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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 199 of 2011

K.Swain Applicant

-Vs-

Union of India & Ors. Respondents

Order dated 17th October, 2012.

CORAM

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....
Heard Mr.N.R.Routray, Learned Counsel

appearing for the Applicant and Mr.S.K.Ojha, Learned ASC
appearing for the Respondents. Hearing is concluded. Order
is reserved. Written note if any be filed by the respective
counsel after serving copy thereof to each other within a
period of seven days hence.

[Signature]

Member (Judl.)

Order dt. 15-11-2012.

CORAM: Hon'ble Mr. A-K. Patnaik, Member (J)

Copy of binal
order dt 15-11-12
issued to
ld. Counsel to
both sides &
also to library

Order pronounced in open court vide
separate sheets attached to the Record.
O.A. is allowed to the extent indicated
above. No costs.

[Signature]
16-11-12.

[Signature]
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[Signature]
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.199 of 2011

Cuttack this the 15th day of November, 2012

CORAM:

THE HON'BLE SHRI A.K.PATNAIK, MEMBER(JUDL.)

...
~~de~~ Kundha Swain, aged about years, S/o. Late Dhulia @
Dhulamani Swain, Village-Ramchandrapur, PO-Saragada
Makundpur, PS-Dharmasala, Dist-Jajpur.

...Applicant

By the Advocates:M/s.N.R.Routray, S.Mishra & T.K.Chaudhury
-Versus-

1. Union of India represented through its General manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Dist-Khurda.
2. Divisional Railway Manager, East Coast Railways, Khurda Road, At/PO-Jatni, Dist-Khurda.
3. Senior Divisional Personnel Officer, East Coast Railways, Khurda Road, At/PO-Jatni, Dist-Khurda.
4. Chief Personnel Officer/East Coast Railway, E.Co.R Sadan, Chandrasekharpur, Bhubaneswar

...Respondents

By the Advocates:M/s.S.K.Ojha & S.C.Paikray

...
ORDER

A.K.PATNAIK, MEMBER(J):

This is the third round of litigation by the applicant before this Tribunal. Earlier, he had approached this Tribunal in O.A.No.23 of 2003. This Tribunal vide order dated 18th day of July, 2003 disposed of the said O.A. in the following terms.

I have carefully considered the rival submissions of both sides and taken note of the citations and circulars produced before me at the time of hearing. In circular No.P/R/EA/Poly dated 12.9.1995, the Chief Personnel Officer of S.E.Rly. at Garden Reach, Kolkata has clarified that "if the employee has less than three

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years of service before superannuation (i.e., he is past the age of 55 years) at the time of decision is taken, the personal approval of the General Manager to be obtained before the offer of appointment on compassionate ground is made"; which goes to show that there are no prohibition for providing compassionate employment to a family member of an employee retiring after 55 yrs. That apart, it is crystal clear from the School Leaving Certificate, Voter list and the affidavit sworn in by the ex-employee and the Applicant himself that the Applicant is the son of Dhuli Swain. As such, the D.R.M., ought not to have shown much credence on the facts as ascertained on enquiry by the Inspector, without any basis/documentary proof; because law is well settled that men may lie but document will now. That apart, the report of the Inspector was one-sided (not being drawn after noticing the Applicant) and bad being an outcome of the violation of the principles of natural justice. Since due to the discrepancies in the matter of son-ship of the Applicant the case of the applicant was rejected by the D.R.M. instead of sending it to the General Manager for consideration, in view of the discussions made above, the Divisional Railway Manager (P), (S.E.Railway now East Coast Railway) Khurda Road is directed to immediately re-process the matter and send the same to the appropriate authority (i.e., General Manager of Railways) for consideration of the grievances of the Applicant for providing him an employment on compassionate ground. The entire exercise should be completed within a period of 120 days from the date of receipt of a copy of this order".

2. Aggrieved with the above decision, Respondent-Railways moved the Hon'ble High Court of Orissa, which formed the subject matter of W.P.(C) No.5091 of 2004. The Hon'ble High Court of Orissa dismissed the said Writ Petition vide order dated 2.9.2008 as under:

"Undisputedly, the opposite party had produced documents, such as, School Leaving Certificate and Voter List to show that he is the son of the ex-employee Dhulia Swain. Ex-employee Dhulia Swain himself also

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filed an affidavit accepting the claim of the opposite party. Apart from the above, it appears that the opposite party has availed the benefits available to the children of Railway employees. From Annexure-6/1, it appears that the opposite party has availed facilities of privilege pass and that is also not disputed by the Railway administration. The affidavit of ex-employee also shows that the opposite party is his son known in different names. Voter list under Annexure-G/1 and the certificate issued by the Tahasildar, Dharmasala under Annexure-H/1 also indicate that the opposite party is the son of ex-employee Dhulia Sain. The School Leaving Certificate under Annexure-15 also shows that opposite party is the son of Dhulia Swain. With regard to the School Leaving Certificate an enquiry was conducted and under Annexure-1/1, the Headmaster of Ramchandrapur Primary School has clarified that according to the admission register, the date of birth of opposite party is 20.10.1965 and he has been described as son of Dhulia Swain in the records of the school and such endorsement in the records of the school had been made at the time of admission of the opposite party on 12.7.1971.

On consideration of these documents, the direction of the Tribunal for consideration of the case of the opposite party does not warrant any interference.

Accordingly, the writ application is devoid of any merit and is dismissed”.

