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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 179 of 2005
Cuttack, this the 13th day of December, 2006.

LALITA KUMAR MOHANTY **APPLICANT.**
Versus
UNION OF INDIA & ORS. **RESPONDENTS**

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not? 
1. WHETHER it be circulated to all the Benches of the Tribunal or not? 


(B.B. MISHRA)
MEMBER (A)

Cuttack, this the 13th day of December, 2006.

C O R A M:

THE HON'BLE MR.B.B.MISHRA, MEMBER(A)

Lalita Kumar Mohanty, Aged about 29 years, son of late Bishnu Charan Mohanty, of village Kantapara, Post: Kanakpur, Ps: Tirtl, District: Jagatsinghpur.

.... APPLICANT.

BY legal practitioner: M/s. P.K.Ratha-l, S.Barik, S.M.Ali,
D.Jena, D.Moharana,
Miss.R.Mohapatra, M.Tola,
Advocates.

-VERSUS-

1. Union of India, represented through its General Manager, South Eastern Railway, Garden Reach, Calcutta-43.
2. The Chief Personnel Officer (Med.), South Eastern Railway, Garden Reach, Calcutta-43.
3. Chief Medical Officer, South Eastern Railway, Garden Reach, Calcutta-43.
4. Assistant Deputy General Manager, CPO's Office, South Eastern Railway, Garden Reach, Calcutta-43.

RESPONDENTS

By legal practitioner **Mr. R.C.Rath, Advocate.**

ORDER

MR. B.B.MISHRA, MEMBER(A):

The brief fact of the case is that the father of the Applicant (Bishnu Charan Mohanty) while working as Clerk under the Respondents/Railways died prematurely on 26.08.1975 when the present applicant was in mother's womb. Soon after the death of the Railway servant, on 27.08.1975 his widow applied for employment on compassionate ground. In the meantime, on 11.10.1975 she gave birth the present applicant who after passing the High School Certificate Examination and attaining the majority, applied for employment on compassionate ground. As no consideration was given to the request of employment on compassionate ground, he approached this Tribunal. in OA No. 380 of 1999 which was disposed of on 27.08.2003 with the following directions:

"I have considered the matter very carefully and I see lot of force in the argument of Mr. R.C.Rath, Learned Standing Counsel appearing for the Respondents that it requires thorough scrutiny to find out relationship between the widow of the deceased railway servant and the applicant, as also to find out the circumstances in which the widow had made such submission that she had done in her letter dated 27.08.1975 that she was a widow without any issue. It is only the Respondents Department which can go into the

mater and find out the Truth. Accordingly, I dispose of this Original Application by directing the Respondents to enquire into the matter as to whether Smt. Basanta Kumari Mohanty, the widow of late Bishnu Charan Mohanty, Ex-clerk of the office of the Chief Medical Officer, South Eastern Railway, Calcutta and given birth to a child named as Lalita Kumar Mohanty, born out of her wedlock with the deceased Government Servant. After such enquiry, if it is established that Lalita Kumar Mohanty is the son deceased Railway servant then the Respondents should take further action in the matter as per the Rules to meet the grievance of the Applicant."

2. Thereafter, on examination, the Respondents did not find the case deserving so as to extend the benefits of scheme for employment on compassionate ground. Accordingly, they rejected the grievance of applicant in order dated 12.01.2004 (Annexure-A/11) which is under challenge in this OA filed under section 19 of the Administrative Tribunals Act, 1985 praying for the following relief;

- "(a) To be pleased to admit and allow the Application;
- (b) To be pleased to quash the impugned order dated 12.01.2003 (Annexure-A/11);
- (c) To be pleased to direct the respondents to reconsider the applicant's case for appointment befitting to his qualification under Rehabilitation Scheme being a family member/son of the deceased Government employee (Bishnu Charan Mohanty, Ex-Clerk of the office of Chief Medical Officer, S.E. Railway, Garden Reach, Cal-43, died on 26.08.1975) to which the applicant is entitled and eligible.
- (d) To be pleased to direct the respondents to give such appointment to the applicant within a

stipulated time to be fixed by the Hon'ble Tribunal.

