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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.177 OF 2004
Cuttack, this the 28th Day of November, 2007

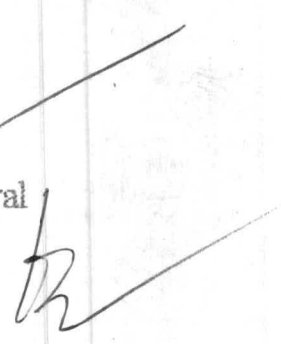
Sri N. Appa Rao Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(DR. K.B.S. RAJAN)
MEMBER(J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.177 OF 2004
Cuttack, this the 28th Day of November, 2007

CORAM:

HON'BLE DR. K.B.S. RAJAN, MEMBER(J)
.....

IN THE CASE OF:

Sri N. Appa Rao aged about 64 years son of Late L. Malaya, Ex. Driver(Express), Loco/KUR now residing at Loco Colony, RPF Barrack, Khurda Road, P.O-Jatni, Dist. Khurda.

..... **Applicant**

By the Advocate(s) **M/s. Achintya Das,
S.P. Nayak.**

Vs.

1. Union of India represented thorough the General Manager, E.C. Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Member Staff, Railway Board, Rail Bhavan, New Delhi.
3. Chief Personnel Officer, E.Co. Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist.Khurda.
4. Divisional Railway Manager, E. Co. Railways, Khurda Road, Jatani, Khurda.
5. Senior Divisional Personnel Officer, Eco. Railways, Khurda Road, Jatani, Khurda. **Respondent(s)**

By the Advocate(s)..... **M/s. Ashok Mohanty,
T. Rath**

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O R D E R

DR. K.B.S. RAJAN, MEMBER(J)

The applicant on medical de-categorization on 30-07-1996 was not immediately offered any alternative employment and he had to be on leave, without any benefit of running allowance otherwise applicable to him. He had, therefore, requested for voluntary retirement on medical grounds as per the CCO/GRC order dated 05-05-1995 (Annexure A-16) vide his representation dated 10-08-1996 (Annexure A-2). It was after 30-10-1996 that the applicant was declared as retired from service, the intervening period having been treated as on leave. Annexure A-3 refers. Provision exists for grant of compassionate appointment to the ward of those who are medically de-categorized and accordingly, the applicant gave a representation dated 13-11-1996 for employment to his son, vide Annexure A-4. The said son too applied independently, vide Annexure A-6 letter dated 16-12-1997, vide Annexure A-5. This was not acceded to and hence this OA.

2. Respondents have contested the OA. They have rejected the claim of the applicant on the following grounds:-

1. That the applicant although was medically de-categorized and was unfit for running express

train but was fit in A-2 category and below with a pair of glass for DV and NV.

2. That the applicant declined to accept any alternative appointment befitting to his medical category and preferred to retire voluntarily.

3. That the applicant was left with only 1 year and 8 months of service for attaining age of 58 years to retire on superannuation.


4. That the applicant has received by way of settlement dues towards PF, GPF, Leave Salary, DCRC and Commutation a sum of Rs.8,41,112/- in total. Apart from the above the monthly pension of Rs.5,799/- with relief as admissible.

5. That the General Manager has also taken into consideration the fact that the eldest son of the family Sri Ramana Murty is working as Gangman under Section Engineer, Baranga of Khurda Road division.

6. That the General Manager has also taken into consideration the instructions issued by the Railway Board governing right of compassionate appointment for medically de-categorized.

3. The contention of the applicant to the above is as under:-

1. That the Railway Board's Letter No.E(NG) II/84/RC-1/51 dtd. 19.9.1984 provides for giving compassionate appointment to the dependant of a Railway Employee irrespective of the period of service left to reach the age of superannuation.




2. The applicant has relied on the order No.E(NG) II/90/RC-1/117 dtd. 12.12.1990 said to be specifying circumstance in which compassionate appointment may be made.
3. Similarly the applicant has relied upon the Board's letter No.P/Comp/Poly/V/1688 dtd. 05.05.1995 to show that compassionate appointment is admissible even when employee refuses to accept the alternative post of normal emolument.
4. Applicant has also relied upon the Board's Letter No.E(NG) II/95/RC-1/94 dtd. 10.11.2000 to establish his submission that an employee declared as medically de-categorized before issuance of Railway Board's letter dtd.29.04.1999 if has not given the alternative appointment nor has been adjusted against Supernumerary post the facility of compassionate appointment on compassionate ground may be extended in favour of one ward.
5. Apart from the above aforesaid departmental circulars, in his written note of submission the applicant has relied on AIR 1978 SC 284 to establish that the circulars issued by the Railway Board is statutory in nature and therefore statutory order are binding in nature.



