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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 188 of 2005

Cuttack, this the 17th day of January, 2007.

Shri Lingaraj Barik & Anr. APPLICANTS.
Versus
UNION OF INDIA & ORS. RESPONDENTS

FOR INSTRUCTIONS

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


(B.B. Mishra)
MEMBER (A)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 188 of 2005

Cuttack, this the 17th day of January, 2007.

C O R A M:-

THEHON'BLE MR.B.B.MISHRA, MEMBER(ADMN.)

1. Shri Lingaraj Barik, aged about 62 years son of late Hata Barik, Ex. Switchman under Sr. Divisonal Operations Manager, E.Co. Railway, KHURDA Road, now residing at Vill. Manchina, Po.Birapurusottampur, Dist. Puri, PIN 752046.
2. Sri Santosh Kumar Barik aged about 34 years son of Sri Lingaraj Barik now residing at Vill. Manchina, PO. Birapurusottampur, Dist. Puri, PIN 752046.

.... APPLICANTS.

BY legal practitioner: Mr.Achintya Das, Advocate.

-VERSUS-

1. Union of India service through General Manager, E.Co. Railway, Chandrasekharpur, Bhubaneswar-23.
2. Chief Personnel Officer, E.Co. Railway, Chandrasekharpur, Bhubaneswar-23.
3. Divisional Railway Manager, E.Co. Railway, Khurdas Road, PO. Jatni, Dist. Khurda, PIN 752 050.
4. Sr. Divisonal Personnel Officer, E. Co. Railway, Khurda Road, PO: Jatni, Dist. Khurda, PIN 752050.

. RESPONDENTS

By legal practitioner **Mr.B.K.Behura, Sr. Advocate**
and Ms. S.L.Patnaik,
Advocate.

ORDER

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

The case of the Applicants is that Applicant No.1 while working as Switchman at Retang Railway Station having been medically de-categorized on 17.06.1998, had applied for voluntary retirement on 20.08.1998 with all the benefits including compassionate appointment as per the existing rules circulated by the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata. The voluntary retirement notice having been accepted, he was finally relieved from his duty with effect from 18.11.1998, vide order dated 26.10.1998 (Annexure-A/3). In application dated 14.12.1998, Applicant No.1 requested DRM (P), S.E. Railways, Khurda Road to provide employment assistance in favour of his son (Applicant No.2) on compassionate ground. The said grievance of applicant No.1 was rejected and communicated to the applicant No.1 in letter dated 17.01.2000 (Annexure-A/6). Being aggrieved by the aforesaid order of rejection, the Applicant No.1 on 24.03.2000 submitted appeal to the General Manager, S.E. Railways, Kolkata with a request to consider his grievance as per the Rules in force in the Railways. It is the case of the Applicants that no response having been received on the appeal submitted to the GM, they had

sought the interference of the Local Member of the Parliament who in turn requested the GM, SE Railways to take a lenient view on the matter. The said prayer has been turned down by the GM and communicated in letter dated 27th November, 2003 (Annexure-A/10). Since there was no response in the matter of providing employment on compassionate ground, in spite of the recommendations by the local MPs the Applicants have approached this Tribunal in the present Original Application filed u/s.19 of the A.T.Act, 1985 with the following relief:

- “8.1. To quash and set aside the DRM (P)/KURs letter No. P/R/EA/OT/Gr.C/Aptt./720/Lingaraj Barik dated 17.1.2000 (Annexure-A/6) and General Manager, E. Co. Railways letter No. ECoR/GA/MP/MLA DATED 27.LL.2003 (Annexure-A/10);
 - 8.2. To direct the Respondents to offer a suitable appointment on compassionate ground to son of the applicant Sri Santosh Kumar Barik who has submitted an application on 21.12.1998 (Annexure-A/5);
 - 8.3. To grant any other relief including cost as deem fit by the Tribunal.”
2. Respondents have filed their counter stating therein that as the Applicant No.1 took voluntary retirement beyond 55 years age, his request for providing employment in favour of his son, on compassionate ground was referred to the Head Quarters at Bhubaneswar vide letter dated

12.10.1999 as per Estt. Sl. No. 86/96 for consideration. No reasonable ground having been found out on the said request of applicant No.1, the same was turned down and intimated to the Applicant No.1 on 17.01.2000 (Annexure-A/6.). Thereafter, on the request of the Applicant No.1, on 10.10.2000, the local Member of the Parliament wrote a letter to the General Manager with request to consider the grievance of applicant No.1 for providing employment on compassionate ground. Simultaneously, on 24.9.2003 a request was made to DRM Khurda Road to reconsider the entire matter. The DRM in letter dated 27.10.2000 intimated to the MP (Rajya Sabha) that the case of the applicant No. 1 was considered not justified for providing employment on compassionate ground in view of the policy of the Government of India especially when the Railway servant took voluntary retirement on medical ground beyond 55 years of age i.e. on attaining the age of 57 years and 10 months. The General Manager, S. E. Railways in his reply dated 27.11.2003 had also intimated that as per Rules, medically de-categorized employees of the railways are to be provided alternative job with same scales etc. But in the present case, applicant No.1 had chosen to retire on medical invalidation ground without waiting for the administrative decision for his adjustment. Since at the time of retirement he had crossed the age of 55 years i.e. 57 years and 10 months, the remaining period of 2