- (e) In the alternative to be pleased to pass an order awarding litigation cost and compensation to the tune of Rs. Five lakhs in favour of applicant;
- (f) To be pleased to pass such order(s)/direction(s) in the facts and circumstances of the case as your Lordship deem fit and proper under law and enquiry."

3. Respondents have strongly contested the case of Applicant by stating in the counter as under:

- (i) This OA is grossly barred by limitation as provided u/s. 21 of the Administrative Tribunals Act, 1985
- (ii) The representation stated to have been filed by the mother of the applicant on 27.08.1975 is neither available on service record nor is a genuine one.
- (iii) Application for employment on compassionate ground has been made under Annexure-A/5 after a lapse of 18 and half years.
- (iv) The applicant does not come under the category of dependent as per the pass rule of the railway so as to be considered for employment on compassionate scheme. A child born posthumously cannot be treated as dependent on the employee;
- (v) As per service record, the deceased left behind only his widow;
- (vi) The widow is getting monthly pension and claim of employment after 30 years of the death of the railway employee is not permissible either under rules or Law made by the Hon'ble Supreme Court of India in the case of Umesh Kumar Nagpal v. State of Harayana- JT 1994 (3) SC 525;
- (vii) Employment assistance on compassionate ground is not a matter of right and when the family has survived for 30 years, at this belated stage, the prayer is not conceivable. ✓

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4. Applicant has also filed rejoinder to the counter filed by the Respondents stating therein that the point of limitation as raised by the Respondents is redundant in view of the orders passed by this Tribunal in OA No. 380/99 and the Hon'ble High Court in OJC No. 12947/01 dated 18.02.2003 and, therefore, there is no alternative on the part of the respondents except to implement the orders and provide employment to the applicant on compassionate ground. It has been averred that the facts of the case cited by the Respondents being different than the present case, the decision relied on by the Respondents has no application to the present one. It has been averred that till the applicant gets majority, he is bound to be dependent on his mother. Since he was in the womb of his mother who was dependent at the time of the death of ex employee, it is a wrong to say that the applicant was not dependent. In this connection to establish the dependency and inherent right of applicant to be appointed, he took support of the Hindu Law, and Transfer of Property Act etc. He has stated that since both, the widow and the applicant were vigilant starting from the death of the railway employee, the grievance of applicant should not be rejected outright on the ground of law of limitation. It has also been averred by him that the Respondents are estopped under law to take into consideration

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the pension/pensionary dues to come to the conclusion that there is no indigence in family.

5. Following arguments have been advanced by Mr. P.K.Ratha-I, Learned Counsel appearing for the Applicant in support his plea that the order of rejection is not sustainable in the eyes of law:

- (i) The Chief Personnel Officer of the South Eastern Railways is not the competent authority to deal with the grievance of applicant and it is the Ministry for Railways who should have dealt with the matter;
- (ii) No opportunity was given to the applicant before rejecting the claim of the Applicant.;
- (iii) The conclusion reached by the CPO that there is no indigent condition in the family is not supported by any evidence. By producing copy of the BPL card he has argued that the family is still in indigent condition;
- (iv) When it has been proved that the applicant is the son of the deceased railway servant, there was no reason not to extend the benefits of employment on compassionate on the face of the such benefits granted to other similarly situated family members;
- (v) Hindu Succession Act clearly envisages that posthumous son is entitled to claim any such right interest on the property of the predecessors interest and there being no other distinction and distinguishable rights in between the adopted son, posthumous son, son born after partition, divided son illegitimate son, son born of a void and voidable marriage step son, son having mental and physical defect, son of a predeceased son and natural son (born), non

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consideration of the case of applicant for employment was unjustified.

