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O.A.No. 270 of 2006

Order dated: 1.5.08

Applicant is the daughter of P.Ramayya who was serving as Fitter in Steam Loco Shed of South Eastern Railway, Bondamunda. While in service he expired prematurely on 20.1.1991. It is the case of the Applicant that after being divorced, she was residing with her father. As her father was the only earning member of her family, after his death, the mother of applicant represented to the authorities of the Railway for providing employment on compassionate ground. But as the Respondents did not pay any heed to such request, she has approached this Tribunal in the present Original Application filed U/s.19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondents to provide her an employment on compassionate ground.

2. The Respondents have filed their counter stating therein that as none of the Respondents, under whom the father of the Applicant was working and to whom the Applicant has sought direction is situated within the State of Orissa, the present OA is not maintainable in this Tribunal. Secondly, it has been averred that the prayer for providing employment on compassionate ground having been rejected and communicated on 9.12.1997 this OA filed on 22.03.2006 is liable to be dismissed by application of law of limitation. Besides the above, it has been averred by the Respondents that on merit also the applicant is not entitled to employment for the reasons that penury of the family

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of a deceased railway employee is the pre-condition for providing employment on compassionate ground; whereas the deceased left behind his son and widow. While the son is working in the Railway, the widow is getting her monthly family pension. As per the declaration furnished, the widow is now dependent on his son and as such there remains no indigence in the family so as to warrant employment to the Applicant who was divorced on 04.09.1991 i.e. much after the death of her father i.e. on 20.01.1991. Hence, they have prayed for dismissal of this OA. No rejoinder has been filed by the Applicant.

3. Heard the arguments of Mr. Tripathy, Learned Counsel for the Applicant and Mr. O.N.Ghosh, Learned Counsel for the Respondents and perused the documents placed on record. By reiterating the facts mentioned in the pleadings, it has been argued by Learned Counsel for the Applicant that the scheme for providing employment on compassionate ground has direct nexus with Article 21 of the Constitution and since the scheme itself has been framed as a social measure for the benefit of the family members of the Railway in the event of death or medical incapacitation, non-extension of such benefits on technical ground is nothing but causing injury to the very scheme/Rules which was framed in consonance with the constitutional mandate. As regards maintainability of this OA, he has argued that it is incorrect to say that the OA is not maintainable. As the Applicant is residing within the state of Orissa/under the jurisdiction of this Tribunal, she has every right to file this OA in this

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Tribunal challenging the inaction of the Respondents. On the question of limitation, he has argued that no such order has ever been communicated or received by the Applicant. Further he has argued that in the absence of any financial support, the Applicant is continuing in indigence, after the death of her father, necessary direction may be issued to Respondents to consider the case of applicant for providing employment on compassionate ground. By relying on Rules as also decisions of the Hon'ble Apex Court, the Learned Counsel for the Respondents has opposed the prayer of Applicant.

4. I have considered the various submissions made by the parties and gone through the pleadings of the respective parties. It is needless to say that as the Applicant is residing in the District of Sundargarh which is within the State of Orissa, as per the provisions of the AT Act, 1985, the OA is squarely maintainable in this Tribunal. As regards merit of the matter it is noted that the father of the Applicant expired prematurely on 20.01.1991. The marriage of the Applicant dissolved through execution deed on 04.09.1991. Hence it cannot be said that the present Applicant was dependent on the deceased at the time of his death. Estt. Srl. No. 157/2001 dated 31.12.2001 (RBE No. 224/2001) clearly provides that the cases of dependent divorced/widowed daughter should be considered for appointment on compassionate grounds, provided the divorced/widowed daughter is wholly dependent on the ex employee at the time

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of the death/medical invalidation of the Railway servant which is not the case of the Applicant.

5. That apart, it is trite law that there should be no departure from this 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. The High Courts and 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. 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. In the present case the death of the father of applicant occurred on 20.01.1991 whereas the Applicant has approached this Tribunal after passage of 15 years i.e. on 22.03.2006 that too when she was aged about 45 years. Besides the above, none of the representations has been filed by the Applicant but by her mother who is not an Applicant in this OA.

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6. In the case of *Indian Drugs and Pharmaceutical Ltd v. Devki Devi*, 2007 (1) AISLJ 224, the Apex Court held that the compassionate appointment is not a right. In the case of *State of J& K v Sajid Ahmed Mir*, 2007 (1) AISLJ 219 the Apex Court observed that when the family could survive in spite of the death of the employee at a belated stage the family should not get employment on compassionate ground. In the case of *National Institute of Technology and another v Miroj K. Singh* (2007 1 SCC (L&S) 668 by the time the employee died the son was a baby, still the Hon'ble Supreme Court held that compassionate appointment cannot be granted to the son after getting majority more than 15 years after the death of the employee.

7. In the light of the discussions made above, I find no merit in this OA. Hence, this OA stands dismissed. No costs.

  
(C.R. MOHAPATRA)  
MEMBER(A)

KNM/PS