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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO.692 OF 2012

Cuttack the 6th day of August, 2013

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

Smt. Mango,
aged about 49 years,
W/o. Late Debraj Das,
Permanent resident of Manoharpur,
Tuari tola, PO. Manoharpur,
Dist. West Singhbhum (Jharkhand),
At present residing at Sector-B,
Bondamunda, Main Road,
PO. Bondamunda,
Dist. Sundargarh (Orissa)

...Applicant

(Advocate: M/s. B.S. Tripathy, M.K. Rath, J. Pati, Ms. M. Bhagat)

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Union of India Represented through

1. The General Manager,
South Eastern Railway,
Garden Reach, Kolkata-43
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Kolkata-43
3. The Divisional Railway Manager,
South Eastern Railway,
Chakradharpur Railway Division,
At/PO-Chakradharpur,
District-Singhbhum (Jharkhand).
4. The Senior Divisional Personnel Officer,
South Eastern Railway,
Chakradharpur Railway Division,
At/PO-Chakradharpur,
District-Singhbhum (Jharkhand).

... Respondents

(Advocate: Mr. S.K. Ojha)

ORDER(Oral)

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

The applicant in this case has approached this Tribunal challenging the order dated 25.04.2007 passed by the Divisional Railway Manager (Respondent No.3) in which her prayer for providing compassionate appointment to her son has been rejected. Besides, she has made a prayer that the compassionate appointment should be reconsidered by the concerned authorities and also the entire dues of her late husband should be paid to her within a stipulated period.

2. The short facts of this case are that the applicant is the widow of one late ~~Mr~~ Debraj Das, who was working as a Gangman on casual basis in the Chakradharpur Railway Division of S.E. Railway. According to applicant, her husband was appointed as casual Gangman on 16.12.1989. On 22.01.1990, when he was performing his duties at Posaita Railway Station, he was kidnapped by some unknown miscreants. A case was registered with the police and after investigation, on 31.08.1990 the police found a human skeleton in a paddy field which was sent for a DNA test. It was ultimately ascertained that the said skeleton was of the applicant's deceased husband. Therefore, the death of the husband of the applicant had taken place in ~~that~~ unusual circumstances. The applicant, thereafter, made a prayer for compassionate appointment in favour of her son which was not considered by the authorities. Therefore, she approached this Tribunal by filing O.A. No.636/05 which was disposed of on 29.11.2006 with a direction to the Respondents to dispose of the representation dated 14.02.05 within a period of three months. In pursuance of this order, Respondent No.3 disposed of the representation by an order dated 25.04.2007 and rejected the prayer of the

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applicant which is the subject of challenge in this O.A. It is the prayer of the applicant in this O.A. that while her husband was on duty, he was kidnapped and subsequently murdered which was confirmed after the police investigation. Her son has attained majority on 08.01.2003 and has studied up to Class-IX as he could not continue further study due to poor financial condition of the family. At present the family is in distressed condition and therefore, a provision of a compassionate appointment in favour of her son will redress the situation of the family. It has been alleged in the O.A. that the concerned authorities have passed a cryptic and mechanical order without application of mind and rejected the prayer for compassionate appointment in favour of her son.

3. The Railway authorities have filed their counter affidavit in this case. On perusal of counter, it reveals that the applicant's husband was engaged on casual basis on 16.12.1989 and worked for a period of only 37 days till 22.01.1990. Regarding the claim of the applicant that her husband was kidnapped and subsequently a human skeleton was discovered which was identified by DNA test as that of her husband, the Respondents in their counter affidavit have pleaded ignorance about this matter since no document ^{or} ~~and~~ report is available with them with regard to the claim of the applicant. It is further mentioned that the applicant submitted a representation on 22.10.1992 with a prayer for employment assistance which was sent to the General Manager, S.E. Railway for a decision. However, it was regretted since this case did not fall within the ambit of Rules governing compassionate appointment. In terms of S.E. Railway's Establishment Serial No.18/87, compassionate appointment can only be considered in case of casual labour with temporary status who dies in harness. Since the applicant's late husband had rendered only 37 days of casual service, therefore,

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he had not attained temporary status, which is granted only after 120 working days. The Respondents have therefore pleaded on this ground that the applicant's case is not eligible for consideration for compassionate appointment. Further, in compliance with the orders of this Tribunal in O.A. No.636/05, the Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division vide order dated 25.04.2007 has disposed of the matter and rejected the prayer of the applicant since her husband was a daily rated casual labour who had not attained temporary status.

4. It is further argued in the counter affidavit that the applicant is a permanent resident of Manoharpur, West Singhbhum (Jharkhand). Therefore, this Tribunal has no jurisdiction to entertain the O.A. in which, the cause of action has arisen beyond the territorial jurisdiction of ^{Odisha} ~~Orissa~~. In the cause title of the O.A. the applicant has indicated that she is at present residing at Sector-B, Bondamunda in the District of Sundargarh, ^{Odisha} ~~Orissa~~. This status has been challenged by the Respondents in the counter affidavit.