- (vi) The applicant has a vested right like property over the service rendered by his father. Therefore, as per the Hindu Succession Act and Transfer of Property Act, the applicant being the son of the railway employee has a vested right to be appointed to the post vacated by his father;
- (vii) In another case Mamaji vrs. Union of India of railways, (OA No. 207/2003 disposed of on 20.08.2004) this tribunal after taking note of 20 years delay, directed the respondents to consider the case of that applicant, and the present case being similar in nature, the tribunal may direct the respondents to consider the case of applicant;
- (viii) As per the decisions of the Hon'ble Supreme Court, High Court and of this Tribunal, the Respondents ought not to have taken note of the pension/pensionary dues of his father while determining the indigent condition of the family.

6. He has therefore, argued at length that the stand taken by the Respondents in the counter as also in the order of rejection being contrary to the Rules/Laws/Act, this Tribunal may direct the Respondents to reconsider the case of applicant for providing employment on compassionate ground,

7. Per contra, Mr. R.C.Rath, Learned Counsel appearing for the Respondents has argued that even if it is accepted that the Applicant was born out of the wed-lock of the ex-railway servant, yet he has no right to claim appointment. No one can claim any ^R

inheritance of the service rendered by his father nor any right like property. No one has any right to claim appointment, even after his selection through due process of selection. When no one has any right for the post, it is not conceivable that the applicant has accrued a vested right to be appointed. One can claim vested right over movable or immovable property and appointment in Government does not come either of the above. Therefore, the arguments advanced by the Learned Counsel appearing for the Applicant has nothing to do with regard to adjudicating the present dispute.

8. The sole question for consideration is as to whether after such long lapse of time, the Applicant is entitled to any employment under compassionate ground. In this connection, by drawing my attention to the judgments of the Apex Court, it has been submitted by Mr. Rath that the Rulings of the Courts are clear that there should be no departure from the general rule except under compelling circumstances such as death of the sole bread earner and the livelihood of the family suffering as a consequence. Once it is proved that in spite of the death of the bread earner, the family (has) survived and a substantial period is over, there is no necessity to say goodbye to the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14.

appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of the employee while in service, leaving his family without any means of livelihood. . In such cases, the object is to enable the family to get over the sudden financial crisis. Such appointments have, therefore, to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. He has argued that by now, 31 years have already elapsed from the date of death of the father of applicant and near about 13 years have elapsed from the date the applicant got majority. The delay is itself sufficient to come to the conclusion that the case deserves no consideration. If there was any need of such employment, the mother could have applied and pursued her grievance. No reason has also been given as to why she did not prefer to do so. His last submission is that when competent authority on consideration of the matter has rejected the grievance of applicant, there is hardly any scope for this Tribunal to interfere in it. ✓

9. I have considered the various submissions raised by the parties. It is not in dispute that employment on compassionate ground is a benediction impelled by sympathetic consideration to redeem the family when the bread-earner of the family died prematurely. I am also in agreement with the argument of the Learned Counsel appearing for the Respondents that the post held by the father of applicant can not be said to be either movable or immovable property so as to attract the T.P. Act relied on by the Learned Counsel for the Applicant. None has also accrued any right in appointment not to speak of vested right. Vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. According to Black's Law Dictionary (6th Edition at page 1563) vested right has been defined as under:

"The word 'vested' is defined in Black's Law Dictionary (6th Edition_ at page 1563, as 'vested'; fixed; accrued; settled; absolute; compete. Having the character or given in the right of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to employment present or prospective, has become property of some particular person or persons as present interest;

mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest".

10. In view of the meaning of the 'vested right', by no stretch of imagination it can be held that the applicant has any vested right over the post vacated by his father.

