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OA No.456 of 2007
Suna Nayak Applicant
Versus
Union of India & Others Respondents

Order dated:- 09th March, 2010

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Facts are not in dispute that after the death of the father of the applicant on 11.8.1991 prematurely while working as Fitter Grade II in the erstwhile South Eastern Railway, the applicant was a minor. The Railway administration considered the case of the mother of the applicant for providing appointment on compassionate ground. She was kept in the waiting list to be provided with an appointment on compassionate ground as there was no Gr.D vacancy available then. However, she was provided engagement on substitute basis. Applicant attained majority meanwhile for which through application, the mother of the applicant sought direction for providing appointment in favour of the applicant on compassionate ground. The said prayer was rejected by the Respondents. The mother of the applicant was offered regular appointment on 12.4.2001. Instead of accepting such offer, the mother of applicant submitted representations, seeking appointment in favour her son. No reply having been received on the said representations, the applicant approached this Tribunal in OA No. 243 of 2006. This Tribunal in order dated 12.12.2006 disposed of the matter with direction to the Respondents to consider and depose of the pending representations for providing appointment in faovur of the applicant. Thereafter, the Respondents considered and rejected the claim of the applicant for appointment on compassionate ground and communicated the same in letter under Annexure-23.01.2007 (Annexure-R/7). Hence by filling the present Original Application Applicant seeks direction to

the Respondents to reconsider his case for appointment on compassionate ground.

2. In the counter, Respondents did not dispute the factual aspects recorded above. But it has been contended that no one can claim the appointment on compassionate ground as a matter of right. After the death of the railway servant, his widow applied for appointment on compassionate ground. Her case was duly considered and she was kept in the waiting list for appointment in Gr. D post in the railway on compassionate ground. But due to non-availability of vacancy, she was provided engagement as substitute. However, on availability of vacancy she was offered with the appointment but she did not join the post and went on making representations seeking appointment in favour of her son which was duly considered but rejected by the Respondents for the reasons that piecemeal request is not acceptable in the eyes of law. Delay is also taken as one of the grounds in the counter filed by the Respondents.

3. Reiteration of arguments having been heard perused the materials placed on record. I see that the only dispute is that once mother has been considered for compassionate appointment and in fact was provided with such an appointment, she having refused the same, can her son claim to be provided appointment in her place. It is not the case of the Respondents that the applicant lacks eligibility for being considered for appointment in Gr. D post in the Railway. Fact of the matter is that when the death of the railway employee occurred the applicant was a minor. It is also a fact that though it was decided by the Respondents to provide appointment to the mother of the applicant the same could not be effected due to non-availability of vacancy. According to the Respondents the mother was offered with appointment on 12.4.2001 but before that she had applied for appointment in favour of the

applicant which was rejected in letter under Annexure-R/7 dated 23.1.2007.

As the Respondents already agreed to provide appointment on compassionate ground in favour of the mother, there would be no injustice caused in case such appointment is provided to the applicant in place of her mother. I do not see any valid reason assigned by the Respondents in resisting the claim of the applicant for appointment on compassionate ground. Hence, the order of rejection under Annexure-A/7 dated 23.1.2007 is set aside. The matter is remitted back to the Respondents for reconsideration of the grievance of Applicant within a period of 45 days from the date of receipt of this order. In the result, this OA stands allowed to the extent indicated above. No costs.


(C.R.MOHAPATRA)
MEMBER(ADMN.)

Free copy
of order dt.9.3.10
given to the
both counsel.


P.L
SO JY 16/3
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