

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 833 OF 2005
CUTTACK, THIS THE 23rd DAY OF JULY, 2008

Shri Manas Ranjan Jena Applicant

Vs

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?


(K. THANKAPPAN)
MEMBER (JUDL.)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 833 OF 2005
CUTTACK, THIS THE 23rd DAY OF JULY, 2008

CORAM :

**HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)**

Shri Manas Ranjan Jena, aged about 30 years, son of Jadumani Jena,
At-Retanga, P.O.-Retanga, P.S. Khandagiri, Dist. Khurda.

..... Applicant

Advocate(s) for the Applicant- M/s. U.N.Mishra, P.K. Mohanty,
S.K.Nanda.

VERSUS

1. Union of India represented through the General Manager, East Coast Railways, Rail Vihar, Chandrasekharpur, Bhubaneswar.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/P.O.-Jatni, Dist. Khurda.
3. Senior Personal Officer(Welfare), East Coast Railway, Khurda Road Division, At/P.O.-Jatni, Dist. Khurda.
4. Divisional Personal Officer, East Coast Railway, Khurda Road Division, At/P.O.-Jatni, Dist. Khurda.
5. Deputy Chief Engineer(Construction) East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
6. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda.

..... Respondents

Advocates for the Respondents – Mr. R.C.Rath, Mr. M.K.Das,

ORDER

HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

The present application has been filed by the Grandson of one late Shri Dhobei Jena, who was working as a casual labourer with temporary status in the Railways. The applicant prays for compassionate appointment due to the death of his Grandfather on 15.3.1994. The following is the relief sought by him:

"8(i) To issue appropriate direction to the Respondents for giving appointment to the applicant on compassionate ground either in the post of his grand father or in any other suitable post considering the educational qualification and extra knowledge in typing and stenography.

(ii) to grant any other reliefs as would be deemed fit and proper in the eye of law, considering that the grand father of the applicant was not declared as a regular employee of the respondent on account of their latches and dilatory tactics to declare him as a regular employees."

The contention of the applicant is that his Grandfather was working as a casual labourer from 3.10.1975 and was allowed temporary status after about six years of service. As he fell ill during May 1990, he filed representation that he should be allowed voluntary retirement and simultaneously filed another petition before his authorities to put his Grandson in his job. The applicant was then 17 years old. Subsequently, the applicant's Grandmother filed O.A.No. 716/97, which was disposed of with observation that no case was made out for compassionate appointment. Thereafter, he has been filing representations. Being unsuccessful for getting compassionate appointment he has filed the present O.A.

The Respondents have stated in their counter that "the applicant's grand father was purely a casual labourer with Ty.status. For the purpose of his regularization he was sent for medical test to be regularized as per his turn in letter dt. 18.5.1990. In the medical examination, the applicant's grand father was declared unfit under B-2 category. Thereafter, he was again sent for medical examination under C-1 and C-2 categories which are lower categories for the purpose of regularization in a lower category of post. The applicant's grand father took that medical memo with the letter but did not turn up for medical examination. Instead he managed to get a sick certificate from a private doctor showing that he is unfit from 24.5.1990. As the applicant's grand father Late Dhobi Jena was declared unfit in B-2 category no leave could be sanctioned to him and he could not also be regularized in the service".

Further it has been submitted in the counter that the applicant's grandfather was never absorbed in regular establishment under the Railway. He was only a casual labourer with Ty.status. The family pension is allowable to a widow or family member of a Railway servant who had held permanent/regular post of service at the time of his death.

According to Respondents, there is no rule in the Railways to provide employment assistance to the grand son. They have also pointed out that the grandmother Smt. Hiramani Devi, wife of late Shri Dhobei Jena had filed O.A. 716/97 before this Tribunal for grant of family pension and compassionate appointment to the grand son. The Tribunal vide its order dated 26.5.2000 rejected the aforesaid application. The relevant portion of the said order dated 26.5.2000 is extracted below:

6. From the above averments it is clear that the applicant's husband was never absorbed in regular establishment under the Railways. He was only a casual labourer with temporary status. The departmental instructions are very clear that family pension is allowable to a widow or family member of a Railway servant who has put in at least one year of service. Casual labourers even with temporary status are not considered Railway servants as a definition of "Railway Servant" specifically excludes casual labour and as the applicant's husband has never been regularized in Railway service, the applicant is not entitled to family pension. This prayer of the applicant is held to be without any merit and is rejected.

7. The second prayer is for settlement of other dues, if any. The Respondents have stated that the matter is under examination and the applicant will be paid legitimate dues, if any, on the disposal of this case. In view of this, it is ordered that whatever dues the applicant is entitled to get from the Railways, the same should be paid to her strictly in accordance with rules within a period of 120 days from the date of receipt of copy of this order.

8. As regards the prayer for compassionate appointment the respondents have stated that because of long absence of the husband of the applicant from 24.05.1990 till his death on 15.3.1994; it has been held that the applicant's husband has resigned his service. The present petitioner before us has also not enclosed any representation filed by her for giving compassionate appointment to her grandson. It appears that during life time of the applicant's husband he wrote on 10.1.1991 seeking voluntary retirement and appointment of her grandson on compassionate ground. Thereafter only on 11.10.1996 the applicant has sent a lawyer's notice seeking settlement dues. In this letter also no claim was put forward for appointment of her grandson on compassionate ground. In the facts and circumstances of this case we hold that the applicant has not been able to make out a case for a direction to the respondents to consider the case

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of her grand son Manas Ranjan Jena for getting compassionate appointment."

The above orders of this Tribunal have never been challenged or reversed or reviewed in any higher Court or by this Tribunal. Applicant has filed the present O.A. virtually seeking the same relief which has already been considered by this Tribunal and rejected.

Heard the Ld. Counsel for the Respondents and perused the materials placed on record. During the course of hearing, the Ld. Counsel for the applicant filed a memo enclosing a copy of the order dated 04.03.1997 of this Tribunal in the O.A.No. 817/94. We have perused the order of this Tribunal cited above. We are of the view that the facts and the circumstances of the applicant in the present O.A. are completely different from the case cited by the Ld. Counsel for the applicant.

It is trite law that issues raised and decided in one way or the other, cannot be re-agitated in separate application and if it is so, then the same is liable to be rejected on the principle of constructive res judicata. Going by the records, it is established that the present issue raised in this O.A. squarely falls within the purview of principle of res judicata. Hence, this Original Application, besides being devoid of any merit is liable to be dismissed being hit by the principles of constructive res judicata and accordingly stands dismissed. No costs.

K. Thankappan
(K. THANKAPPAN)
MEMBER (JUDL.)

C.R. Mohapatra
(C.R. MOHAPATRA)
MEMBER (ADMN.)

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