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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

Original Application No. 161 OF 2004
Cuttack, this the 13th day of July, 2005

LAXMAN MOHAPATRA

APPLICANT.

VERSUS

UNION OF INDIA & ORS.

RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 75
2. Whether it be referred to all the Benches of CAT or not? 77


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 161 of 2004
Cuttack, this the 13th day of July, 2005.

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN

Laxman Mohapatra, aged about 30 years,
S/o. Late Sapani Mohapatra,
At. Loco Colony, Adivasai Sahi,
PO. Jatni, Dist. Khurda.

Applicant.

For the Applicant : Mr. Samarendra Pattanaik, Advocate.
Versus

1. Union of India represented through the General Manager,
East Coast Railway, Chandrasekharpur, Bhubaneswar,
District. Khurda.
2. Chief Personnel Officer, East Coast Railway,
Chandrasekharpur, Bhubaneswar, Dist. Khurda.
3. Divisional Railway Manager, East Coast Railway,
Khurda Road, Po. Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer,
East Coast Railway, Khurda Road,
Po. Jatni, Dist. Khurda.
5. Smt. Rama Kumari Mohapatra, aged about 49 years,
W/o. Late Sapani Mohapatra, At. Loco Colony,
Adivasi Sahi, Po. Jatni, Dist. Khurda....

Respondents

For the Respondents : Mr. R.C. Rath, Standing Counsel (Rlys.)

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN:-

The Applicant (Laxman Mohapatra) has filed this Original Application against the order dated 6.11.2002, passed by the Sr. Divisional Personnel Officer, Khurda Road (Res.4), rejecting his application dated 13.8.2002, addressed to Divisional Railway Manager (in short D.R.M.), S.E. Railway for compassionate appointment in lieu of his mother who has been given appointment by the later authority.

2. The applicant in the earlier round of litigation in O.A.No.508/01 had approached the Tribunal seeking direction to the Respondents to consider his case for employment under Rehabilitation Assistance Scheme. The said O.A. was disposed of by this Tribunal with a direction to Respondents to consider his grievance within a period of three months. It was in pursuance of the said order of the Tribunal that the Respondents, after examining his case passed the following order:

“In obedience to the Hon’ble CAT/CUTT’s order dtd. 30.07.02, an enquiry was conducted for the purpose of considering your case for

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employment assistance on compassionate ground due to death of your late father Sapani Mohapatra, Ex. Trolleyman under JE(I)-WΛ-II/KUR. Necessary intimation was sent to you and your mother vide this office letter No.DPO/KUR/Wel/EA/LM dtd. 08.10.02 which was also acknowledged.

On the said date the Chief Personnel Inspector was deputed to conduct the enquiry in the office and in the presence of JE(Works)/KUR under whom your father had last worked. The enquiry was conducted after observing all formalities and with reference to the documents submitted by you and documents available with the Railway Administration. But your mother who was also present in the enquiry, refused to sign the papers for granting employment in your favour on compassionate ground, rather she submitted a representation stating the eldest son Sri Laxman Kumar Mohapatra has already got married and though he and his family are jointly residing with her i.e., widow and other children in the Loco Colony, Adibasi Sahi, he is not looking after her and her two un-married daughters and sons. That the second son, Tukuna Mohapatra is looking after her and family. Therefore, she is not willing to extend employment assistance in favour of Sri Laxman Kumar Mohapatra (eldest son) and willing to extend the same in favour of the 2nd son Sri Tukuna Mohapatra.

In this context, it is to mention here that the object of the scheme of providing appointment on compassionate ground to an eligible dependent family member of a railway employee, who dies in harness or is retired on being totally medically incapacitated, is to relieve the dependent family members from financial distress caused by the death/medically incapacitated. It is therefore, the incumbent on the part of a person appointed on compassionate grounds to look after the other

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family members who were wholly dependent on the ex. Employee for their sustenance.

In the instant case, the widow has already represented to the Railway Administration that though you are residing with her and the other children along with your family, you are not looking after her and family.

In view of the above, it is regretted that it is not feasible to extend employment assistance on compassionate ground in your favour.

