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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 260/00768 of 2014
Cuttack, this the 28th day of July, 2017

CORAM:

The Hon'ble Shri A.K.Patnaik, Judicial Member

.....

Shri Balaram Mohanty, aged about 37 years, son of Late Arjun Mohanty, Vill. Nagena, Po. Badanagna, Dist. Dhenkanal at present residing At/Po. Birogobindpur, Sakhigopal, Puri, Dist. Puri, Odisha.

.....Applicant

By legal practitioner : M/s. J.M.Pattnaik
& C.Panigrahi, Advocate.

Versus

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 Rly Manager (P), East Coast Railway, Khurda Road Division, At/Po. Jatni, Dist. Khurda.
4. The Assistant Personnel Officer (Wel), Office of the General Manager (P), 2nd Floor, South Block Rail Sadan, Samanta Vihar, Bhubaneswar-751 017.

.....Respondents

By the legal practitioner : Mr.M.K.Das, Advocate

ORDER

A.K.Patnaik, JM:

The applicant has filed this Original Application under section 19 of the A.T. Act, 1985 seeking the following reliefs:

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"Under the circumstances, the Hon'ble Court may graciously be pleased to quash the letter dated 7.3.2014 and direct the Respondents to consider/reconsider the case of the applicant as per the observation and direction made in OA No. 133 of 2008 disposed of on 23rd November, 2009 and to provide him appointment on compassionate ground within a stipulated period to be fixed by this Hon'ble Tribunal.

And further be pleased to pass any other order/orders as deemed fit and proper."

2. The observation of this Tribunal in the earlier OA No. 133 of 2008 disposed of on 23rd November, 2009 is as under:

"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 dependent 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 of by itself not only connotes and represents different and distinct meaning, but of own and independent meaning. However, the deduction to be derived there from is that all those ingredients viz. Death, medically incapacitated and missing are under the banner of compassionate 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 dependants/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

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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 upto 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 Annexure 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 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."

3. Thereafter, the Respondent No.2 considered the case of the applicant and intimated the result thereof vide order dated 27.1.2014 – relevant portion of the said order is quoted herein below:

"The ex employee Sri Arjun Mohanty was initially appointed as Temporary Casual Gangman on daily rated basis purely in casual capacity. He attained Temporary Status for getting CPC scale of pay on 24.5.1976. He was on Extra Ordinary Leave (EOL) w.e.f. 11.1.1982 to 10.7.1983. No extraordinary leave can be sanctioned to a Casual Staff beyond the maximum period of 18 months as

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per the extant rule. Therefore he ceased to become a Casual Labour on roll w.e.f. 11.7.1983. Subsequently, he was reported missing.

Only regular employees in the event of death/de-categorization etc are eligible for appointment on compassionate ground. Compassionate Appointment in favour of Sri Balaram Mohanty, S/o. Sri Arjun Mohanty was not considered as such. Appointment on compassionate ground is not a matter of right and is subject to fulfilment of certain other conditions like dependant minor family members available, pecuniary condition etc. It may be noted that widow of the ex employee also died in the year 2003 of natural cause. Further compassionate appointment is given for immediate succour to the family. In this case, the death had occurred in 1982-83 about 30 years back. It also depends upon satisfaction of the competent authority on the basis of a balanced and objective assessment of the financial condition of the family having regard to the number of dependents, assets, liabilities left by the Rly Employee, income of any member of the family as also his liability etc.

The widow is the first claimant for such appointment who died in 2003. The applicant is the sole member of his family he has no family members to support as well as no liabilities to meet out. The ex employee was not a regular railway servant but was working as CPC Casual Labour in which case only their wards/widows can be considered for engagement as substitute or casual labour with the objective satisfaction of the Competent Authority besides availability of vacancy. Since employment pattern in the Railways has undergone a change and this Railway is no longer engaging substitutes and casual labours his case deserves no merit to be considered specially so after 30 years of death/missing of his father hence no element of compassion is left. Today he is around 36 years old adult who can eke out a living like many others. I find no merit in his case for providing employment assistant on compassionate grounds and thus regret the same."

