

ORISSA HIGH COURT: CUTTACK

W.P.(C) NO. 4358 OF 2021

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR

Ramanamaa Petitioner

-Versus-

Union of India and others Opp. Parties

For Petitioner : M/s. N.R. Routray,
J. Pradhan, T.K. Choudhury
and S.K. Mohanty, Advocates.

For Opp. Parties : Mr. P.K. Parhi, Asst. Solicitor
General of India

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
HONOURABLE MR. JUSTICE G. SATAPATHY**

Date of hearing and judgment: 08.09.2022

DR. B.R. SARANGI, J. The Petitioner, who is the daughter of an Ex-Gangman under PWI, S.E. Railway (now East Coast Railway), Berhampur, by means of this writ

petition, seeks to quash the order dated 11.12.2020 passed in O.A. No. 413 of 2018, by which the Central Administration Tribunal, Cuttack Bench, Cuttack, has confirmed the order rejecting the application of the petitioner for appointment on compassionate ground, and dismissed the original application.

2. The factual matrix of the case, in brief, is that the father of the petitioner, who was working as a Senior Gate Keeper under PWI, S.E. Railway (now East Coast Railway), Berhampur, died on 13.11.1995. Upon his death, mother of the petitioner submitted an application for release of DCRG and appointment on compassionate ground, but she died on 05.10.1997. Though the petitioner had two brothers, but one of them died on 31.07.2004 and other was mentally disordered. Therefore, on attaining the age of majority on 13.05.2006, the petitioner filed an application for appointment on compassionate ground. On consideration of her application, opposite party no.4, vide letter dated 10.09.2009, called upon the petitioner

to submit required documents and also deputed one Welfare Inspector to collect necessary documents for consideration of her application for appointment on compassionate ground. But no communication was received for a period of four years. Therefore, the petitioner submitted another application for consideration of her appointment on compassionate ground. In response to the same, opposite party no.4, by letter dated 02.04.2013, advised the petitioner for submission of application in prescribed format, along with required documents. Further, vide letter dated 15.01.2014, opposite party no.4 also advised the petitioner for submission of certain documents for grant of family pension, which she complied. But thereafter, no communication was received.

2.1 Therefore, again the petitioner submitted an application on 03.10.2016 before opposite party no.4 through proper channel to consider her case for compassionate appointment sympathetically. But her application was rejected by opposite party no.4, vide

letter dated 20.11.2017, on the ground that the application was filed seeking appointment on compassionate ground after more than 20 years. On receipt of the letter dated 20.11.2017, the petitioner filed an appeal on 15.02.2018 for reconsideration of her case for appointment on compassionate ground. Though such application was forwarded by opposite party no.4 to opposite party no.1 for consideration, but the same was rejected, vide letter dated 22.05.2018, instead of reconsidering the grievance of the petitioner, on the ground that the same has already been considered. Aggrieved thereby, the petitioner approached the tribunal by filing O.A. No. 413 2018 seeking to quash the orders dated 20.11.2017 and 22.05.2018 under Annexure-A/6 and Annexure-A/8 respectively to the original application and further sought direction to the opposite parties to provide employment to her on compassionate ground. The tribunal, after due adjudication, came to a conclusion that the fact, that petitioner had not submitted any

application for appointment on compassionate ground before the authorities for more than 13 years from the date of death of the ex-employee, cannot be overlooked, although the petitioner herself has mentioned that she attained the age of 18 years on 13.05.2006 and, as such, there is no reasonable explanation from the side of the petitioner as to why she waited till submission of his representation dated 24.12.2008. More so, the petitioner had not submitted the relevant documents and also not applied in proper form in spite of communication received by her from the opposite parties. But subsequently, the petitioner submitted an application for employment assistance on 03.10.2016, i.e., after 21 years of death of her father and after 10 years of her attaining majority. Thereby, there is undue delay and, as such, there was no penury in the family and that the petitioner was able to survive for such a long period. Thereby, for rejection of the application filed by the petitioner for compassionate appointment, after consideration of all the relevant facts, no illegality

or irregularity is attributable to the opposite parties. By observing so, the tribunal dismissed the original application filed by the petitioner. Hence, this writ petition.

