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**O.A. No. 84 of 2009**

**Bijay Kumar Jena** .....Applicant

**Versus**

**Union of India & Ors.** .....Respondents

ORDER DATED: 26th March, 2010

CORAM:

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

The present O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985 by Shri Bijay Kumar Jena, Son of Shri Bainā Jena, seeking compassionate appointment due to the premature death of his father while in service on 6.9.1999, who was serving as a Head Trackman under P.W.I, Barang in Khurda Road Division. This is the third round of litigation resorted to by the applicant. The relief sought for by the applicant is reproduced below:

“Let the original application be admitted and notice issued to the respondents calling upon them to show cause as to why the order of Respondent No.3 vide Annexure-A/9 shall not be quashed and why the applicant shall not be given appointment under Rehabilitation Assistance under the Respondents as the son of Late Bainā Jena within a given time and in the event, the respondents fail to show

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cause or show insufficient cause, the said relief be granted in favour of the applicant."

2. The case of the applicant was earlier considered by the Divisional Railway Manager but the same was rejected vide Annexure-A/9, which is under challenge in the present O.A. The applicant has averred in the O.A. that the Railway-authorities have rejected his prayer for compassionate appointment primarily on the ground of discrepancy noticed between the education certificate issued by the Board of Secondary Education and other documents like Legal heir Certificate (Annexure-A/2), the Identity Card issued by the Election Commission of India, the Affidavit filed by Shri Pratap Jena and Sukanti Jena (Annexure-A/6 series). The applicant contends that his father died leaving behind four sons including the applicant, two unmarried daughters and his widow, Smt. Sumitra Jena (mother of the applicant). He was asked by the Railway-authorities on 18.11.2002 to obtain a certificate from the Revenue-authority in support of the fact that Baina Jena and Bauri Bandhu Jena are one and the same person and that he is the natural father of the applicant. The certificate given by the competent Revenue-authority, which was obtained by the applicant, confirmed that the Baina Jena and Bauri

Bandhu Jena is one and the same person. Applicant further averred that as a legal heir of the deceased employee, Baina Jena, he has received his share of the Death-cum-Retirement benefits. It is the contention of the applicant that inspite of the direction of this Tribunal in O.A. No. 597/2006, the prayer of the applicant for being considered for compassionate appointment did not succeed. Hence, he has knocked at the door of the Tribunal once again in the present O.A.

3. Respondents, by filing a counter have submitted the following factual position:

“5. That the brief fact of the case, one Sri Baina Jena while working as Hd. Trackman under the Section Engineer(P.Way) Barang SE(PW)BARANG, expired on 06.09.99. After his death, the widow Smt. Sumitra Jena submitted an application dated 16.11.2K(R/1) to give Employment Assistance (E.A.) in favour of her son Sri Bijay Kumar Jena. While processing the case, some discrepancies have been observed in the name of ex employee as Pratap Jena in H.S.C. Baureebandhu Jena in the Candidate’s Voter Identity Card & Bain Jena in the Duplicate Voter Identity Card of the Candidate. On 23.8.02,(R/2) the widow submitted an application that Sri Bijaya Kumar Jena is their natural born Son & by mistake, his Father’s name has been recorded as Pratap Jena in the School Record & Pratap Jena is her Brother-In-Law. She also submitted that her Husband’s name was wrongly recorded as Bauri Badhu Jena in the Voter Identity Card of her son.

Subsequently, her husband's name has been corrected as Baina Jena in her son's duplicate Voter Identity Card. Then the widow was asked to produce a Certificate from the Civil Authority that Baina Jena & Baureebandhu Jena is one & the same person & that Baina Jena is the natural father of Sri Bijaya Kumar Jena & not Pratap Jena.

Similarly, it was observed that there is a difference in the name of the Candidate i.e. Bijoy Kumar Jena & Bijaya Kumar Jena & the widow was advised to submit a one & the same person Certificate from the Civil Authority. The widow submitted a Certificate dated 16.10.2004 from the Tahasildar, Jatni that Sri Bijoy Kumar Jena, S/o Late Baina Jena & Bijay Jena, S/o Bauree Bandhu Jena & Bijaya Kumar Jena, S/o Late Baina Jena is one & the same person. Similar type of Certificate was issued on 04.03.2006.

On 25.9.03, the Candidate, Bijaya Kumar Jena submitted a Certificate from the Tahasildar, Jatni that Late Baina Jena & Late Bauri Bandhu Jena is the one & same person. He also submitted an Affidavit sworn by Sri Pratap Jena & his wife that Bijoy Kumar Jena is the natural born son of late Baina Jena. That his father's name has been wrongly recorded in the B.S.E. Certificate & all the School Records as Pratap Jena. He also enclosed a copy of Hon'ble Tribunal's order dated 05.9.03 passed in O.A. 586/03.

