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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO. 23 OF 2002
Cuttack this the 18th day of July/2003

Kanda @ Adikanda Swain ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

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


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO. 23 OF 2002
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CORAM:

THE HON'BLE MR. M.R. MOHANTY, MEMBER (JUDICIAL)

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Kanda @ Adikanda Swain, aged about 47 yrs.,
Son of Dhulamani @ Dhula Swain
Vill-Ramchandrapur, PO-Sargada Makanandapur
PS-Dharmasala, Via-Jenapur, Dist-Jajpur

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Applicant

By the Advocates

M/s. Amilav Das
P.K.Nayak

-VERSUS-

1. Union of India represented through
its Secretary, Ministry of Railways,
Govt. of India, New Delhi
2. Divisional Railway Manager (P)
South Eastern Railway, Khurda,
At/PO/Dist-Khurda
3. Senior Divisional Personnel Officer,
South Eastern Railway, At/PO/Dist-Khurda

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Respondents

By the Advocates

Mr. R.C. Rath,
Standing Counsel (Rly)

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ORDER

MR. M.R. MOHANTY, MEMBER (JUDICIAL): Applicant stated to be the son of Dhulia @ Dhulamani Swain. Said Dhulia @ Dhulamani was working as a Railway Gangman under the Senior Section Engineer, P.W.I., Jajpur. On being medically decategorised, said Dhulia had to apply for voluntary retirement. Accordingly he was allowed voluntary retirement w.e.f. 01.04.1997. After the said retirement, the Applicant applied (on 18.11.97) for providing him an employment on compassionate ground.



Respondent No.3, in his letter dated 10.4.2001, directed for production of certain documents for examining the prayer of providing an employment on compassionate ground. Pursuant to the said letter of the Railways, the father of the Applicant submitted all the documents/testimonials. It is the case of the Applicant that when no action was taken on the request in question, he made a representation to Respondents 2 and 3 on 13.9.2001. Thereafter, the Respondent No.3, on 4.10.2001, sent a letter to the Headmaster of Ramchandrapur Primary School (under Dharmasala Block) for verification of the School register and the Transfer Certificate furnished by the Applicant. Ultimately, (under Annexure-6 dated 24.11.2001) the request of the Applicant for providing him an employment (on compassionate ground) having been rejected, he has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking a direction to the Railways/Respondents for providing an employment.

2. Railways/Respondents have filed a counter stating therein that as the educational qualification of the candidate was less than the minimum required educational qualification (of Class-VIII pass), the case of the Applicant was not processed further and, subsequently, as per the instruction of the Railway Board, a letter was addressed to the ex-railway employee (on 10.4.2001) informing him that the name of his son (for whom an employment is sought for) having not been mentioned, he should submit an affidavit in support of his family composition (with relationship) disclosing therein date



of birth of each of the family members. The ex-employees (Dhulia) submitted an application on 10.5.2001, requesting for providing an employment in favour of the Applicant and, on the basis of the said application, the matter was enquired into by the personal Inspector. It is the case of the Respondents that, on enquiry, it was revealed that the Applicant is not the son of the ex-employee and that he fraudulently availed the privileges from the Railways and that the claimants failed to produce any deed of declaration to the effect that the Applicant to be the son of Dhulia. Further it has been mentioned in the counter that with the available materials, the matter was placed before the authorities for approval and that it was opined by the competent authority that in absence of any material to show that the Applicant to be the son of Dhulia and that since Dhulia (ex-employee) was medically decategorised at the age of 57 years and subsequently asked for voluntary retirement the grievance of the Applicant devoid of no merit. It was further alleged by the Respondents that since the ex-employee had taken voluntary retirement, after medical decategorisation; instead of opting continuance in other post, the case does not deserve to be one of indigent condition for providing employment assistance. It was emphatically submitted that the present applicant is not the son of ex-railway employee, but he is the son of one Kulamani Swain, the elder brother of the ex-employee. In the said premises, the Respondents opposed the prayer for providing employment to the Applicant on compassionate grounds.

3. In the above premises, Mr. Amitav Das, learned

counsel appearing for the Applicant, and Mr.R.C.Rath, learned Standing Counsel appearing for the Respondents/Railways, were heard and the records were perused.

4. Mr.Das, learned counsel appearing for the Applicant, has vehemently submitted, during the course of argument, that the enquiry (which was undertaken by the Respondents, as disclosed in the counter) was made behind the back of the Applicant/his father; the ex-employee. Had there been any opportunity given, during such enquiry, the Applicant would have been in a position to place all materials/evidences/records to show that he is the son of the ex-employee, Dhulia. As such, no credence can be attached to such an enquiry report; which was drawn behind the back of the Applicant. Further, it was urged by him that the discrepancy pointed out in the Voter List/School Leaving Certificate with regard to age, is not a pertinent thing to deny the status. Further, it was urged that new pleas have been taken in the counter; which is not sustainable in the eye of law.

5. Mr.Rath, learned Standing Counsel appearing for the Respondents/Railways argued that (a) as, during enquiry, it has revealed that the Applicant is not the son of the ex-employee; (b) as the railway employee sought for voluntary retirement, instead of asking for continuance in employment in order to meet the financial hardship, (c) as more deserving persons are waiting for appointment on compassionate ground, (d) and since the Applicant has not approached this Tribunal with clean hands; his case has rightly been turned down by the Respondents and that, therefore, this Original Application being devoid of any

merit, is liable to be dismissed.

6. I have carefully considered the rival submissions of both sides and taken note of the citations and circulars produced before me at the time of hearing. In Circular No.P/R/EA/Poly dated 12.9.1995; the Chief Personnel Officer of S.E.Rly. at Garden Reach, Kolkata has clarified that "if the employee has less than three years of service before superannuation (i.e., he is past the age of 55 years) at the time the decision is taken, the personal approval of the General Manager to be obtained before the offer of appointment on compassionate ground is made"; which goes to show that there are no prohibition for providing compassionate employment to a family member of an employee retiring after 55 yrs. That apart, it is crystal clear from the School Leaving Certificate, Voter list and the affidavit sworn in by the ex-employee and the Applicant himself that the Applicant is the son of Dhuli Swain. As such, the D.R.M. ought not to have shown much credence on the facts as ascertained on enquiry by the Inspector, without any basis/ documentary proof; because law is well settled that men may lie but document will not. That apart, the report of the Inspector was one-sided (not being drawn after noticing the Applicant) and bad being an outcome of the violation of the principles of natural justice. Since due to the discrepancies in the matter of sonship of the Applicant the case of the applicant was rejected by the D.R.M. instead of sending it to the General Manager for consideration, in view of the discussions made above, the Divisional Railway Manager (P), (S.E. Railway, ^{new East Coast Railway} Khurda Road is directed

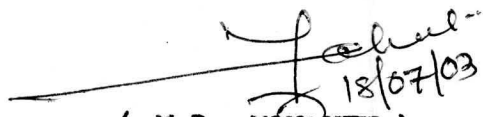
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to immediately re-process the matter and send the same to the appropriate authority (i.e., General Manager of Railways) for consideration of the grievances of the Applicant for providing him an employment on compassionate ground. The entire exercise should be completed within a period of 120 days from the date of receipt of a copy of this order.

7. In the result, therefore, this O.A. is allowed.
No costs.


(M.R. MOHANTY)
MEMBER (JUDICIAL)

KNM.