4. After receipt of the above said communication, the applicant represented to the General Manager on 5.3.2014 and

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an order was issued by the GM, ECoRly, BBSR, which was communicated to the Applicant vide letter dated 7.3.2014 which is quoted herein below:

"During the staff grievance Interview held on 5.3.2014, you have represented to the General Manager regarding employment assistance on compassionate ground in favour of your.

In this connection, the General Manager has examined the case and found that **you are over aged**. Hence he has regretted it, as per extant Rules.

This is for your information and in disposal of your representation submitted to the General Manager."

5. The Respondents have filed their counter supporting the stand taken in the order dated 27.1.2014 and 7.3.2014 and contested the case of the applicant with prayer for dismissal of this O.A. being devoid of any merit.

6. The Applicant has also filed rejoinder making efforts to overcome the stand taken in the counter and to justify this to be a fit case where the relief is to be granted to him.

7. Heard Ld. Counsels for both the parties and perused the records.

8. In this case the father of the applicant while under treatment at SCB Medical College and Hospital, Cuttack went on missing w.e.f. 15.1.1984. FIR was lodged before the police station on 10.2.1987. The applicant at that relevant point of time was a minor and after attaining majority, the mother of the applicant applied for compassionate appointment in favour of his

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son (applicant) on 19.2.1996. Since no action was taken, he approached this Tribunal in OA No. 836 of 1996. The said OA was disposed of on 20.11.2001 with some observation. In compliance of the order of this Tribunal, the applicant submitted representation on 4.3.2002 followed by reminders dated 6.11.2002, 10.10.2003 and 17.1.2005. Thereafter, alleging inaction he approached this Tribunal by filing OA No. 514 of 2005 which was disposed of on 14.6.2005 with some direction. The Respondents rejected the case of the applicant vide order dated 16.11.2005 on the following grounds:

(i) The applicant's father is reported to have been missing after expiry of the maximum period of extra ordinary leave of 18 months i.e. from 11.1.1982 to 10.7.1983 by which time the 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 ex ordinary 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 OA No. 514 of 2005 relate to Railway employees only and that the applicant's father was not a regular railway servant at the time of termination of his services."

9. The applicant submitted appeal on 16.11.2005 and 1.2.2006 against the above order of rejection and in response thereto, he was intimated vide letter dated 23.2.2006 that the matter was under process and he would be informed in due course. Thereafter, vide letter dated 23.10.2006 he was

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informed that there is no need to review the order of rejection dated 16.11.2005. Thereafter, the applicant challenged the said order of rejection in OA No. 133 of 2008 and this Tribunal quashed the order of rejection and directed for reconsideration vide order dated 23.11.2009. The Respondent No.2 on reconsideration, rejected the claim of the applicant on some other grounds than the grounds upon which his request was rejected earlier, as quoted above. However, he represented the GM, ECoRly, BBSR against the said order of rejection. The GM, ECoRly, BBSR did not accept the grounds of rejection taken by the Respondent No.2 in letter dated 27.1.2014 but rejected the grievance/claim of the applicant on the ground that the applicant was overaged. The rejection on the ground that the applicant is over age has been questioned by the applicant in this OA on the footing that the delay being not attributable to the applicant, the rejection of his claim on the said ground is not sustainable in the eye of law.

10. After going through the pleadings and materials placed in support thereof, I find force in the submission of the learned counsel for the applicant that in the above circumstances the delay in considering the claim of the applicant cannot be attributable to the applicant. I find that he has been pursuing his grievance before the authorities and before this Tribunal since 1996. As over age is the only ground taken by the

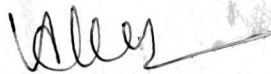
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GM, ECoRly for not granting the appointment on compassionate ground to the applicant and delay being not attributable to the applicant, for the discussions made above, I find this is a fit case where the impugned letter/order dated 7.3.2014 is liable to be quashed. Accordingly, the letter/order dated 7.3.2014 is quashed and the matter is remitted back to the Respondent No.1 to reconsider the case of the applicant in the light of the discussions made above and communicate the result thereof in a well reasoned order to the applicant within a period of 60(sixty) days from the date of receipt of a copy of this order.

11. This OA is accordingly disposed of. No costs.


(A.K.Patnaik)
Judicial Member

RK/CM