6. The applicant has also submitted that "It is submitted that the family members are still continuing in destitute without any other means to earn their livelihood" in the submission of the applicant under Article 21 of Constitution of India the word 'Live' has been held not mere confined to the physical existence but it includes within its ambit the right to live human dignity it is also the argument of the applicant of the right to life is not restricted to mere animal existence, it means something more than just physical existence.
7. Further case of the applicant in his written note of submission is that the order under Annexure-A/16 lacks reasons and therefore the same is bad as per the judgement of the Hon'ble Apex Court of India reported in 2003 (4) SCC 364.
8. Apart from the above the further submission of the applicant that the applicant has right to go on voluntary retirement and in case voluntary retirement and medically de-categorized the Railways framed the rule that employment assistance to be given one of the dependant there is no conditions in

the rule to pick and chose. Therefore, the authority is bound to provide compassionate appointment.

9. Further the case of the applicant is that the applicant has been discriminated for no justification.
 10. apart from the above the applicant's case is that by virtue of the judgement delivered by the Hon'ble Apex Court of India in case of Govind Prakas Verma Vs. Life Insurance Corporation of India reported in 2005 SCC L & S 590 and some other similar cases. It has become the law of land that retirement benefits are not to be counted for assessing the indigent condition of the family. Therefore, the order under Annexure A/16 is wrong.
 11. Further the applicant has relied upon a judgement rendered in Original Application No.188 of 2005 disposed of on 17.01.2007 (Lingaraj Barik Vs. Union of India and others) by stating that the same is directly covers the case of the applicant and as such the present original Application deserves to be allowed by the Hon'ble Court.
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12. Further case of the applicant is that in Railways there is no mention at all under the compassionate appointment scheme about the condition that the compassionate appointment ground has to be offered only in the cases where indigent conditions exist. Therefore, authority has committed error by assessing the indigent condition of the family.

4. Arguments in the form of written submissions, containing the above contentions have been made and the same perused.

5. It is worthwhile to refer to some of the Rly. Board Circulars in this regard and the same are as under:-


I) as referred to and extracted by the applicant:

(a) The Ministry of Railway in supersession of all instructions issued earlier vide its letter No.E(NG) III/78/RC/III dtd.30.04.1979, floated a scheme called appointment on compassionate ground, specifying the priorities categories for providing compassionate appointment.

In Para-3 of the aforesaid circular it has been specified that appointment on compassionate ground may also be offered

in cases where the employees while in service becomes crippled, develop serious elements like heart diseases, cancer etc. or otherwise became medically de-categorized for the job they are holding. If no alternative job with the same emoluments can be offered to them, one son/daughter should be eligible for compassionate appointment if such an employee opts to retire. A copy of the aforesaid instruction dtd. 30.04.1979 is filed herewith for kind perusal of the Hon'ble Court."

(b) The circular dtd. 30.04.1979 was further clarified by the railway board vide its letter E (NG)/III/78/RC1/1 dtd.07.04.1983 which in clear terms specified as follows: "iv. When Railway Employees became crippled while in service or develop serious ailments like heart diseases, cancer etc. or medically de-categorized for the job they are holding and no alternative job of the same emoluments can be offered to them".

 (c) The aforesaid scheme has been further clarified by the railway board vide its letter

No.E(NG)III/78/RCI/1 dtd.03.09.1983 to the extent as follows:

"3.After careful consideration of the matter it has been decided that in case where on being medically de-categorized railway employee offered alternative employment on the same emoluments but is not accepted by the Employee and he chooses to retired from service. Compassionate appointment of an eligible word of the employee, if so requested by him can be considered at the discretion of the competent authority provided that if the employee has less than 03 years of service before superannuation (i.e. he above the above of 55 years) at the time of decision taken, the personal approval of the General Manager has to be obtained before the offer of appointment on compassionate ground is made."

