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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 133 of 2008
Cuttack, this the 23rd November 2009

Sri Balaram Mohanty	Applicant
	Vrs.	
Union of India and others	Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B., CAT, or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.NO. 133 of 2008

Cuttack, this the 23rd day of November 2009

CORAM:

HON'BLE MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

HON'BLE MR. C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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Sri Balaram Mohanty, aged about 31 years, son of late Arjun Mohanty, village Nagena, P.O. Badanagna, Dist.Dhenkanal Applicant

Advocates for applicant - M/s J.M.Pattnaik, S.Misra and
C.Panigrahi

Vrs.

1. Union of India, represented through General Manager, East Coast Railway,Rail Vihar, Chandrasekharpur, Bhubaneswar,Dist. Khurda.
2. The Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar,Dist. Khurda
3. The Divisional Railway Manager (P), East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.Khurda.
4. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.Khurda Respondents

Advocate for Respondents - Mr.G.D.Singh

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ORDER

JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

In this Original Application, the applicant has prayed for the following relief:

“(i) To direct the respondents to provide employment assistance under compassionate ground in any suitable post as available evening Group-D within a reasonable time by quashing the orders vide Annexures A/11 and A/15~~5~~ passed by the respondent No.3.

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(ii) To direct the respondents to pay arrear family pension of the deceased mother from 11.07.1983 to 30.12.2003 to applicant within a reasonable period.

(iii) To pass further orders as deemed fit and proper by this Hon'ble Tribunal for the bona fide interest of justice."

2. The Respondent-Railways have filed their counter opposing the prayer of the applicant.

3. The facts as revealed from the records are that the applicant's father was initially appointed as Gangman under PWI/S.E.Railway/Cuttack on 24.5.1976. While working as such, he having suffered from T.B. was under treatment in S.C.B.Medical Colelge & Hospital,Cuttack. On 15.1.1984 he was found to have been missing and to this effect FIR had been lodged by the mother of the applicant as per S.D.Entry No.196 dated 10.2.1987. While the matter stood thus, the applicant having attained majority, his mother applied for employment assistance on compassionate ground on 19.2.1996. Since no action could be taken, she approached this Tribunal in OA No. 836 of 1996. This Tribunal as per order dated 20.11.2001 disposed of the said O.A. directing that terminal benefits, if any, payable to the applicant's father should be paid to the applicant's mother within a stipulated time. With regard to the prayer of the applicant for employment assistance on compassionate ground, the Tribunal held as under:

“.....Under the Rules which are enclosed by the respondents to their counter, the maximum period of 18 months extraordinary leave was granted to the applicant's father. The submission of the respondents that after expiry of the period of 18 months, he did not report for duty has not been denied by the applicant through



rejoinder. From this, it is clear that on expiry of the period of 18 months of extraordinary leave his father did not report for duty. This is also borne out by the averments of the applicant himself in the O.A., that as on 15.01.1984 while under treatment his father left home without any information and after searching him for three years, a missing report was lodged before the Officer-in-charge, Dhenkanal Police Station. In view of the above facts, the services of the applicant's father rightly stood terminated after expiry of the period of 18 months extraordinary leave. Compassionate appointment is available only to wards of the Railway Employees, who die in harness, leaving the families in distressed condition and/or on the ground of retirement on invalidation. As the applicant's father ceased to be in Railway Service from 11.7.1983, the applicant cannot claim for appointment on compassionate ground."

However, this Tribunal further directed that in case the applicant applies for any post his case should be considered on merits along with others strictly in terms of the Recruitment Rules. In pursuance of the above direction, the applicant submitted a representation dated 4.3.2002 followed by a reminder dated 6.11.2002 and further representations dated 10.10.2003 and 17.1.2005 respectively. The said representations having not yielded any fruitful result, the applicant again approached this Tribunal in OA No. 514 of 2005, disposed of in order dated 14.6.2005 directing the Respondent-Railways to consider the grievances of the applicant as raised in his aforesaid representations and in the O.A. and to pass necessary consequential orders, as due and admissible under the Rules. The Respondent-authority as per order dated 16.11.2005 (Annexure A/11) did not accede to the request of the applicant on the following grounds:



- (i) The applicant's father is reported to have been missing after expiry of the maximum period of extraordinary leave of 18 months, i.e., from 11.1.1982 to 10.7.1983, by which time his temporary service stood terminated.
- (ii) The Hon'ble Tribunal in OA NO. 836 of 1996 observed that under the Rules, after expiry of the maximum period of 18 months extraordinary leave, the temporary services of the applicant's father rightly stood terminated.
- (iii) As the applicant's father ceased to be in Railway service from 11.7.1983, the claim for compassionate appointment is not admissible.
- (iv) The Railway instructions dated 24.5.1982 as referred to in O.A.No. 514 of 2005 relate to Railway employees only and that applicant's father was not a regular railway servant at the time of termination of his services.

The applicant, on receipt of the above communication at Annexure A/11 dated 16.11.2005, again represented to the General Manager, E.Co.Railway, Bhubaneswar, as per Annexure A/12 dated 1.2.2006, in response to which he was intimated as per the communication dated 23.2.2006 by the Deputy Chief Personnel Officer (HQ)-II that the matter was under process and he would be informed in due course. Thereafter, the applicant, as per Annexure A/15 dated 23.10.2006 was communicated that there is no need to review the



case as the communication dated 16.11.2005 (Annexure A/11) was wholesome. It is in this background the applicant has approached this Tribunal for the relief as referred to above.