3. Review Application preferred by the Railways in RVWPT No.20/2009 was also dismissed by the Hon'ble High Court of Orissa on 6.8.2010. In the circumstances, the applicant having not received any communication in compliance of the order of this Tribunal, again moved this Tribunal in O.A.748/2010. This Tribunal vide order dated 30.11.2010 disposed of the said O.A. at the admission stage as under:

“We find no justification on the part of the Respondents not to reconsider the case of the applicant as directed by this Tribunal in order dated 18th July, 2003, if the order has not been stayed by any higher

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forum. This being the position, without expressing any opinion on the merit of the matter by way of reiteration, this O.A. is disposed of at this admission stage with direction to the Respondents to communicate the decision on reconsideration of the case of the Applicant pursuant to the earlier order of this Tribunal within a period of 90 days from the date of receipt of copy of this order”.

4. In compliance of the above direction of this Tribunal, Respondent – Railway issued Annexure-A/6 dated 22.02.2011 rejecting the prayer of the applicant for compassionate appointment, the gist of which is reproduced as under:

“Sub: O.A.No.23/2002 and O.A.No.748/2010 before the Hon’ble CAT/CTC and WP©NO.5091/2004 before Hon’ble High Court/CTC.

1. Hon’ble CAT/CTC vide its order dtd. 18.07.2003 has directed Divisional Railway Manager (P) (South Eastern Railway, now East Coast Railway)/Khurda Road to “immediately reprocess the matter and send the same to the General Manager for consideration of the grievance of the applicant for providing him employment on compassionate ground.. The said order was upheld by Hon’ble High Court in its order dtd. 02.09.2008 and further clarified vide order dtd. 06.08.2010 in Review Petition No.20/2009 that Shri Kanda Swain is the adopted son of Shri Dhulia Swain.

2. As per Rule 2(a) of Railway Services Pass Rules, 1986, “adopted child” means, a child for whom there is satisfactory proof of adoption irrespective of the fact whether such adoption is permissible or not under the personal law governing the Railway servant concerned.

3. It is observed that on declaration of Shri Dhulia Swain, one set of second class Privilege Pass No.309845 was issued on 30.12.1995 mentioning the age of the son as 16 years and another set of second class Privilege Pass No.698922 was issued to him on 03.08.1996 mentioning the age of his son as 17 years. Shri Kanda Swain was 30 years of age as on 30.12.1995 and 31 years of age as on 03.08.1996, date of birth being 20.10.1965 as per School Leaving Certificate and

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Settlement documents. Obviously, the above two passes were not issued to Shri Kanda Swain because he would not be eligible for Privilege Pass in terms of Rule-2(d) of Railway Service Pass Rules, 1986. This indicates that Passes were not issued in favour of Shri Kanda Swain whose appointment is sought for by Shri Dhulia Swain on compassionate ground. It is further observed that adoption deed has been executed on 20.11.2002, i.e., after the date of retirement and not during the service time. Therefore, he was not a family member during his service period as per Pass Rules.

In view of the above, this compassionate ground appointment case does not fall within the purview of rules circulated by Railway Board vide letter No.E(NG) II/86/RC-1/1 Policy dtd. 11.12.1996”.

Accordingly, the compassionate ground appointment to Shri Kanda Swain cannot be extended”.

5. Aggrieved with the above decision of the Respondent-Railways, the applicant has moved this Tribunal by filing the present OA seeking the following relief:

i) To quash the impugned order dtd. 22.02.2011 and 21.03.2011 under Annexure-A/6 series.

ii) And direct the Respondents to provide employment to the applicant on compassionate ground.

iii) And direct the Respondents to treat an employee of Railway w.e.f. 22.02.2011.

6. Respondents filed their counter opposing the prayer of the Applicant.

7. Heard Shri N.R.Routray, learned counsel for the applicant and Shri S.K.Ojha, learned Standing Counsel appearing for the Respondent-Railways and perused the materials on record. It reveals from the record that the sole point revolves round the adoption of the applicant by the ex-railway employee. But we find that this point is no more res integra in view of decision of this Tribunal in

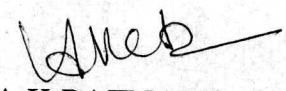
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O.A.No.23/2002 which has been confirmed by the Hon'ble High Court of Orissa in W.P.(C) No.5091/2004. In the circumstances, I am not inclined to take a further view in the matter. It may be added that the Respondent-Railways have not disputed the authenticity of School Leaving Certificate as well as the Voter Identity Card produced by the applicant to establish that he is the adopted son of the ex employee. Therefore, if at all the adoption deed had been executed in the year, 2002, i.e., after the retirement and not during the service time of the railway employee, it does not make the case of the applicant vulnerable – rather, the same should have been taken into consideration by the Respondent-Railways together with the School Leaving Certificate and Voter Identity Card as corroborative evidence. In the circumstances, I cannot but hold that the Respondent-Railways were not justified in rejecting the case of the applicant for compassionate appointment on a ground which is not consistent with the decision of this Tribunal in O.A. 23/2002 and confirmed by the Hon'ble High Court in W.P.(C) No.5091/2004.

8. For the reasons discussed above, impugned communications dated 22.02.2011 and 21.03.2011 vide Annexure-A/6 series are quashed and in effect, the Respondent-Railways are hereby directed to reconsider the matter and communicate the decision taken thereon to the applicant within a period of sixty days from the date of receipt of this order. *all*

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9. In the result, O.A. is allowed to the extent indicated above. No costs.



(A.K.PATNAIK)
MEMBER (JUDL.)

