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O.A. No. 218/07

ORDER DATED 25th JULY, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

A short question raised in this Original Application is that whether the rejection of the application of the 2nd applicant for compassionate appointment is reasonably supported with material or not. The applicant challenges Annexure-A/17 order dated 21.05.07 by which the Screening Committee, comprising of three Sr. Scale Officers for recommendation of the application for compassionate appointment, has rejected the claim of the 2nd applicant on the ground that there was no admissible document proving the passing of 8th Class by the applicant.

2. The short facts upon which the applicants have filed this Original Application are as follows. The husband of the 1st applicant and the father of the 2nd applicant, one Late Bhagaban Rout, was working under the Respondents as Artisan Gr.II. While the same employee was working he died in harness on 16.08.97. Thereafter on producing of the necessary documents both the applicants requested for

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employment under the dying in harness scheme on compassionate ground. However, that was not considered and the 1st applicant was called upon to attend the screening test which she had not attended and subsequently the 2nd applicant became major and filed another application which was not considered in time. The applicant approached this Tribunal in filing O.A No.151/05. Annexure-A/10 order dt. 01.08.06 of this Tribunal reads as follows:-

"Heard Mr. N.R. Routray, Ld. Counsel appearing for the applicant and Mr. C.R. Mishra, Ld. Counsel appearing for the Railways/Respondents and perused the materials placed on record.

Facts of the matter is that Shri Bhagaban Rout, husband of applicant No.1 and father of applicant No.2 while working as Artisan Gr.II under Deputy Chief Electrical Engineer (Construction), Bhubaneswar passed away untimely on 16.08.1997 leaving behind his widow, two sons and two daughters in indigent condition. To over come the sudden joint caused due to the death of the only bread earner of the family. On 27.10.1997 the widow (Applicant No.1) requested the authorities for providing her employment assistance on compassionate ground. The authorities considering her request, asked to appear for screening test held on 30.11.2000, 20.12.2000 and 31.01.2001. But she did not attend the test to take up the job due to her domestic chores. Subsequently, she made a representation for providing an employment in favour of her son (Applicant No.2) who was then a minor. However, on attaining the age of 18 years it has been disclosed by the Respondents that the



grievance for providing employment in favour of Applicant No.2 is under consideration and necessary instruction has been issued to finalize the matter as early as possible.

In view of the admission made by the Respondents that the grievance for providing employment assistance in favour of the Applicant No.2 is under active consideration, there is no need for interference at this stage except directing the Respondent No.5 to finalise the case within two months from the date of communication of this order. It is so ordered.

In the result, this OA stands disposed of with the observation and direction made above. There shall be no order as to costs."

In compliance with the above direction, the present impugned order has been passed by the Respondents.

3. Assailing the present order in Annexure-A/17 the Ld. Counsel for the applicant submits that the rejection of the application of the applicants on the ground that there was no evidence or material to prove the passing of 8th Class by the 2nd applicant is without verification of the facts and without considering the original documents which the applicants produced before the authorities. When the O.A. once came before this Tribunal on 21.04.08 this Tribunal passed the following order:-

"Mr. N.R. Routray, Ld. Counsel appears for the applicant and submits that there is enough material to

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establish that the applicant had passed Class 8th standard which was pre-requisite for his consideration for getting appointment on compassionate ground. In support of his claim he has filed certain documents at Annexure-A/18 and Annexure A/23 and some of these documents are part of the records of the School which according to the Respondents was non-functional at the relevant point of time. The Ld. Counsel for the applicant submits that the rejection of request for appointment on compassionate ground is based only on one ground i.e the genuineness of the Class 8th pass certificate was in doubt. Due to various documents now filed with his rejoinder he claims that there should be no doubt about the educational qualification of the applicant and he deserves to be considered being one of the eligible candidates for compassionate appointment.

2. Mr. B.B. Patnaik, Ld. Counsel appears for the Respondents and submits that the documents and the averments made in the rejoinder were not part of the Original application and hence these documents would require scrutiny at their end.

3. Since the entire case hinges on one issue i.e the genuineness of the educational qualification of the applicant, it would be fair to allow the Respondents to re-verify this aspect in the light of the averments made in the rejoinder as well as the documents produced along with the rejoinder. The Respondents are therefore given opportunity of doing so within a period of one month and apprise the Tribunal about the outcome of this examination/scrutiny/verification of these documents through their agencies. List this case on 26.06.2008.

4. Copy of this order be handed over to Ld. Counsel appearing for both the parties."

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4. In spite of the that order and even after a further extension of time the matter has not been verified properly by the Respondents. However, Respondent No.9, the President of Amruteswar Ucha Bidyapatha, under whose management the School in which the 2nd applicant completed 8th Class, appeared before this Tribunal today and produced all the documents for verification by this Tribunal. In the presence of both the Counsel appearing on either side and the Counsel appearing for the 9th Respondent this Tribunal had perused the Admission Register Book No.1 and Mark sheet of the said School. The perusal of the above documents by the Tribunal is objected by the Counsel appearing for the Respondents on the grounds that the Head Master is keeping the records of the School. Further the Counsel submits that as the Inspector, so directed by the Screening Committee, has given the verification report about the existence of the School, the perusal of the documents by the Tribunal is not acceptable. Accordingly, the Counsel for the Respondents submits that the rejection of the claim of the applicant is justifiable as there was no material before the Committee to consider the claim of the applicant.

5. Considering the stand taken by the Counsel appearing for the parties and perusing the records, this Tribunal see that admittedly the father of the 2nd applicant and the husband of the 1st applicant was a permanent employee and he died in harness. The other facts and situations are not disputed. With regard to the

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applicant's educational qualification of passing of 8th Class by the 2nd applicant, this Tribunal had already considered the objections raised by the Counsel appearing for the Respondents- Railways. However, this Tribunal is competent to verify the records now produced by the 9th Respondent though the Respondent- Railways are not in a position to comply the order of this Tribunal passed on 21.04.08. The Counsel for the Respondents- Railways submits that he has no instruction regarding that.

6. In the above circumstances, on perusing the Admission Register and the Marksheets, though not produced by a memo before this Tribunal, this Tribunal is satisfied with the claim of the 2nd applicant that he had completed 8th Class in Amruteswar Ucha Bidyapatha and had been awarded the marks as entered in the Marksheets. These two documents this Tribunal perused have been duly countersigned and attested by the Inspector of School, Jajpur Circule, Jajpur. This Tribunal is not doubting the signature and seal of the Inspector. If so, this Tribunal is fully justified by perusing the above documents. On the basis of the above documents, this Tribunal is satisfied that the documents produced by the 2nd applicant regarding his qualification are genuine. If so, on the findings entered above, the Respondents, viz., Respondent No.5 & 6 have to be directed to reconsider the application afresh and pass appropriate orders thereon as per the provisions relating to the compassionate appointment. Accordingly, this O.A is allowed

by setting aside Annexure-A/17 order and directing Respondent No.5 & 6 to reconsider the entire material afresh and pass appropriate orders within a reasonable time, at any rate within 45 days of the receipt of the copy of this order. There shall be no order as to costs.

The Admission Register and the Marksheets, after entering in the register of the Registry, are returned back to the Respondent No.9.

Utkapoor
MEMBER (J)