3. Mr. N.R. Routray, learned counsel for the Petitioner contended that the father of the petitioner died on 13.11.1995 while he was in service, whereas her mother and one of the brothers died on 05.10.1997 and 31.07.2004 respectively and, as such, another brother, who is mentally retarded, left the house whose whereabouts was not known. It is contended that the Railway Board issued compassionate scheme to provide employment on compassionate ground to the dependents of the railway employees, who died or permanently crippled in course of duty; the dependents of the employees who died in harness as a result of railway accidents while off duty; the dependents of the employees who died in harness while in service before retirement or medically incapacitated; and also for other grounds. As per the original scheme, there was a

provision for relaxation of 20 years by the General Manager, wherein the said power has been delegated to DRMs/CWMs/HODs to consider compassionate appointment in favour of widow/widower or any ward of her/his choice in respect of cases up to 20 years old from the date of death of the railway employee. It is contended that father of the petitioner died on 13.11.1995, while in railway service, and according to the opposite parties, the petitioner submitted the application under the prescribed format on 03.10.2016, although she had submitted the application on 24.12.2008 requesting for appointment on compassionate ground and also handed over the required documents to the Welfare Inspector. As such, on either way, the petitioner having submitted the application for appointment on compassionate ground within 20 years from the date of death of her father, denial of such benefit, cannot be sustained in the eye of law.

3.1 It is further contended that as per RBE No.3 of 2009, even the case of more than 20 years can be considered by obtaining necessary approval from the Ministry of Railways, but here the opposite parties have neither conducted any inquiry nor examined the case of the petitioner and rejected the same without any application of mind and without taking into consideration RBE No.3 of 2009. As such, the observation so made by the tribunal that there was no penury in the family of the petitioner and she was able to survive, by upholding the rejection order passed by the opposite parties, also cannot be sustained.

3.2 It is further contended that the opposite parties have neither taken steps for collection of required documents, except simple pleadings regarding issuance of letters. Though the petitioner by filing representation had brought to the notice of the opposite parties about her family condition, but no prompt steps were taken by the authorities to resolve the grievance. Therefore, for the lapses on the part of the opposite

parties, the petitioner should not suffer and, as such, the order so passed by the tribunal on 11.12.2020 may be quashed and the matter may be remitted back to the authority for reconsideration.

To substantiate his contention, he has relied upon the judgment of the apex Court in the case of ***State Financial Corporation v. Jagadamba Oil Mills***, AIR 2002 SC 834.

4. Mr. P.K. Parhi, learned Asst. Solicitor General of India vehemently contended that though the petitioner's father, who was an employee of the railways, expired on 13.11.1995, but his widow had neither applied for employment assistance in her favour nor in favour of any eligible family members of the deceased employee. After more than 13 years from the date of death of the ex-employee, the petitioner claiming to be the daughter, had submitted the representation on 24.12.2008 for sanction of family pension and to provide employment assistance in her favour. In response to the same, vide letter dated 20.07.2009, the

petitioner was called upon to apply for sanction of family pension and it was informed that no such request for employment assistance has been received by the office till date in proper format along with required documents. In the said letter, the petitioner was also informed that after the death of ex-employee on 13.11.1995, the mother of the petitioner also expired on 05.10.1997. Thereafter, on receipt of the settlement of documents executed by one Kumari Sobhamma, the unmarried daughter, family pension was granted in her favour from 19.11.1995 till her marriage. After her marriage, Kumari Dalamma, was also granted family pension from 02.07.1998. Thereafter, the next eligible son Bairagi was also granted with family pension payable up to 25 years of age. Thereafter, there was no claim with relevant documents received either from the son of the deceased or from the present petitioner. It is further contended that though the petitioner advised by letter dated 10.09.2009 to apply for employment assistance on compassionate ground in proper format

along with required documents, but after lapse of four years instead of applying for employment assistance in the prescribed format, which was already supplied to her, she made an appeal in plain paper application, for which she was again advised to apply in prescribed format duly filled in properly enclosing all necessary documents for taking further course of action, vide letter dated 02.04.2013, wherein also it was mentioned that request for employment assistance can be considered only if her case is genuine and after submission of requisite documents. But she did not respond to such letter dated 02.04.2013 and finally the petitioner submitted an application for employment assistance on compassionate ground on 03.10.2016 after 21 years of death of her father and 10 years of her attaining the age of majority, without explaining the reason of delay.