(d) While the position stood as above in year 1994 the Hon'ble Apex Court in the case of Umesh Nagpal Vs. State of Hariyana explained the scope and ambit of compassionate employment and also directed that all Ministries should follow the ratio decided in the above case while dealing with compassionate appointment.

The Railway Board in its letter No.E (NG) II/94/RC-1/236 dtd.28.02.1995 has adopted the same in toto and circulated for information and guidance of all concerns.

(e) It will be appropriate here to mention that after 1994 the Railway Board in its letter No.E(NG)-II/99/RC-1/GN-9/GCM-DC dtd. 15.02.2000 while described the scope of compassionate appointment has specifically stated " the scheme of compassionate appointment has been evolved with the idea of providing relief in a situation where the family is subjected to financial distress due to the sudden loss of income from the bread winner, consequent to his death in harness or retirement due to medical invalidation. Request for appointment on compassionate ground are thus, expected to be made immediately after the event warranting such an appointment".

(f) In the case of medical de-categorization i.e. those case in which an employee becomes medically unfit for the post held at present but is fit to perform the duties of an alternative suitable posts in lower medical category, the request for appointment on compassionate ground to an

eligible word will not be admissible, even if the employee chooses to retire voluntarily on his being declared medically de-categorized. Such an employee may then either to continued in a supernumerary post or allowed to retired voluntarily if he so desires but without extending the benefit of appointment on compassionate ground to the word".

II. As referred to by the respondents

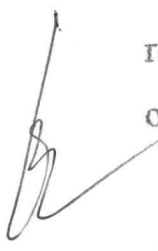
(i) It is well settled by now that while exercising it power of judicial review the Hon'ble Court confine themselves to find out whether there is any procedural irregularity in the order.

(ii) In a case ~~like~~ the present one, the General Manager is the only authority who has got the direction to adjudge the suitability of providing or not providing compassionate appointment to the family members of a de-categorized employee. While rejecting the application for compassionate appointment the General Manager has taken into consideration various factors the existence of which are

not disputed in the present original application.

(iii) Similar question was raised before the Hon'ble Apex Court in the case of Union Bank of India Vs. M.T. Latheesh and the Court has clearly laid down that the case law of Balbir Kaur Vs. SAIL does not apply to a cases where the scheme of the department provides for taking into consideration the terminal benefits to reach a conclusion as to the distress condition of the family.

(iv) Finally the applicant has alleged discrimination by citing some examples where similarly placed persons like him has been provided with compassionate appointment. The present respondents have denied the same in the counter filed in the present case. In this case the applicant has relied upon the Hon'ble Apex Court rendered in case of Kamala Gaird Vs. State of Punjab and others reported in SLR 1992



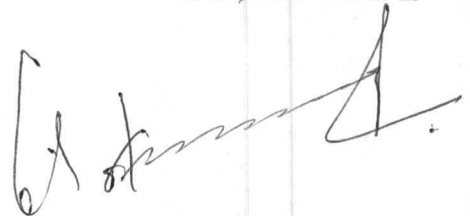
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(5) 864. Even assuming for sake of argument that the submission of the applicant is correct still the respondents humbly submit the examples cited by the applicant where compassionate appointments having been made contrary to the scheme as stated above can at no stretch of imagination should be the ground to grant compassionate appointment to the applicant. In the case of Union Bank of India Vs. M.T. Latheesh while dealing with a similar submission the Hon'ble Apex Court has held Learned Counsel for the respondents contended that the bank has made several compassionate appointment quite contrary to the scheme and therefore, the respondents should also be considered for such appointment on compassionate ground. It is well settled that Article 14 cannot be extended to legalize illegal orders though others had wrongly got the benefit of that order on some stray incidents earlier.



6. Taking into account the above background, the matter, according to this Tribunal, deserves one more consideration at the level of General Manager on the basis of the latest order. If the General Manager is satisfied that compassionate appointment can be granted on the basis of the facts and circumstances of this case, he may accordingly pass suitable orders. If not, the General Manager, by reasoned and speaking order should inform the applicant the reason for rejection of his claim. With the above observation, this O.A. is disposed of.



MEMBER (JUDICIAL)