

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK**

ORIGINAL APPLICATION NO.1478 OF 2003

Cuttack this the 30th day of October, 2007

Machiram Patra

Applicant

Vrs.

Union of India and others 11

Respondents

FOR INSTRUCTIONS

1) Whether it be referred to the Reporters or not? *yes*

2) Whether it be sent to the Principal Bench of the Central Administrative Tribunal or not? *yes*

(N.D.RAGHAVAN)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.1478 OF 2003

Cuttack this the 30th day of October, 2007

CORAM:

THE HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

Machiram Patra, aged about 26 years, Son of late Kamaya Patra, resident of Machinipatna, PO/PS-Rambha, District-Ganjam

...Applicant

By the Advocates :M/s.S.S.Das

P.K.Nayak, K.C.Khuntia

R.K.Sahoo

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railways, Chandrasekharpur, PO/PS-Bhubaneswar, Dist: Khurda
2. Divisional Railway Manager, East Coast Railways, Khurda Road Division, At/PO-Khurda Road, Dist-Khurda
3. Senior Divisional Personal Officer, East Coast Railways, Khurda Rload Division, At/PO-Khurda Road, District-Khurda

...Respondents

By the Advocates: Mr.R.N.Pal

O R D E R

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN:

This O.A. was placed before the Bench for hearing on 4.7.2007 when the learned counsels M/s S.S.Das, P.K.Nayak, K.C.Khuntia and R.K.Sahoo for the applicant and the learned Panel Counsel Mr.R.N.Pal for Respondent Nos. 1 to 3-Railways remained absent. As this is an year-old case pending since 2003, instead of dismissing it for default, the pleadings of the parties were perused and order was reserved.

2. In this Original Application, the applicant has prayed for a direction to the Respondent-Railways to extend the benefit of employment under the



Rehabilitation Assistance Scheme commensurate with his educational qualification.

3. The facts of this case, according to the applicant, are that his father, while working as a Gangman under the Respondent-Railways, died in harness on 22.12.1989. After the death of his father, applicant's mother made representation to the concerned authority seeking compassionate appointment in favour of her eldest son since the other members of the family were minor at the time of the making such representation. While making such approach, the mother of the applicant is stated to have submitted death certificate, legal heir certificate and affidavit vide Annexure-1 to the O.A. It has been submitted that after receipt of such representation along with documents, for the reasons best known, the authorities did not intimate anything in pursuance of such representation.

4. It has been urged that the scheme for compassionate appointment envisages that where an employee, while in service, became crippled, developed serious ailments, like heart disease, cancer, etc., or otherwise became medically decategorised for the job he was holding, an appointment on compassionate ground could be offered to one of the dependant family members. To this effect the applicant has also annexed to the O.A. Annexure-2 for the appreciation of the Tribunal.

5. It is the case of the applicant that the principles of law unequivocally settle that in all claims for appointment on compassionate grounds there should not be any delay in as much as the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread winner of the family. In this respect, the verdict of the Hon'ble Supreme Court, as submitted by the applicant, is that if there is no suitable post for appointment, supernumerary post should be created to accommodate the next kith and kin of the deceased employee. His further grievance is that notwithstanding the fact that there are suitable vacant posts available commensurate with his educational qualifications, the



Respondents are not considering his case purposefully with some ulterior motive thereby thus violating the principles of natural justice and Article 311 of the Constitution. It has been urged that while there exists provision for compassionate appointment and the Respondent-Railways have considered many such cases, there should not have been any bar or impediment to consider the case of the applicant. Therefore, it has been submitted that non consideration of the case of the applicant amounts to mala fide and arbitrariness in order to harass the applicant and there being manifestation of miscarriage of justice, the Tribunal should grant relief as sought by him above.

6. Respondent No.2, i.e., Divisional Railway Manager, East Coast Railway, Khurda Road, Dist-Khurda has filed counter. It is the case of the Respondent-Railways that the O.A. is not maintainable in law as well as in facts in as much as the applicant has no locus standi to file this O.A. as he is in no way connected with the deceased Railway employee nor has he any cause of action. They have stated that there is no representation received by them for extending the compassionate appointment in favour of the applicant. It has been submitted by the Respondent-Railways that after receipt of the notice in this O.A., they made all endeavour to trace out the representation stated to have been made by her mother and after thorough search, no such representation was found out and therefore, the applicant without doing so has filed the present O.A. They have submitted that the O.A. being devoid of merit is liable to be dismissed.

7. I have perused the pleadings of the parties and considered the rival claims. From the above, the following points emerge for consideration:

i) Whether this application in its present form is maintainable under Section 20 of the Administrative Tribunals

Act, 1985? *Ans*

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ii) Whether the applicant could be deemed to have exhausted the departmental remedy available to him under the relevant rules?

8 Section 20 of the Administrative Tribunals Act, 1985 reads as under:

“20. Application not to be admitted unless other remedies exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purpose of sub-section(1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievance,-

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or represent was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Government of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to such memorial. “

9. The Respondent-Railways have submitted in their counter that ~~the~~ neither the applicant's mother nor the applicant has made any representation for extending compassionate appointment in his favour. The applicant in order to substantiate his contention that he had ever made such representation seeking compassionate appointment has not annexed to the O.A. a copy thereof. Therefore, this application in the present form is hit by Section 20(1) of the Administrative Tribunals Act, 1985. This being the *Ans.*

situation, the applicant having not exhausted the remedy available to him under the rules, cannot maintain this Original Application before the Tribunal.

10. Since this is a matter pertaining to compassionate appointment, I had gone through the legal heir certificate and affidavit annexed to the O.A. vide Annexure-1. This affidavit appears to have been executed on 4.5.1990 before the Court of the Executive Magistrate, Chatrapur. In the said Affidavit, Chilkama, wife of late Kamaya, on solemn affirmation, stated as under:

"That my eldest son Balaji was born on 18th June, 1966 at my village Mincbinipatna and as such he is aged about 24 years.

That my husband Kamaya was serving as Gangman in S.E.Rly at Humma and died on 22.12.89 at Minchinipatna.

That I have got one daughter who is now married and has left my house. I have also got one son and one daughter they are all minor and not eligible for employment.

That I and other minor son and daughter therefore have no objection if Balaji, my eldest son is given employment in place of my late husband Kamaya who will support and manage my family".

11. From the aforesaid affidavit sworn by the wife of the deceased Railway employee, it is quite clear that the applicant's mother had made a declaration in the said affidavit in favour of her eldest son Balaji to be provided with compassionate appointment by the Respondent-Railways and that his eldest son Balaji was then 24 years old and the present applicant Machiram was a minor then. Therefore, the Respondent-Railways were right in saying that no such representation has been received by them in so far as the present applicant is concerned. Thus, as pointed out by the Respondent-Railways, the applicant has not approached this Tribunal with clean hands. This apart, the averments made in Para-6 of the O.A. that "there having been no other alternative remedy under the Rules the applicant approaches this



Hon'ble Tribunal for ends of justice" is self explanatory and corroborates the stand taken by the Respondent-Railways, besides giving a delicate hint that the present applicant never preferred any representation nor was any request made by his mother before the authorities competent to consider and redress his grievance and in a cut and dry method, the applicant has approached this Tribunal.

12. For the reasons discussed above, the O.A. is dismissed, being not maintainable. No costs.

(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement on

03-10-07 10:11 AM