

02.11/03

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Or. No. 2.12.03

counter bills, copy has not been served for further orders

le 01/12

Bench

Or. No. 10.12.03

for Admission & final hearing. Rejoinder has not been filed.

le 01/10/04

Bench

Or. No. 7.1.04

for Admission and final hearing. Rejoinder not filed.

le 13/1/04

Bench

Or. No. 14.1.04

for Admission & final hearing. Rejoinder not filed.

le 20/1/04

Bench

Or. No. 14.1.04

for Admission and final hearing. Rejoinder filed and copy served.

le 21/2/04

Bench

Dated 17.03.04

D. Rama Rao, while serving in the Railways died prematurely on 27.07.97 his son (the Applicant named D. Srinivas Rao) applied for a compassionate employment. At that time, the Applicant was having a qualification less than Class VIII. His application, for compassionate appointment, was turned down (under Annexure-3 dated 16.04.99) on the ground that the Applicant had not passed Class VIII; because in order to hold a Group 'D' post, one should have passed Class VIII.

2. In the counter, the Respondents have filed a copy of RBE Establishment Sl. No. 18/99 said to have been issued on 15.01.99. The Establishment Sl. No.18/99 has, in fact, put the Railway Board's letter dated 04.12.98 into circulation; which has been filed as Annexure R/2 dated 15.01.99/04.12.98 which goes to show that the executive instruction was issued by the Railway Board fixing minimum educational qualification (required to hold a Group 'D' post) was Class VIII.

3. Executive instructions are to hold the field prospectively. The grievances of the Applicant being a <sup>pre-</sup> 15.01.99/04.12.98 one; not possessing 8<sup>th</sup>

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NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Dr. No. 20.02.04

For Admission & final hearing.

Bench

Dr. No. 25.2.04

For Admission and final hearing

Bench

Dr. No. 17.03.04

Copies of order communicated to the petitioner & to all respondents. A copy of said order also sent to the Govt. Encl. Esplanade, B.B.E.R. Also copies of order prepared for counsel for both side.

Dr. No. 20/04/04

Class pass qualification could not have been a ground against the applicant to deny him a compassionate employment in any Group 'D' post under the Railways.

4. In the case of Y.V. Rangaih & Others Vrs. J. Sreenivasa Rao & Others (AIR 1983 SC 852, it has been held by the Apex Court of India that "the vacancies, which occurred prior to amendment of any rules, are to be governed by the old rules and not by the amended rules". In another case (of P. Mahendran and Others Vrs State of Karnataka and Others reported in AIR 1990 SC 405) it was held by the same Apex Court that "if a candidate applies for a post in response to advertisement issued by Public Service Commission in accordance with the Recruitment Rules, he acquires a right to be considered for selection in accordance with the then existing rules and that the said right cannot be affected by amendment of any rule unless the amending rule is retrospective in nature. The same view was also taken by Justice R.C. Patnaik in a Division Bench of the Hon'ble High Court of Orissa in the case of Gayadhar Sahu Vs. State of Orissa and others (OJC No.811/90) decided on 26.04.91.

5. Since the Applicant's father died on 27.07.97 and the Applicant represented to the

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authorities on 26.03.98, the Railway Establishment Sl. No.18/99 of 04.12.98 and 15.11.99 are not to effect his prospective of getting a Group 'D' employment (on compassionate ground) simply because he had not passed in Class VIII Examination. It appears, he had read up to Class-VIII at that relevant time.

6. In the above back-ground of the matter, opportunity may be granted to the Applicant to make a consolidated representation to the Railways which he should do by 15.04.2004 and in the event such a representation is made, the Railways should give due consideration to the same within 120 days from receipt of the said representation. While doing so, the Railways should give full consideration to the grievance of the Applicant and grant necessary relief by keeping in mind the judicial pronouncements of the Apex Court of India rendered in the case of Y.V. Rangaiah & Others cases ( Supra) of the Country.

7. With the aforesaid observation and direction, this case under Section 19 of the Administrative Tribunals Act, 1985 is disposed of. Copies of this order be sent to all the parties( Applicant and the Respondents) in the address given in the Original Application and free copies of this order be handed over to the Ld. advocates

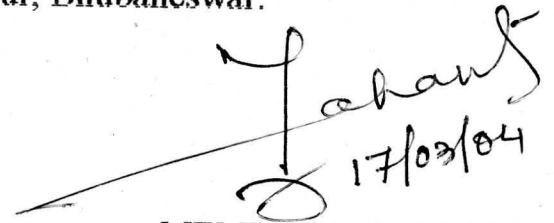
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ORDERS OF THE TRIBUNAL

appearing for the Applicant and to Ms. S.L. Patnaik Ld. Counsel appearing for the Railways. A copy of this Order be also sent to the General Manager of East Cost Railways at Chandrasckharpur, Bhubaneswar.

  
17/02/04  
MEMBER (JUDICIAL)