

Original Application No.881 of 2005
Cuttack, this the 3rd day of May 2007.

(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 881 of 2005
Cuttack, this the 3rd day of May, 2007

C O R A M:

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

Smt. Dokkari Jogamma, W/o. Late Simhadri, Aged about 56 years,
household duties, resident of Golla Kanchili Village, Kanchili-P.O,
Srikakulam Dist. Andhra Pradesh, Pin: 532290.

..... Applicant.

By legal practitioner: Mr. B.P.Yadav, Advocate.

-Versus-

Union of India represented by:

1. The Divisional Railway Manager, East Coast Railway, Divisional
Railway Manager's Office, Khurda Divison, Khurda Road, Jatni,
Po. Puri, Dist. Orissa.
2. The General Manager, East Coast Railway, Chandrasekharpur,
Bhubaneswar, Orissa.
3. The Secretary for the Ministry of Railways, Rail Bhavan, New
Delhi-110 011.

...Respondents.

By legal practitioner: Mr.D.K.Behera, ASC for Res.No.2.

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ORDER

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

In short, the fact of the matter is that the husband of the Applicant was a Gangman working under the Permanent Way Inspector/Somepeta. While in employment, he expired prematurely on 26.05.1973. Silence over the grievance of Applicant to provide employment in favour of her son, formed the subject matter of consideration before this Tribunal in OA No. 104 of 2002. The matter was listed for consideration on 04.03.2002 and on consideration of the matter, this Tribunal in its order dated 04.03.2002 disposed of the same with direction to the Respondents to treat the OA to be a representation to them and take a final view on the same within a stipulated period. As it appears, since Applicant had sought for appointment in favour of her third son, after a lapse of 25 years, the same was rejected on 03.09.2003 and communicated to the Applicant on 20.09.2003. Thereafter, the Applicant filed another OA No. 1116 of 2004 seeking direction for employment in favour of her first son. On 24.11.2004 on the request of the Learned Counsel for the Applicant the said OA No. 1116 of 2004 was disposed of as withdrawn with liberty to pursue her grievance before appropriate authority. Non-consideration of the request of Applicant to

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provide employment in favour of her first son, is the subject matter of this OA filed on 2nd November, 2005 praying to direct the Respondents to provide employment in favour of the first son of the Applicant on compassionate ground.

2. Respondents have filed their counter objecting to the prayer of the Applicant for employment assistance in favour of her first son as also questioning the very maintainability of this O.A. on the point of limitation.

3. By filing rejoinder, the Applicant has stated that the delay was not attributable to the Applicant. It was for the callousness of the Respondents. Therefore, for the fault of the Respondents, the Applicant should not be deprived of her rightful claim as the family members of the deceased are still continuing in penury.

4. During the course of argument, Learned Counsel for the parties, by placing reliance on their pleadings have persuaded us to take the view in support of their prayers. Fact remains that the first son of the Applicant is aged about 37 years. Death of the husband of applicant occurred during 1973. For the first time, the Applicant had sought for employment in favour of her son on 01.12.2004 which is 19 years after his attaining majority.

5. We do not feel to record all the arguments advanced by the parties; as this would be nothing but mere repetition of fact; especially,

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when this case is fully covered by the law laid down by the Apex Court in the case of **State of J & K and others v. Sajad Ahmed Mir**, 2006 SCC (L&S) 1195 holding that 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 over look to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14.

6. In view of the law laid down by Their Lordships of the Hon'ble Apex Court, since the Applicant claims employment assistant on compassionate ground after 34 years of death of her husband, we find no merit in his OA, which is accordingly rejected. No costs.

See pages 4 & 5 Paras 7/8/10
(N.D.RAGHAVAN)
VICE-CHAIRMAN

2/8/17
(B.B.MISHRA)
MEMBER(A)

KNM/PS.

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PER N. D. RAGHAVAN, V.C.:

7. I have gone through the order proposed by my learned Brother. While I do agree with his order, I am unable to refrain myself from adding the following paragraphs ^{- only for} to strengthen the proposed order in rejecting the O.A.

8. It is seen that the husband of the applicant was a Gangman who prematurely expired on 26.5.1973 while being in employment. Nearly three decades thereafter, O.A.No.104 of 2004 was filed in view of the silence over the grievance of the applicant to provide employment in favour of her third son, which was the subject-matter thereof. On 4.3.2002, that O.A. was disposed of with a direction to Respondents to treat that O.A. itself as a representation to the Department and for taking a final view on it within a stipulated period. The Departmental Respondents seem to have rejected it and such rejection order was communicated to the applicant on 20.9.2003. Thereafter the applicant has filed a second OA No.1116 of 2004 seeking a direction for employment in favour of the applicant's first son. On 14.11.2004, the second O.A.No.1116 of 2004 was disposed of as withdrawn with liberty to pursue the grievance before appropriate authority. Yet, ^{again} ~~again~~, the first son was not considered for employment. Non-consideration of such request to provide employment is the subject matter of this O.A. filed on 2.11.2005 which has been heard recently for adjudication and order to be passed this day.

9. Apart from the reasons assigned by my learned Brother in his order proposed rejecting this O.A., I would like to add that as to how the judicial forum is being taken for granted, crossing the fence of limitation provided by the Act, as well as the mercy shown by the forum to treat the O.A. itself as a representation for



considering employment to the third son and when it got rejected, then in considering employment for the first son. In my view, the third round of litigation instituted in this O.A. should ~~have been~~ ^{correctly be held} outright rejected, not bearing the test of patience conducted over this forum extending up to this third O.A. which is adjudicated today. Thus on the point of limitation itself, this O.A. can be dismissed as time barred.

10. In the result, the O.A. is dismissed accordingly.


(N.D. RAGHAVAN)
VICE-CHAIRMAN

03/05/07