4.1 It is further contended that as per RBE No.3 of 2009, wherever in individual cases where death of the ex-employee took place over 20 years ago, prior

approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma as circulated vide Board's letter dated 19.04.1988. Though the case of the petitioner was put up before the competent authority for orders, whether her case should be proposed in the light of RBE No.3 of 2009 or otherwise, but on consideration of the same, the competent authority found no merit and regretted the same, which was intimated to the petitioner on 20.11.2017. But the petitioner submitted her grievance before the General Manager, East Coast Railway and on verification of genuineness of educational certificate and other documents, as provided by the petitioner, again such application was rejected by the authority. Being aggrieved by the orders of the authority, the petitioner approached the tribunal and the tribunal after due adjudication, passed the order impugned by dismissing the original application filed by the petitioner which is

well justified and does not warrant any interference of this Court.

To substantiate his contention, he has relied upon the judgment of the apex Court in the cases of **Punjab State Power Corporation Ltd. v. Nirval Singh**, (2019) 6 SCC 774; **Central Coal Fields Ltd. v. Smt. Parden Oraon**, Civil Appeal No. 897 of 2021 (arising out of S.L.P.(C) No.10514 of 2020 disposed of on 09.04.2021); **State of Himachal Pradesh v. Prakash Chand**, (2019) 4 SCC 285; and **MGB Gramin Bank v. Chakrawarti Singh**, (2014) 13 SCC 583.

5. This Court heard Mr. N.R. Routray, learned counsel for the Petitioner and Mr. P.K. Parhi, learned Asst. Solicitor General of India for the Opposite Parties-Union of India by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, this writ petition is being disposed of finally at the stage of admission.

6. The undisputed fact, as is borne out from the records, is that the Petitioner's father, who was working under the Railway, died on 13.11.1995. Though his widow was granted family pension benefit, but she died on 05.10.1997. Thereafter, one of the daughters was allowed to receive family pension. After her marriage, the same was transmitted to another daughter on 02.07.1998. Thereafter, it was granted to his son till he attained the age of 25 years. But fact remains, the petitioner on attaining the age of majority on 13.05.2006, submitted a representation before the authority on 24.12.2008 claiming for compassionate appointment, which was not supported by any document. Therefore, request was made by the opposite parties to furnish the relevant documents. Even though such documents were furnished, but no decision was taken at the level of the opposite parties.

7. It is true that the Government of India, Ministry of Railways, vide letter dated 06.01.2009, delegated the power to DRMs/CWMs/HODs to consider

for grant of the benefit of compassionate appointment in favour of widow/widower or any ward of her/his choice in respect of cases up to 20 years old from the date of death of railway employee. On 09.12.2011, the Railway Board in RBE No. 166 of 2011 clarified regarding appointment on certain categories having no minimum educational qualification. Even though request was made to the petitioner to apply afresh on 02.04.2013, but she applied on 03.10.2016, by that time, 20 years period has already lapsed. Even by the time she made the application on 03.10.2016, 10 years from the date of attaining the age of majority had also been over. Therefore, the authority rejected the claim of the petitioner on the ground of delay. Challenging the same, the petitioner approached the tribunal by filing O.A. No. 413 of 2018, where the petitioner has also filed M.A. No. 49 of 2020 for condonation of delay.

8. Therefore, taking into consideration the factual matrix of the case at hand, it is evident that admittedly the petitioner has not approached the

authority within the reasonable time for her appointment on compassionate ground. At first, she approached the authority by filing representation on 24.12.2008 claiming for family pension, which has already been paid. But so far as claim with regard to compassionate appointment is concerned, she approached the authority only on 03.10.2016 by providing all the documents and by the time such application was filed, 20 years period had already been over. More so, such application has to be routed through the competent authority and with due approval of the Ministry of Railway, such appointment can be considered. So far as RBE No.3 of 2009 is concerned, even though it gives relaxation of 20 years to make an application, but that is subject to approval of the Ministry of Railway. But the application filed by the petitioner could not get a clearance from the Ministry of Railway, as because the claim was made after 20 years and, as such, the petitioner and her family were satisfied with the family pension, which they were

getting and that is why they did not ask for any compassionate appointment before 03.10.2016. Therefore, there was a gross delay in claiming such benefit by the petitioner.

