

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

On 22.1.04

Notice issued to newly added party in R-5.

12/2/04

12/2/04
Sd/- (J)

AD is back in R-5 (in newly added imp.pts.)

Counter not

filed

11/2

Regn

Dt. 12.3.04

Both the parties are present. The learned Asst for Respondents prays for time to file counter. Time granted till 15.4.04 for counter.

12.3.04

REGISTRAR

Counter not filed

12/4

Regn

Dt. 15.4.04

The learned counsel for Respondents prays for time to file counter. Prayer allowed. Time granted till 17.5.04 for counter.

15/4/04

Order dated 14.1.05

Put up this matter on 27.1.05

member (J)

Order dated 31.1.05

Heard B. Mohanty-1 Id. Counsel appearing for the applicant and Mr. B.K. Bal, Id. Counsel for the Railways.

Perused the materials placed on record.

Applicant's father was in service of the Railways. On a medical examination, he was found unsuitable for any category of employment; for which he was given premature retirement. Thereafter the family, in order to overcome the distress condition, represented to the Railways to provide a compassionate employment in favour of the applicant. The preliminary Enquiry was conducted by the Railways and, it is alleged, that on preliminary enquiry it was found that the condition of the family of the applicant to be bad. In fact, since the Railway employee was sick, a considerable amount of terminal benefits granted to the family were being spent for his treatment. The Railway employee faced premature retirement on 8.12.99 and, ultimately, died prematurely on 25.10.04. The prayer for providing a compassionate employment to a member of the family /applicant having been turned down by the Railways on 27.2.02, the present O.A under Section 19 of the Administrative Tribunal Act 1985 was filed.

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For counter.

Reg

14/9/04

Order dt. 17.5.04

Learmed Counsel for the applicant is present. Respondents are absent and no steps taken to file counter.

However, time is granted as a last chance till 28.6.04 to file counter.

17/5/04
REGISTRAR

Counter has not been filed.

25/6

Reg

Order dt. 28.6.04

Ld. Counsel for the applicant is present. Respondents are absent and no steps taken to file counter.

However, time is granted till 13.7.04 to file counter.

28/6/04
REGISTRAR

Counter not filed.

Reg

The Railways having filed a counter has supported the rejection order passed on 27.2.02 (Annexure-A/7).

The prayer for providing a compassionate appointment to a member of the family of the Railway employee/applicant was turned down on the ground

- because the Railway employee/father of the applicant faced premature retirement at the fag end of his career; and
- because a big amount was paid towards terminal benefits including family pension.

For the reason of the views taken by the Supreme Court of India in the case of Balbir Kaur vrs. Steel Authority of India Limited (reported in AIR 2000 SUPREME COURT 1596),

the terminal benefits are not to be computed for determining the distress condition of the family, ^{and,} therefore, the objection on that score, as raised by the Respondents, is hereby overruled. The other objection pertaining to premature retirement at the fag end of the services is also not sustainable; in absence of any prohibition in any rules of the Railways.

In fact, the matter fell for consideration of this Tribunal and by the Apex Court in a number of occasion. In several other cases Railways provided compassionate employment to the distressed family, where the Railways employees faced similar premature retirement within two years of their age of retirement. Keeping such a situation in mind, Hon'ble Supreme Court of India in the case of Smt. Kamala Gaiind vrs. State of Punjab and others (reported in 1992 (5) SLR Vol. 83 Page 864) held that discrimination

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Order dt. 13.7.04

Ld. Counsel for the applicant is present. Respondents are absent and no steps taken to file counter. Adjourned to 27.7.04 for filing of counter.

13-7-04
REGISTRAR

counter not filed

for
26/7

Regn

Order dt. 27.7.04

Counter is filed to-day after service of copy. At the request of Ld. Counsel for the applicant, adjourned to 26.8.04 for filing of rejoinder.

27.07.04
REGISTRAR

Rejoinder filed,
copy not sent

for
24/8

Regn

in any form is not to be tolerated. In that case their Lordships of the Hon'ble Supreme Court of India observed as follows:

"Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment. We, therefore, direct that within three months from now a suitable Class-I post in P.C.S. Executing shall be provided to the appellant's son in lieu of the offer already made".

Since both the objections raised by the Respondents are not sustainable in that touchstone of judicial scrutiny and since the family of the applicant remained under distress condition (especially for the reason of bad health condition of the retired Railway employee) the Respondents should give due reconsideration to the matter in providing a compassionate employment to the applicant; which they should do within a period of 90 days from the date of receipt of a copy of this order.

This O.A. is, accordingly, allowed by quashing the impugned rejection order under Annexure A/7 dtd. 27.2.02 but, however, there shall be no order as to costs.

Send copies of this order to the Respondents and free copies of this order be handed over to the Counsel appearing for both the sides.

31/08/04
Member (J)