On 28.10.03, the Asst. Personnel Officer-III advised to re-examine the case basing on the documents furnished by the applicant & put-up to competent authority for decision who rejected the case as the Educational Qualification Certificate indicates the Candidate's father's name as Pratap Jena which is not in consistency with

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Tahasildar's Certificate & the candidate was informed vide this Office Letter No. P/R/EA/OT/Gr.-'C'/OA 586/03 dated 25.5.06 (R/3). Being aggrieved, the applicant has filed the O.A.No. 597/06 in the Hon'ble Tribunal with relief to admit O.A. and to provide Compassionate Appointment under Rehabilitation Assistance Scheme as a legal heir of Late Bainā Jena. The case was contested by Rly. Administration and after hearing from the Ld. Advocate from both sides, the Hon'ble Tribunal has disposed of the case on 18.8.2008 with the following order.

6. That in the above premises, the impugned order Annex-A/12 is hereby set-aside & the matter is remitted back to respondents to give fresh consideration to the case of applicant by taking cognizance of all the materials especially materials available under Annexure-A/2 and A/6 series within the period of 60 days from the date of receipt of copy of this order & communicate the result thereof to the applicant.

7. That in result, this O.A. stands allowed to the extent stated above.

In obedience to Hon'ble Tribunal's order dated 18.8.08, the case of the applicant was examined & a detailed speaking order was issued by this office vide this Office letter dated 03.12.08 & the same was communicated to applicant. The copy of said letter has been annexed as Annexure-A/9 to O.A. by the applicant. In the said speaking order, it was stated that the documents at Annexure-A/2 and A/6 series indicates that the applicant is the son of Sri Bainā Jena. But the Educational Certificate indicates that the applicant is the son of Sri Pratap Jena & there is no such document issued by the Civil Authority to establish that 'Bijoy Kumar Jena, S/o Pratap Jena &

Bijoy Kumar Jena S/o Bainā Jena is one & the same person'. As such, no cognizance can be given to the Educational Certificate produced by applicant showing his father's name as Pratap Jena."

4. Having heard the Ld. Counsel for the respective parties, perused the materials placed on the record. During hearing, both sides almost reiterated their stand as per the pleadings already made.
5. In compliance to the order passed by this Tribunal, the Respondents submitted their settlement case file No. Sett/Engg/onLR/488/5 of Late Bainā Jena regarding the status of the applicant as that was the main issue/ground based on which decision had been taken by the concerned Railway-authorities to reject the case of the applicant for compassionate appointment. Relevant portion of Page 38 of the said file is extracted below:

Identification-cum-heirship-cum-Guadianship certificate

Certified that Smt. Sumitra Jena is the sole legal surviving widow of Late Bainā Jena, designation Ex.Gangman. The deceased employee is not survived by any other children or by any other wife. The deceased employee is survived the following widow and children only.



Name of the widow      Age on the dt. of the death, Date of birth.  
Widower

Smt. Sumitra Jena, widow 1.7.1949

Name of relation, Age on the dt. of the death, Date of birth.  
Guardianship

1. Sri Bijoy Kumar Jena, son	2.6.70
2. Sri nand Kishore Jena, son	10.9.72
3. Ku Lilibala Jena, u/m/d	21.3.75
4. Juli Bala Jena, ---do---	4.11.79
5. Sri Binod Kumar Jena, Minor son	2.8.83
6. Sri Bikram Kishore Jena,--do--	5.12.89

6. The above would reveal that Shri Bijay Kumar Jena has been entered in this record of the Railways as the son of the deceased employee with date of birth 2.6.1970 and this document is authenticated by the Sr. Assistant Engineer, S.E.Railway, Bhubaneswar.

7. From the pleadings as well as the hearing, one thing is crystal clear that Respondents have not at all considered the case of the applicant in terms of the extant policy of Government. They have not entertained the applicant's case due to the discrepancy noticed in the name of the father of the applicant. This discrepancy is now reconciled particularly in view of the service record of the deceased employee written by

the Sr. Assistant Engineer, S.E.Railways, Bhubaneswar (as cited above).

8. Since, the document clearly shows the applicant to be the son of the deceased employee, Baina Jena, notwithstanding the order at Annexure-A/9 dated 3.12.2008, Respondents are directed to examine the case of the applicant for offering him appointment on compassionate ground as per the relevant instructions on the subject. Respondents shall complete this exercise and pass a reasoned order within two months from the date of issue of this order.

9. With the above observation and direction, the O.A. is disposed of. No costs.

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

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