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ORDER DATED 14-07-2004.

This Original Application has been filed by Sudarshan Mahana and another being son and widow of late Nabin Mahana, who was working as Khalasi under D.S.T.E., Khurda and expired on 01-11-1983 while in service. The grievance of the Applicants is that since the death of the deceased Railway Servant, they have been subjected to harassment by the Railways ; as it took about 13 years to sanction the family pension in favour of the widow and children and that the application of the widow for providing compassionate appointment to Applicant No.7 under the Respondent-Department has been kept hanging for all these years. The application has now been repudiated on the ground that the same has been made after 12 years of the death of the Railway Servant and that the widow of the deceased Railway servant is the second wife. Learned counsel for the Applicants has vehemently submitted that both these grounds are without any legal basis and are mere instruments for harassing a helpless family. Referring to para-3 of the Estt. Sl. No. 58/85 (Annexure-R/3) it has been submitted by the learned counsel appearing for the Applicants that the Ministry of Railways have decided long back in March, 1985 that where the widow cannot take up employment Railways can keep the case for appointment on compassionate grounds open to enable consideration of appointment

of a minor son when he attains majority. This is exactly the case in this matter and, therefore, denying consideration for appointment on the said grounds is violative of the order of the Railway Board/Ministry of Railways, and therefore, deserves to be quashed. Secondly, that the allegation of time barred is also a mere plea to deny the employment to the applicant by adopting illegal method; because in terms of Estt. Sl. No. 62/95 dated 23.04.1997, Railway Board have decided vide its order dated 06.10.1995 that the General Managers are empowered to consider time barred cases upto 20 years old from the date of death of the Railway employee provided appointment is sought for the first child/first son/first daughter and that the application for appointment is submitted within two years of attaining the age of majority by the candidate. In this case, the Applicant No. 3 being the first son of the deceased Railway servant, he is entitled to the benefit of relaxation of time barred for appointment on compassionate ground as contained in Estt. Sl. No. 62/95 and, therefore, the efforts of the Respondents to deny him compassionate appointment on the ground of limitation is wholly arbitrary and illegal.

The Respondents have contested the application on the ground as stated above. In addition, in the counter they have also raised an issue that this is a case of two wives of

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the ex-employee and ex-employee did not obtain permission for his second marriage from the Administration, and as such they were averse to consideration of the application of the Applicants. The argument of the Respondents as given in the counter and also repeatedly highlighted by the learned Counsel for the Respondents are of no consequence; because after deciding to pay family pension to the widow of the deceased railway servant who is said to have married two wives, his first wife died earlier and the administration having consciously decided to sanction family pension to the widow, it is not open to them to raise the question as to whether the second marriage of the deceased railway servant was permissible under the conduct rules. This only shows a very weak attempt on the part of the Respondents to somehow reject the claim of the ward of the deceased railway servant to get the benefit of compassionate appointment and as such, such attempt should not only be discouraged but also be called an apathetic attitude of the Respondent Department. The Respondents are therefore, called upon to ensure that in future this type of ~~work~~ argument should not be ~~done only to ridicule the~~ ^{put up to avoid adverse} ~~and~~ ^{Comment from Dr. judicial forum.} public vibes.

Having regard to the rule position regarding granting employment on compassionate ground to the first son of the

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deceased railway servant, there is no doubt that the widow of the railway servant, in terms of para-3 of Estt. Sl. No. 58/35 has the right to exercise her privilege to apply for appointment of her first son on compassionate ground as soon as he attains majority; which she did in the year 2000; whereupon she approached the Divisional Signal and Telecom. Engineer of the South Eastern Railway for grant of employment in favour of her son on compassionate ground vide her representation dated 1.7.2001. I also agree with the submissions of the learned Counsel for the Applicants that the Respondents are wrong in taking the ground of time barred and it was also wrong on their part to deny the Applicants the benefit of relaxation of time limit in terms of Estt. Sl. No. 62/95 dated 23.4.1997. In the aforesaid circumstances this application succeeds.

Before closing, I must observe that in the counter the Respondents have taken the plea that compassionate appointment cannot be claimed as a matter of right and for this they have also relied upon the decision of the Hon'ble Apex Court rendered in the case of Umesh Kumar Nagpal Vrs. State of Haryana. I would, however, like to observe here that reliance on the judgment of Umesh Kumar Nagpal (supra) in the case of compassionate appointment to wards of the deceased Railway servants would not be relevant because the scheme of

employment on compassionate ground in railways, has not been in any way modified or amended following the ratio of the judgment of Umesh Kumar Nagpal (supra). That being the fact of the matter, the Respondents will be well advised to take an internal view as to whether they would like to modify/amend their existing scheme for compassionate appointment following the ratio laid down by the Hon'ble Supreme Court in the case of Umesh Ku. Nagpal and until this is done, it is incorrect on their part to repudiate the cases of compassionate appointment by relying the decision of the Hon'ble Supreme Court rendered in the case of Umesh Kumar Nagpal (supra). I order accordingly.

In the result, this O.A. is disposed of with the observations and directions made above. No costs.

AFR

Ranjan
(B.N. SOM) 14/7
VICE-CHAIRMAN

Copy of order dt. 14/7/09
despatched to the counsel
for both sides.

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21/7/09*