5. It is further submitted in the counter affidavit that this O.A. is badly barred by limitation and therefore the prayer of the applicant should not be considered by this Tribunal.

6. I have heard the Ld. Counsels for both parties and perused the records.

7. The Respondents have raised the point of jurisdiction of this Tribunal to entertain this case. Rule-6 of CAT (Procedure Rules), 1987 prescribes that "an application shall ordinarily be filed by an applicant with the Registry of the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action wholly or partly has arisen." In the present case

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the cause of action has certainly arisen outside the State of ^{Odisha} Orissa. But in the cause title of the O.A., the applicant being the wife of late Debraj Das, has mentioned that she is residing at present in _____

Sector-B, Bondamunda Main Road, PO- Bondamunda in the District of Sundargarh, ^{Odisha} Orissa. On the basis of this, the matter has been admitted by this Tribunal on 18.09.2012. In view of this I would not like to go into the point of jurisdiction in view of the provisions of Rule 6 of the CAT(Procedure) ^{Rules}.

8. Coming to the merit of this case, it has been admitted by both sides that the applicant's husband was engaged on a casual basis in the S.E. Railway and worked for a period of 37 days only from 16.12.89 to 22.01.90. Because he did not work for the minimum period of 120 working days, he did not attained ^e the temporary status. The learned Counsel for the Respondents has submitted before this Tribunal that the Railway Board's letter dated 31.12.86 circulated under S.E. Railway's Establishment Serial No.18/87 categorically stipulates that "only if the casual labour with temporary status dies in harness and if such cases feature extreme hardship ^{meriting} ~~imparting~~ special consideration, then the General Manager could exercise his personal discretionary power for giving appointment to eligible and suitable ward of such casual labour on compassionate ground." In the S.E. Railway Establishment Serial No.94/87 a clarification has been issued that the Ministry's letters dated 04.05.84 and 31.12.1986 apply also to widows of casual labour dying in harness. In the case of the present applicant her husband had rendered only for a period of 37 days of service and he did not attain temporary status and therefore was not covered under the scheme of compassionate appointment as per the decision of the Railway Board. Besides no

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record was available with the Railway authorities regarding the unusual circumstances in which the applicant's husband was allegedly kidnapped and murdered.


9. On a perusal of the order of Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division dated 25.04.07 which is by way of disposal of the representation dated 14.02.05 in compliance of this Tribunal's order dated 29.11.06 in O.A. No.636/05, it is seen that this is a detailed order in which the prayer for compassionate appointment as well as for payment of settlement dues and compensation to the applicant have been discussed point wise. The ground on which the prayer for compassionate appointment has been rejected, i.e., "as the applicant's husband had rendered only 37 days of casual service and was not conferred with temporary status, her case is not covered by the scheme for compassionate appointment, is found to be cogent and convincing. The Ld. Counsel for the applicant has not been able to put forward any substantive ground on which the decision of the Respondent No.3 can be faulted, with. Ld. Counsel for the applicant strenuously pleaded that since this is a matter of compassionate appointment, the Tribunal should give a direction for fresh consideration of this case. However, any direction for fresh consideration should be supported by a convincing ground. When the applicant does not have the basis of eligibility for compassionate appointment as per the instructions of the Railway Board, the question of reconsideration would not arise. Compassionate appointment also has to be given within the four corners of the existing Rules and cannot be an arbitrary ^{act} of generosity. The applicant's husband worked only 37 days as a casual labour and did not attain temporary status. Under the existing

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Rules and instructions this case is not ab-initio eligible for compassionate appointment.

10. It is also found that the claims have been agitated after a long lapse of time. Even, if the order at Annexure-A/3 which is under challenge was passed on 25.04.07, the present O.A. has been filed on 09.08.12, i.e., after a lapse of more than five years. When a question was put to the Ld. Counsel for the applicant regarding the matter of delay, the Ld. Counsel for the applicant replied that because of illiteracy and poor financial condition, the applicant has filed this O.A. at a belated stage. The reply given by the applicant's counsel is not at all convincing. The applicant had filed O.A. No. ⁶³⁶~~365~~/05 which was disposed of by the Tribunal vide order dated 29.11.06. In compliance of the order of this Tribunal the Respondents disposed of her representation by an order dated 25.04.07, which they have communicated to the applicant in her permanent address. Since the applicant has now approached this Tribunal challenging the speaking order of the Respondents in a 2nd round of litigation, the explanation offered by the Ld. Counsel for the applicant for unreasonable delay does not hold water. ^eBoth on the point of limitation as well as on the point of merit, ^ethe applicant's Counsel has failed to establish a case for interfering with the orders passed by the Respondents at Annexure-A/3.

11. Therefore, in view of the detailed discussions made above, the O.A. is dismissed both on merit as well as on the point of limitation.


(R.C. MISRA)
MEMBER(A)