years and 2 months service was added to his qualifying period for calculation of pensionary benefits which has appropriated the shortfall or loss in qualifying service to the ex employee and , therefore, his request for compassionate appointment is not tenable in the eyes of law. It has been maintained by the Respondents that the scheme for providing employment on compassionate appointment is not an alternate mode of recruitment. This is a beneficial legislation existing in the railways only to enable the family members of a deceased railway employee to get rid of immediate hardship caused to the family after the death of the bread earner of the family. It does not mean that the benefits of the scheme can be extended even after long lapse of time. In this connection, they have also placed reliance on the circular of the DOP&T dated 28.01.1994 and various decisions of the Hon'ble Apex Court starting from the **U.K.Nagpal v. State of Harayana and others.**

3. Applicant has filed a rejoinder stating that since the grounds of rejection of the grievance of applicant is against the Rules of the Railways, and benefits of compassionate appointment have been extended to many wards of the medically de-categorized employees of the railways, the order of rejection needs; to be quashed. It has also been stated that since fact of the matters before the Hon'ble Supreme Court in the cases relied on by the

Respondents are different than the present case, those cases are of no help to them. He has stated that a set of rules have been framed so far as providing employment on compassionate ground is concerned. Since the case of applicant covers and governs the rules, the very rejection of the claim is bad in law.

4. Heard Mr. Achintya Das, Learned Counsel for the Applicants and Mr. B.K. Behura, Learned Senior Counsel for the Respondents/Railways. I have also gone through the decisions cited by the Learned Counsel for the parties in support of their pleadings.

5. By taking me through various Rules/Instructions framed /issued by the Railway Board, Learned Counsel for Applicant has submitted that since the grounds of rejection are not as per the Rules/Instructions, the order of rejection needs to be quashed with a direction to the Respondents to reconsider the case of Applicants. It has been argued that the applicants did not sit over his grievance. Due to paucity of funds, they were approaching the authorities of the railways through various means to over come the indigent condition of the family. Lastly when they failed to get any relief, they approached this Tribunal. Therefore, learned counsel for the applicants by relying on various decisions of the Hon'ble Apex Court has sincerely

prayed for appropriate direction to the respondents by condoning the delay if any.

6. On the other hand, Mr. Behura, Learned Senior Counsel for the Respondents has argued that delay and negligence on the part of the applicant No.1 in seeking redressal being more than five years of the impugned order under Annexure-A/6 is sufficient ground for rejection of this OA without going into the merits of this case. Applicant No.1 without waiting for the decision of the administration to adjust him on his medical de-categorization, opted for voluntary retirement. Therefore, there being no laches on the part of the Respondents, the request of applicants for providing employment was rightly rejected. He has argued that less than three years of service left before superannuation cannot form the basis of comparison since the railways scheme for compassionate appointment allows it, at the discretion of the competent authority with the personal approval of the GM. If in some case such appointments were given that ipso facto cannot mean those given were shown favour and those not given were discriminated against. Railway circulars and instructions on the subject of compassionate appointment being in nature of administrative instructions any deviation or infraction there from cannot be enforced as of right. As regards the plea of the applicant that the order of rejection is unreasoned, Mr. Beuria, Learned

Sr. Counsel has argued that the order not being a judicial, quasi judicial order or an order that could be said to be one resulting in adverse civil consequences or in exercise of statutory or constitutional power, but administrative in nature, the same cannot be sought to be quashed more than five years after nor can the authority be directed to reconsider the matter and pass a more speaking order years after the event. In this connection, Learned Senior Counsel for the Respondents though relied on several judgments of the Hon'ble Apex Court copies of same have not been supplied for perusal.

7. Before dealing with the contentions raised by the rival parties, I would like to quote the grounds taken by the Respondents in the order of rejection and various instructions issued by the Railway Board on the subject.

Letter dated 17.01.2000 (Annexure-A/6) speaks as under:

“It has been decided that, there does not exist any reasonable ground to offer employment assistance to Sri Santosh Barik in his case.”

Letter dated 27th November, 2003 (Annexure-A/10) speaks as under:

“In reference to above letter, it is informed that Shri Lingaraj Barik, Ex WM/RTN on being declared medically unfit in A1 but fit in C1 on 17.6.1998, did not wait for the administration to identify alternative job but opted for voluntary retirement on medical grounds. Had

he not chosen to retire, he would have been given an alternate job protecting his emoluments irrespective of his educational qualification as per extant rules.

