

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.267 of 2005
Cuttack, this the 30th day of May, 2007.

Khetra Mohan Mohanta ... Applicant
Versus
Union of India and Others ... Respondents

FOR INSTRUCTIONS .

1. Whether it be referred to the reporters or not? ^{7th}
2. Whether it be circulated to all the Benches of the CAT or not?.


(N.D.RAGHAVAN)
VICE-CHAIRMAN


(B.B.MISHRA)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 267 of 2005
Cuttack, this the 30th day of May, 2007

CORAM:

THE HON'BLE MR.N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Khetra Mohan Mohanta,
Aged about 35 years,
S/o. Late Rameswar Mohanta,
Village-Magusiria, PO-Kuradhika,
Via-Jagpura, Dist.Mayurbhanj.

..... Applicant.

By legal practitioner: M/s. T.Sinha, R.N.Mishra, Advocate.

-Versus-

1. Union of India represented by General Manager, South Eastern Railway, Garden Reach, Kolkata, West Bengal.
2. The Divisional Railway Manager (P), South Eastern Railway, Kharagpur, West Bengal.

...Respondents.

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

ORDER

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

According to the Applicant, his father was a Gangman, working under the PWI, Jaeleswar of South Eastern Railway, Kharagpur. While working as such, he expired on 12.02.1979. After the death of Railway employee, the mother of the Applicant (who is not before us) submitted a representation under Annexure-1 dated 01.03.1979 intimating that due to her health problem she was not willing to take up any employment on compassionate ground and, therefore, she requested to keep the scheme for employment open till her son who was a minor by that time, attains majority. It is the case of the Applicant that no sooner he got the majority on 28.03.1987, then his mother applied to the Respondent No.2 to provide employment to the Applicant. The said prayer was rejected on 19.10.1990. Thereafter, perseverance through repeated representation before higher authorities did not yield any result and, thereby, the condition of the family deteriorated. The grievance of the Applicant is that though his case is covered by the Railway Board's Circular No. E (NG) II/87/RC-1/143 dated 19.04.1988 (Annexure-7), with ulterior motive, the Respondents kept silent on the matter, and, therefore, finding no other way out, he has approached this Tribunal in the present Original Application filed u/s. 19 of the Administrative Tribunals Act, 1985 praying to direct the Respondents to appoint the

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12 Applicant on compassionate ground by quashing the order of rejection under Annexure-3 dated 19.10.1990.

2. The Respondents in their counter filed on 15th February, 2006 have stated that the Applicant by filing this OA on 8th January, 2005 seeks to annul the order of rejection dated the order 19.10.1990 which is clearly barred by law of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985. Therefore, this OA is not entertainable and is liable to be dismissed at the threshold.

3. As regards the merit of the matter, the Respondents have denied to have received any such representation dated 01.03.1979 from the mother of applicant. They have also denied to have received any representation after the regret letter under Annexure -3 dated 19.10.1990. The Respondents have maintained that as per the instructions of the RRB, in case of Railway employee who die in harness and where the widow cannot take up employment and sons/daughters are minor, the case may be kept pending till first son/daughter becomes a major i.e. attains the age of 18 years provided the request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter to be considered for compassionate appointment has become a major say within a maximum period of six months. According to applicant his date of birth being 28.03.1969, he got majority on

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28.03.1987. But the mother of the applicant applied for employment assistance only on 21.10.1988. Since the application was received beyond the period prescribed, the same was rejected and communicated to applicant under Annexure-3. They have also taken the ground that since the family has survived for more than 26 years without any employment assistance, acceding to such request would tantamount to curtailing the chances of employment of many deserving candidates who are waiting for such employment.

4. By filing rejoinder, the Applicant has made efforts to justify their claim for employment but without giving any convincing reason for such delay in filing this OA. He has also failed to produce any authority to show that such representations have actually been made by the mother of the Applicant.

5. Having taken note of the arguments advanced by Learned Counsel for the parties, we have gone through the materials placed on record.

6. Section 21 (a) of the Administrative Tribunals Act, 1985 clearly provides that a Tribunal shall not admit an application unless the same is made within one year from the date on which such final order has been made. The admitted case of the parties is that the grievance of

Applicant was rejected on 19.10.1990. Therefore, this OA ought to have been filed within one year i.e. by 18.10.1991 instead of 08.01.2005. No doubt, this Tribunal has the power to condone the delay where a separate application is moved by showing reasons that the delay is unintentional and the delay was due to reasons beyond his control. It appears, no such separate application has been filed by the Applicant; nor any convincing reasons supported by documents have been given by the Applicant enabling this Tribunal to condone the delay. Also it is settled law that repeated representations shall not save the law of limitation (Ref. **S.S.Rathor v. State of Madhya Pradesh**, AIR 1990 SC 10). Therefore, we are bound to hold that this OA is clearly hit by law of limitation provided in section 21 of the A.T. Act, 1985.

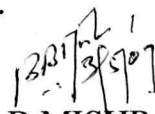
7. Besides, on this subject, law of law is that the compassionate appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as death of the sole breadwinner and likelihood of the family suffering because of the set back. Once it is

proved that in spite of the death of the bread winner, the family survived and substantial period is over, there is no necessity to overlook the normal rule of appointment and to show favour to one at the cost and interests of several others ignoring the mandate of Article 14 as per the ratio decidendi relied upon by the Respondents in **State of J & K and others v. Sajad Ahmed Mir**, 2006 SCC (L&S) 1195. Admittedly, the death of the railway employee occurred sometime in 1979 whereas the applicant has approached this Tribunal only on 8th June, 2005. It is also noticed that the correspondence were made between the mother of the Applicant and Authorities of the Railways. But it is not known as to why she has not approached this Tribunal along with the Applicant. Also on merit, we hold that such quartered century delay itself is a substantial and sufficient cause to come to the conclusion that the family members of the deceased are not entitled to any assistance on compassionate ground.

8. In the light of the discussions made above, we find no merit in this OA; which is accordingly dismissed. No costs.


(N.D.RAGHAVAN)
VICE-CHAIRMAN

03-5-07


(B.B.MISHRA)
MEMBER(A)

KNM/PS.