This is for your information please"

Sd/

Sr.Divl.Personnel Officer/KUR

3. Being aggrieved by the said order, the applicant filed another O.A.No.1087/02. On the other hand, the mother of the applicant and widow of late Sapani Mohapatra (the father of the applicant), also had filed an Original Application No.674/03. Both the OAs were disposed of by the Tribunal through a common order dated 16.10.2003 directing the Respondents to decide the matter within a period of 60 days. Thereafter, the applicant submitted a representation on 31.3.2004 for consideration of his case as per Railway Board's Circular, but that also did not yield any result. In the meantime, Respondent No.4 called Respondent No.5 for medical test for the purpose of compassionate appointment to her, ignoring the case of the applicant. It is in this background that the Applicant has approached the Tribunal for resolution of the dispute.

4. The Respondents have opposed the application by filing a detailed counter. They have disclosed in their counter that in pursuance to

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the directive of the Tribunal in O.A.No.508/01 dated 30.7.2002, the case of the applicant was enquired into by the Respondents when it was found that the widow of the deceased railway servant, who was present in the inquiry, refused to give up her claim for employment in favour of the applicant for appointment on compassionate ground. Rather, she submitted her representation stating that the applicant (the eldest son) had already got married and though he and his family were residing with her (widow) and other children, the applicant was not looking after her and her other children. In fact, the widow was willing to recommend the name of her 2nd son for compassionate appointment. The Respondents have quoted the provision as set out in the scheme for compassionate appointment to the effect that appointment on compassionate ground to an eligible family member of a railway employee will only be offered, provided the person so appointed on compassionate ground is willing to look after the other members who were wholly dependant on the ex employee for their existence. But in the instant case, as per the representation submitted by the widow, the applicant was not looking after the interest of her (widow) and the other members of the family and, therefore, he was not coming within the scheme of compassionate appointment.

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5. We have heard the learned counsel of both the sides and have perused the materials placed on record..

6. The issue raised in this O.A. is no longer res integra, as we have already observed while disposing of the O.A.No.s.1087/02 and 674/03, which reads as under:

“After hearing the respective parties and perusing the materials placed on record, we are of the view that it is not for this Tribunal to decide to whom the compassionate appointment should be effected. It is for the authorities/respondents to decide as to whether in a particular case compassionate appointment should be given and if this is so, to whom”.

7. The Respondents during hearing have disclosed that compassionate appointment has already been offered to the widow and that she has accepted the same. In support of this disclosure, they have filed Annexure-R/1. The applicant, by appearing in person sought to argue that he is eligible to be considered for compassionate appointment as per Annexure-7. In Annexure-7, he has quoted Para-3(i)© of Railway Boards circular dated 16.11.1984, which reads as follows:

“(3)(i)© In Priority (iii) cases – Son/daughter:
In case son/daughter is a minor or there is no son/daughter, wife will be eligible for compassionate appointment with the personal approval of CPO (R.B.’s No.E9NG0II-84/RCI/105 of 16.11.84, Sl.No.SE 228/84)”

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Perusal of the said circular does not in any way support the contention of the applicant. The learned Standing Counsel for the Respondents by referring to the scheme of compassionate appointment under the Rehabilitation Scheme has clearly submitted that the appointment on compassionate appointment is to be offered first to the widow/widower, failing which to a son or a daughter and that in any case there could not be more than one appointment in case of death/medically incapacitation. Further, the Respondents, in their order dated 6.11.2002(Annexure-5) have already stated clearly the object of the rehabilitation scheme that the person to be appointed on compassionate ground should be one, who would look after the family members who were wholly dependant on the ex-employee for their sustenance.

8. In this case, the widow had made a complaint that the applicant was not looking after the dependants of the ex employee. Initially, she was willing to recommend appointment to be given to her 2nd son and later on she took up the employment herself. As the widow has been appointed and she is legitimately the first choice to be appointed on compassionate ground being the widow of the deceased railway, this O.A. must fail being devoid of merit. Accordingly, this O.A fails. No costs.


(B.N.SOM)
VICE-CHAIRMAN