Sine he retired at the age of 57 years 10 months, the remaining period of 2 years and 2 months service was added to his qualifying period for calculation of pensionary benefits which meant no shortfall or loss in qualifying service to the ex employee.

In view of the above, there is no merit in the request of Shri Lingaraj Barik to provide appointment on compassionate ground to his son Shri Santosh Kumar BARIK. Earlier also the case was not considered justified and accordingly regretted. This was communicated to the Hon'ble MP vide the then General Manager 's DO letter No. P/R/EA/OT/Gr./Appt/720/Lingraj Barik dt. 27.10.2000".

Railway Board Circular No. E9NG)II/90/RC-1/117 dated 12.12.1990 provides as under:

"Circumstances in which compassionate appointment may be made:

Appointments on compassionate grounds relate to the appointments made of dependents of Railway Servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/de-categorized".

Circular No. E(NG)II/84/RC-1/51 dated 19.09.1984 provides that appointment on compassionate ground can be given to the dependents of employees irrespective of the period of service left to reach the age of superannuation. Further circular No. P/Comp./Poly/V/1688 dated 05.05.1994 provides that even in cases where the employee refuses to accept

the alternative post on normal emoluments, compassionate appointment is admissible as per the Board's Letter No. E(NG)III/78/RC 1/L dated 03.09.1983. Railway Board's Instruction No. E(NG)11/95/RC-1/94 dated 10.11.2000 provides that in all those cases in which an employee is declared as medically de-categorized before issuance of Board's letter dated 29.04.1999, sought voluntary retirement but he has not yet been given alternative appointment nor he has been adjusted against a supernumerary post, the facility of appointment on compassionate ground may be extended to one ward.

8. By filing affidavit under Annexure-A/23 the Applicants have brought to the notice of this Tribunal that the sons/wards of several railways employees who had taken voluntary retirement on medical de-categorization before two years/less than two years of service left on superannuation have been provided with employment on compassionate ground. Besides, the General Manager of the Railways, has also been empowered to condone the delay up to 20 years in the matter of providing employment on compassionate ground.

9. On the face of the above instructions of the Railways, now it is to be examined as to whether the order of rejection is sustainable

and as to whether the delay in approaching this Tribunal can stand on the way of directing the Respondents to reconsider the case of the applicants for providing employment on compassionate ground.

10. No doubt, it is the opinion of the Courts/Tribunal that there should be no departure from the general rule except under compelling circumstances such as death of the sole breadwinner 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 over look the normal rule of appointment and to show favour to one at the cost of several others, ignoring the mandate of Article 14. The Tribunal should not confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations did not cover and contemplate such appointment. The 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, 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. But in

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railways the exception is that employment on compassionate ground can be provided to the son/ward of a medical de-categorized employees. The further exception is that the General Manager has been empowered to condone the delay up to 20 years which is not available in any other organization of the Government of India. However, it is seen that the General Manager rejected the claim on 27th November, 2003. As per the Act/Rules, this OA ought to have been filed by 26th November, 2004 but he has filed this OA after six months. Ordinarily a litigant does not stand to benefit by approaching the Courts/ Tribunal in late. Dismissing a matter on the hyper technical Rule of law of delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the best that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. From the facts it is also not evident that the delay is suffered deliberately, or on account of culpable negligence, or on account of *mala fide*. Besides when authorities have been empowered to condone the delay in appropriate cases

delay in approach cannot be a ground to throw this OA. Therefore, this plea of delay advanced by the Railways is hereby over-ruled.

11. As regards merit of the matter, it is seen that the very order of rejection is not sustainable being bereft of any reasons. Failure to give reasons amounts to denial of justice "Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". This position was also highlighted in the case of **Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar** 2003 (4) SCC 364. In the case of **Mahavir Prasad v. State of UP** AIR 1970 SC 1302 it has been held by the Hon'ble Apex Court that recording of reasons in support of a decision by a quasi judicial authority is obligatory, as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal.

12. By furnishing the names under Annexure-A/23, it has been brought to the notice of this Tribunal that in similar situation, benefits of employment on compassionate ground have been extended to the sons of the medical de-categorized railway employees but in his case the same has been denied to him. Law is settled in the case of **Smt. Kamala Gaind v.**

State of Punjab and Others, 1992 (5) SLR Vol. 83 page-864 that even if it is compassion, unless there be some basis there is no justification for discriminately extending the treatment. In view of the above, the case of Applicants needs reconsideration.

13. In view of the discussions made above, the orders of rejection of the prayer of the Applicants are hereby quashed and as a consequence, the Respondents are hereby directed to re-consider the case of Applicants within a period of 45 days from the date of receipt of a copy of this order.

14. In the result, this OA stands allowed by leaving the parties to bear their own costs.

B.B.Mishra
(B.B.Mishra)
MEMBER (A)