operation of the scheme of employment assistance in case of death of a Central Government servant, other than the Railways. It would not be advisable to apply the ratio of that case in operation of the Railway Scheme. Should the Respondent Department like to follow the ratio of Umesh Nagpal case, it is incumbent on their part first to carry out an amendment to the employment scheme before they bring that case law in their support; otherwise their denial of employment assistance to the bereaved family, will make the scheme redundant.

7. In the conspectus of the discussion above, this O.A. succeeds and the Respondents are directed to consider the case M. Durga Prasad, second son of the applicant for appointment in suitable post as per rule of compassionate ground. No costs.


(B.N. SOM)
VICE-CHAIRMAN

RK/SD