9. It is trite law that compassionate appointment cannot be claimed as a matter of right. In catena of decisions, the apex Court has already held that to mitigate the immediate hardship of the family, compassionate appointment can be given to one of the member of the family to save from penury because of sudden death of bread earner of the family. Admittedly, after the death of the deceased employee, in order to save the family from penury, the mother of the petitioner applied for grant of family pension, which was paid immediately. But she never claimed for compassionate appointment for anybody's favour at the relevant point of time. May it be, since the petitioner had not attained the age of majority, she submitted a plain paper representation on 24.12.2008, after attaining the majority on 13.05.2006, but that itself was

relating to grant of family pension benefit. Since the benefit of compassionate appointment cannot be applied in a plain paper, the petitioner was informed to submit the application in prescribed format for giving compassionate appointment, but the same was only done on 03.10.2016. Therefore, the application of the petitioner for compassionate appointment was made after 21 years of the death of her father and also after 10 years of her attaining the age of majority. As such, the grounds taken by the petitioner to explain the undue delay are also not satisfactory.

10. In **State Financial Corporation** (supra), while considering the provisions contained in State Financial Corporation Act vis-à-vis Article 14 of the Constitution of India, the apex Court held that the obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice, which the quasi-judicial authorities are bound to

observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin. Even so, the extent of judicial scrutiny/judicial review in the case of administrative action, cannot be larger than in the case of quasi judicial action. It is further held that the power of the Courts while reviewing the administrative action is not that of an appellate Court. The ratio of this case, on which reliance has been placed by learned counsel for the petitioner, has no assistance to the petitioner, rather it supports the case of the opposite parties.

11. In **Punjab State Power Corporation** (supra), the apex Court held that there is no inherent right to compassionate appointment, which has to be in accordance with existing policy since objective is to ameliorate condition of family at relevant stage of time and it is deviation from rule of merit. Applying the same, the apex Court held that the respondent was not entitled to compassionate appointment since there was delay of 7 years in approaching the Court and, thus, the

very objective of providing immediate amelioration to family was extinguished.

12. In **Central Coalfields Limited** (supra), the apex Court held that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family. The apex Court further held that the application for compassionate appointment of the son was filed by the opposite party in the year 2013 which is more than 10 years after the respondent's-husband had gone missing. As the object of compassionate appointment is for providing immediate succor to the family of a deceased employee, the

respondent's-son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.

Similar view has also been taken by the apex Court in ***Umesh Kumar Nagpal v. State of Haryana***, (1994) 4 SCC 138.

13. In ***State of Himachal Pradesh*** (supra), the apex Court held that direction to consider the application for compassionate appointment of dependants of deceased employee de hors the policy, is impermissible.

14. In ***MGB Gramin Bank*** (supra), the apex Court held that compassionate appointment claimed in the nature of entitlement for and conditions emphasized and reiterated that it is not a vested right but only an ameliorating relief for financial constraints on bereaved family.

15. The cumulative effect of law laid down by the apex Court clearly indicates that there is no inherent

right to compassionate appointment, which has to be in accordance with the existing policy, as the object is to ameliorate the condition of the family at the relevant point of time. Therefore, the claim made by the petitioner after 20 years of death of her father to get compassionate appointment, cannot have any justification, because the very object of providing immediate amelioration to family had extinguished. Needless to say, the father of the petitioner had expired on 13.11.1995 and the petitioner though attained the majority on 13.05.2006, but submitted the application for compassionate appointment in the prescribed format enclosing required documents only on 03.10.2016. Meaning thereby, after 20 years of death of her father and after 10 years of attaining the majority, the petitioner applied for compassionate appointment by providing all documents. Therefore, there is gross delay in claiming such benefit and, thereby, the authority is well justified in rejecting her claim. Even though RBE No.3 of 2009 provides 20 years' time within which one

can make application, but the same has to be routed through the Ministry of Railway. The same having not been done in the instant case, the rejection of the claim of the petitioner is well justified. As such, the tribunal has not committed any error apparent on the face of record in confirming the order passed by the authority rejecting the claim of the petitioner for compassionate appointment and in dismissing the original application, so as to warrant interference with the same.

16. In view of the aforesaid facts and law, as discussed above, this Court does not find any merit in the writ petition, which is accordingly dismissed. However, there shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

G. SATAPATHY, J. I agree.

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G. SATAPATHY,
JUDGE

Orissa High Court, Cuttack
The 8th September, 2022, Ashok/GDS