

Original Application No. 1274 of 2003  
Cutback, this the <sup>27th</sup> day of May, 2005

Vs

Union of India & Others ..... Respondents

FOR INSTRUCTIONS

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

( B.N.SQM )  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 1274 of 2003  
Cuttack, this the 27th day of May, 2005

CORAM :

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

.....

Shri Trinatha Dalai, aged about 22 years (S/o. Late Anama Dalai who was working as ex-G.Man under P.W.I JJKR of South Eastern Railways, Khurda) resident of Village/P.O.- Jenapur, Dist-Jajpur.

..... Applicant

By the Advocates

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M/s. S.K.Swain,  
D.K.Mohanty.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railways, At- Chandrasekharapur, Bhubaneswar, Dist- Khurda.
2. The Divisional Railway Manager, East Coast Railways, Khurda Road Division, Khurda, At/P.O./P.S. Jatni, Dist- Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railways, Khurda Road Division, Khurda, At/P.O./P.S.- Jatni, Dist-Khurda.

..... Respondents

By the Advocates

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M/s. B.K.Behra (Sr.Counsel)  
R.C.Rath(S.C.,Rly.).

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ORDER

SHRI B.N.SOM, VICE-CHAIRMAN :

Shri Trinath Dalai, Son of late Anna Dalai ex-Gangman in P.W.I, JUKR has filed this O.A. assailing the order dated 16.4.02 (Annexure-A/4) passed by Respondent No.2 rejecting his application for compassionate appointment on the ground that his deceased father had rendered only three years service in Railways before his death.

2. The applicant has come in second round of litigation before this Tribunal in connection with his prayer for compassionate employment. The applicant lost his father on 6.12.93 when he was a minor. Admittedly, he had served the Railways only for three years at the time of his death. The applicant attained majority on 5.1.99. Before that his mother had approached the Railways for his appointment on compassionate ground by her application dated 15.5.95 but that could not have been considered because he was minor then. On 3.5.99, his mother again represented to the Respondents that the applicant had attained majority in the meantime and had also requisite educational qualification for appointment to a Group-D post. However, the Respondent No.2 rejected his application. Being aggrieved by this order, he had filed O.A.No. 50/02 challenging the said order of Respondent No.2 dated 24.11.01. This Tribunal vide it's order dated 13.2.02 directed the Respondents to pass a speaking and reasoned order in place of impugned

order dated 24.11.01 within a period of two months from the date of receipt of a copy of this order. It is in this background, the order dated 16.4.02 (Annexure-A/4) was passed by Respondent No.2.

3. The Respondents have opposed the application defending this decision on the ground that the applicant had not been able to substantiate to the authority concerned that he had passed class VIII standard. Further, quoting several decisions of the Apex Court, they have taken the following positions :

- (a) Object of compassionate appointment is to enable the family of deceased employee rendered destitute without any other means of livelihood on account of sudden death of the breadwinner.
- (b) Employment under the Scheme can not be claimed after long delay nor be deferred or reserved, indefinitely.
- (c) Appointment by creation of super-numerary post can not be ordered by way of compassion if no vacancy is available to be filled up.
- (d) Compassionate appointment, being by way of exception to the general provision as to employment, are not intended to nullify or interfere with general provisions of employment or eligibility conditions.
- (e) Unless governed by statutory rules, compassionate appointment can not be claimed as of right or be of compassionate appointment under administrative instructions are, however, liable to be interfered with under Article-14 of the Constitution of India.

In support of their submission, they have also relied on the cases of Umesh Kumar Nagpal, Pushpendra Kumar and others to contest that the applicant does not have any case for appointment under compassionate quota.

4. I have heard the Ld. Counsel for the rival parties and have also perused the records placed before me.

5. The sole question in this O.A. for answer is

whether the application for appointment under compassionate quota can be turned down by the Respondents on the ground that the applicant's father, at the time of his death, had rendered only three years of service in the Railways. I have given my anxious considerations to this issue. The Ld. Counsel for the applicant has vehemently opposed this stand of the Respondents on the ground of discrimination. Although, Ld. Counsel for the applicant was unable to establish convincingly how the discrimination has taken place in his case, there is lot of force in the principle adumbrated by him that such an objection can be raised by him if such a condition is not incorporated in the Scheme itself.

6. I am constrained to point out that neither of the parties has placed before me the copy of the 'Master Circular' dealing with compassionate appointment in the Railways. However, I have gone through the Master Circular No.16 and letter No. E(NG)/II/90/RC-1/117 dated 12.12.90, wherefrom I did not see any condition that the Scheme would not operate in case the death of an employee, while in service, takes place within three years of his career appointment. That being the Scheme position, I have no doubt that the objection raised by the Respondent No.2 in his order dated 16.4.02 is liable to be set aside. I order accordingly.

7. The Ld. Sr. Counsel for the Respondents has argued that the widow came forward seeking employment of her son some years after the death occurred to her husband and because of this delay, she is liable to be denied the benefit

of the Scheme. Having gone through the Scheme provisions and having regard to the Scheme conditions, as enumerated in Railway Board's letter No. E(NG) II/84/RC-1/172 dated 1.3.85, I find that the Respondent organization has made provision that it will 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 was a daughter who had attained majority and/or a major son who was already employed. That being the Scheme condition\$, I am unable to persuade myself to accept the submission made by the Id. Senior Counsel.

8. However, one point has been made by the Respondents in their counter that neither the applicant nor his mother has been able to file any certificate establishing the educational achievement of the applicant and it is admitted that for the purpose of the compassionate appointment, the applicant shall have to possess the requisite qualification as given under the Recruitment Rules, specially the educational qualification. But, the Rehabilitation Scheme under the Respondent's department has wide scope and has been framed to cover all unfortunate cases of untimely death in service. Having regard to this objective of this Scheme to provide a welfare shield for the unfortunate families of the deceased Railway servants, it would be in fitness of things if the Respondents are directed to take a fresh look at the application of the applicant. I, therefore, direct the

applicant to file his application for appointment under compassionate quota; giving a copy of his School Leaving Certificate/Transfer Certificate to Respondent No.2 who would verify the Certificate and in case the document is found to be true in all respects, they will put the applicant to further selection process for an employment under the Rehabilitation Scheme. Accordingly, this O.A. succeeds. No costs.

  
( B.N. SOM )  
VICE-CHAIRMAN

KUMAR