



FORM No. - 4
See Rule (12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORDER SHEET

Original Application No. 425 of 2004
Applicant (s) B. N. Jena Respondent (s) Union of India
Advocate for Applicant (s) M. R. Mohapatra Advocate for Respondent(s)
S. Mishra
U. B. Mohapatra

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
<p>P. P. O. of 150/2004 For Registration on memo</p> <p><i>Sh</i> 17/04</p> <p><i>Sh</i> 01.07.04.</p> <p><i>Registration</i></p> <p><i>Sh</i> 17/04</p> <p>For Admonition with Intimation - copy served</p> <p><i>Sh</i> 17/04</p>	<p>REGISTER</p> <p><i>Sh</i> 17/04 Registrar</p> <p>1. ORDER DATED 02.07.2004.</p> <p>Heard Mr. U. B. Mohapatra, Learned Counsel appearing for the Applicant and Mr. R. C. Rath, learned Standing Counsel for the Railways; on whom a copy of this O.A. has already been served.</p> <p>Applicant's brother while serving as a constable in the Railway Protection force died prematurely and in the said premises, the RPF organisation recommended</p>

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the case of the Applicant to the South Eastern Railways to provide an employment to the Applicant on compassionate ground. It appears, under the earlier Railway Board's circular issued in the year 1986, a near relative/brother of a Bachelor / spinster of Railway employee was available to be provided with compassionate appointment and that the said provision was discontinued by subsequent clarificatory letter of the Railway Board issued on 13.12.1995 and as a result thereof a near relative/brother of a deceased bachelor railway employee is not available to be provided with compassionate appointment. For the said reason of the clarificatory letter issued by the Railway Board on 13.12.1995, the prayer of the applicant to provide him an employment on compassionate ground has been turned down by the Respondents and in the said premises, the Applicant has approached this Tribunal for redressal of his grievance/for a direction to the Respondents to provide him an employment on compassionate ground.

For the reason of the Railway Board's clarificatory letter/circular dated 13.12.95 near relatives have been debarred from getting an employment on compassionate appointment. But in the present case, applicant's brother having died on 9.9.1995 i.e. before issuance of the Railway Board's clarificatory circular dated 13.12.1995 and therefore, the case of the

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on 26.4.1991 in which it was held as under:-

"we hold that inasmuch as the process for filling up the vacancy which occurred prior to 3.6.1988 and commenced before Rule 8(2)(b) was substituted by Rule 8(3), we are of the view that the process was to be completed and the vacancy was to be filled up following the provisions contained in Rule 8(2)(b) and not by following the points was contained in Rule 8(3)".

In the present case, Applicant's brother having died prematurely prior to 13.12.1995, he is entitled to get the benefits available to the near relatives/brother of unmarried Railway employees available in the Railway Board's Circular issued during April, 1986.

As a result, the objections raised under CPO, Garden Reach Office Letter dated 19.4.1996 is hereby over-ruled and this case is disposed of with a direction to the Respondents to consider the case of the Applicant to provide him a compassionate appointment under Railway Board's Circular issued during April, 1986 notwithstanding the Railway Board's subsequent letter dated 13.12.1995. Liberty is hereby granted to the Applicant to make a fresh representation to the Respondents elaborating the points in his favour, which he should do by 16.7.2004 and if any such representation is made by 16.7.04, the Respondents should give full consideration to the same on merit without raising hypertechnical objections within a period of three months therefrom. Respondent No. 3 is hereby directed

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	<p>sought to have been considered as a case covered under the original Railway Board's Circular issued during April, 1986; notwithstanding issuance of the subsequent circular of the Railway Board dtd. 13.12.1995.; especially, when law on this issue has already been answered by the Hon'ble Supreme Court in the case of Y.V. RANGAIAH AND ORS. vs. V.J. SRENVASA RAO AND OTHERS (AIR 1983 SC 852); and in the case of P. MAHENDRAN AND OTHERS vs. STATE OF KARNATAKA AND OTHERS (AIR 1990 SC 405). In the case of Y.V. Rangaiah (supra), the Hon'ble Supreme Court has held that the vacancies which occurred prior to amended rules could be governed by the old rules and not by the amended rules. We have no slightest doubt that the post which fell vacant prior to amended rules could not be governed by new rules. Similarly in the case of P. Mahendran and others (supra) the Hon'ble Supreme Court of India has held that if a candidate applies for a post in response to the advertisement issued by the Public Service Commission in accordance with recruitment rules, he acquires right to be considered for selection in accordance with the then existing rules. The right cannot be affected by amendment of the said rules unless the amending rule is retrospective in nature. The said view was also reiterated by the Division Bench of the Hon'ble High Court of Orissa (MR. R.C. Patnaik and Mr. K.C.J. Ray JJ.) in the case of Gayadhar Sahoo Vs. State of Orissa and others in OJC No. 811/1990 decided</p>

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On 02.07.04

copies of order
alongwith copies of OA
sent to all resp'ts.
and copies of said
order prepared for counsel
for both sides.

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21/07/04
SD (M)*

to immediately recommend the case of the Applicant preferably by the end of July, 2004; so that the Respondent Nos. 1 and 2 can give due consideration to the case of the Applicant.

With the above observations and directions, this case is disposed of at the admission stage.

Send copies of this order to the Respondents, alongwith copies of the O.A., and free copies of this order be given to learned counsel for both sides.

*Manoranjjan Mohanty
02/07/04*
(MANORANJAN MOHANTY)
Member(Judicial)