11. Next question arises for consideration as to whether after long lapse of time to say 31 years from the date of death and 13 years after the applicant got majority, the Applicant has any substantive right to claim employment on compassionate appointment. Numerous decisions of the Hon'ble Apex Court passed over a span of nearly one and half decades have laid down and reiterated the principles which this Tribunal must apply while considering the question as to whether employment on compassionate ground can be provided after such a long lapse of time. I do not think it is necessary to burden this judgment by referring to all of them except some recent pronouncements in which earlier decisions have been considered are reiterated. The general principle which has been laid down by the Hon'ble Supreme Court summarized in the case of *Pradeep Kumar*

Umesh Kumar Nagpal v. State of Harayana and others, (1997) 4

SCC 138. Relevant portion of the aforesaid decisions are quoted herein below:

“It appears that there has been good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any merits of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus, to enable the family to tide over the sudden crisis. The object is; not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.....The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus

with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased..... The decision does not justify compassionate employment either as a matter of course.... The only ground which can justify compassionate employment is the penurious condition of the deceased's family..... The object being to enable the family to get over the financial crisis".

12. In another case of **State of J & K and Ors. v. Sajad**

Ahmed Mir, 2006 SCC (L&S) 1195 the Hon'ble High Court allowed

the Writ Petition directing to provide employment on compassionate

ground to Sajad Ahmed Mir. The Hon'ble Supreme Court noticed that

application for compassionate appointment was made by Sajad after 4

& 1/2 years of death of his father. The said claim was rejected and

communicated to him. Though he had knowledge of said rejection, he

kept silent and did not take any action in respect thereof.

Subsequently, after 3 years when department again communicated to

him that he could not be appointed on compassionate ground, he filed

a writ petition challenging the said decision (which was after more than 12 years of death of his father). In that case, single judge of High Court dismissed the writ petition on ground of delay and laches. The matter was challenged before the Division Bench of the said High Court. The Division Bench of the said High Court quashed the earlier order of the Single Bench and directed for providing employment. Department carried the matter in appeal and the Hon'ble Supreme Court quashed the order of the High Court on the ground that since the family had survived for such a long time in spite of the death of the employee, there is no need to show exception to the general rule by way of providing employment on compassionate ground.

13. In view of this, it is not necessary to go into the other aspects of the matter except holding that the Applicant has no right to claim any employment on compassionate ground after lapse of 31 years of the death of his father and 13 years after his majority. Hence this OA is held to be without any merit and stands dismissed.

14. Before parting with this case, it is observed that very often it has come to the notice that in absence of exhaustive instructions, with regard to the manner of consideration, there has been scope for allegations of discrimination in the matter of providing employment.

In order to avoid it, the Ministry of the Defence has adopted a viable system on a 100 point scale, attributable to various parameters for a comparatively, balanced and *objective* (emphasis added) assessment of requests of deserving candidates for compassionate appointment. Accordingly while deciding a matter of Department of Posts, this Tribunal in OA No. 749 of 2005 disposed of on 27.09.2006 (Bijay Kumar Acharya v. Union of India and Others) has advised the Department to issue exhaustive instructions for consideration of the prayer for compassionate appointment. The illustration given therein are as under:

Monthly income of earning member(s) and income from property:

(i)	No income	05
(ii)	Rs.1000 or less	04
(iii)	Rs. 1001 to 2000	03
(iv)	Rs. 2001 to 3000	02
(v)	Rs.3001 to 4000	01
(vi)	Rs. 4001 and above	Nil

No. of dependents:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05

No. of unmarried daughters:

(i)	3 and above	15
(ii)	2	10
(iii)	1	05
(v)	Nil	

No. of minor children:

(i)	3 and above	15
(ii)	2	10

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(iii)	1	05
(iv)	None	00
Left over service:		
(i)	0-5	02
(ii)	Over 5 & upto 10 years	04
(iii)	Over 10 & upto 15 years	06
(vi)	Over 15 & upto 20 years	08
(vii)	Over 20 years	10

It would be advisable if instructions, stated above, are issued by the appropriate authorities of the railways and implemented by the subordinate authorities, so that subjectivity, arbitrariness, casual approach and ad-hocism, can be avoided while determining the eligibility of candidates for compassionate appointment.

15. In the result, this OA stands disposed of. There shall be no order as to costs.

Copies of this order be sent to the Secretary,
Railway Board, New Delhi for appropriate action in the matter.

13/12/06
(B.B.MISHRA)
MEMBER (A)