4. The grounds urged by the applicant are that although the Railway Board's instruction dated 24.5.1982 is applied to his case, the Respondent-Railways have rejected his prayer for compassionate appointment without applying its mind and therefore, the impugned orders at Annexure A/11 and Annexure A/15 are liable to be quashed.

5. We have heard the learned counsel for the parties and perused the materials on record.

6. In order to bring the matter within the framework, it is profitable to quote hereunder the relevant instruction dated 24.5.1982, which is germane to the issue:

“Subject: Appointment on compassionate grounds-Missing Railway Employees.

[No.E(NG)11181/RC/1251 dated 24.5.1982]

The Ministry of Railways vide their letter of even number dated 6.2.1982 had decided that in case an employee's whereabouts were not known for a period of seven years and consequently his settlement dues had been paid to the family, the requests from their wives/wards for appointment on compassionate grounds may be considered, if they are otherwise suitable for such appointment. In pursuance of discussions of the PNM Meeting with A.I.R.F. held in March, 1982 the Ministry of Railways have further decided that in cases of real hardship, the General Managers may consider cases on merit even before the expiry of the seven years period with the condition that the service of the ward would be terminated in case the missing Railway employee becomes available subsequently.



Also such appointment can be offered after a lapse of minimum of 3 years period after the Railway employee is missing."

In this context, the decision of the Railway Board contained in its letter dated 31.12.1986, vide para 5, reads as under

"5. Ministry of Railways have now decided that if a casual labourer with temporary status dies in harness, i.e., during his employment with Railways and if the case presents features constituting extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary power for giving appointment to eligible and suitable ward of such casual labour on compassionate grounds. Such appointment will be only on the form of engagement as casual labour (fresh face) or as substitute. The Ministry expect this power to be exercised judiciously keeping in view in particular the need to contain the total casual labour force as enjoined in the extant instructions on the subject."

Admittedly, the applicant's father was a casual labour with temporary status. It is also not in dispute that while under treatment he was found missing on 15.1.1984 and to this effect FIR as per S.D.Entry No.196 dated 10.2.2007 was lodged. It is also admitted fact that as per Railway Board's instruction dated 24.5.1982 the case of dependants of missing Railway employees for compassionate appointment could be considered in case the whereabouts of former were not known for a period of seven years, although, according to the Railways, this instruction applies to the case of regular employees. Similarly, it is also not in dispute that as per the decision of the Railway Board in letter dated 31.12.1986 there is provision for compassionate appointment of the dependants/wards of casual labour with temporary status who die in harness. Keeping the above points in view, it is to be noted that the



circumstances in which compassionate appointments could be made read as under:

“Appointments on compassionate grounds relate to those appointments which can be made of dependants of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments on compassionate grounds may be made are as below:

- (i) When Railway servants lose their lives in the course of duty or get so crippled that they cannot do any work (this also in the course of duty – for example, loco and traffic running staff in charge of trains involved in accidents).”

From the above recitals it is clear that if a Railway servant loses his life or dies in harness otherwise while in service and/or medically incapacitated, compassionate appointment in favour of dependant or ward could be considered, the object behind it being to redeem the distressed family. By this it is also self-evident that this provision is applicable to the case of regular railway employee or casual labour with temporary status, as the case may be. It is also amply clear from the above provision that in all three factors, viz., death, medical incapacitation and missing of railway employee, either regular or casual labour with temporary status are important aspects of the matter for considering the request for compassionate appointment. As a rule, death, medically incapacitated and missing, each by itself not only connotes and represents different and distinct meaning, but of own and independent meaning. However, the deduction to be derived therefrom is that all those ingredients, viz., death, medically incapacitated and missing are under the banner of compassionate



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appointment though 'missing of railway employee' is an exception in case of casual labour with temporary status. In other words, whereas there is provision for compassionate appointment of the dependents/wards of regular employee, no such provision has been made in case of casual labour with temporary status in similar circumstance. Having regard to the above, it is now to be considered as to whether the Tribunal, in the absence of any such circumstances, can issue a direction to the Respondent-Railways to consider the case of the applicant, whose father was a casual labour with temporary status. Be that as it may, the vital importance of the matter upon which the Respondents have attempted to establish their case is that as per rules, the father of the applicant having been granted 18 months EOL, his services were terminated. In this regard it is to be noted that the Respondents have not produced any corroborative material to show that the services of the father of the applicant had been so terminated. There is no material before this Tribunal to show that any such proceedings had ever been initiated against the father of the applicant, but at the same time the records would reveal that the Railways had allowed 18 months EOL up to 11.7.1983. It is to be noted in this context that the Respondents are silent as to what happened thereafter to the services of the applicant's father.

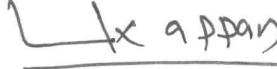
7. Having regard to the above, we quash the impugned orders at Annexures A/11 and A/15. This we are doing also considering the letter dated 6.7.1990 at Annexure A/2 of the Senior Divisional Personnel Officer. Accordingly, we direct Respondent No.2 to reconsider the case of the applicant

(Signature)

and take a final decision in the matter and communicate the same to the applicant within a reasonable time, at any rate, within 90 days of the receipt of this order.

8. The O.A. is accordingly disposed of. No costs.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER



(K.THANKAPPAN)
JUDICIAL MEMBER