

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Dated: This the 29th day of January 2020.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

Original Application No.330/00919 of 2018

Tejaswani Gautam aged about 36 years, Daughter of Late Ganga Prasad Presently residing at 48 Krishna Nagar Road No. 7, Izatnagar Bareilly, permanent resident of Village Belwadand, Pargana Nagar Purab Post Kalwadi, Tehsil Basti Sadar, District Basti (U.P).

..... Applicant

By Adv: Shri Shahid Ali Siddiqui

V E R S U S

1. Union of India through Secretary, Railway Board New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Chief Workshop Manager, North Eastern Railway, Izzatnagar, Bareilly.
4. Sahayak Karmic Adhikari, North Easter Railway Izzatnagar, Bareilly.
5. Karkhana Karmic Adhikari, North Eastern Railway Izzatnagar, Bareilly.

..... Respondents

By Adv: Shri Awadhesh Rai

O R D E R

1. The present O.A. has been filed applicant – Tejaswani Gautam under Section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

"(i) Issue an order or direction for quashing of impugned order dated 25.07.2018 passed by respondent No. 5 on the instruction/on behalf of respondent No.2, rejecting applicant claim of compassionate appointment against their own record of dependency of applicant on deceased employee during service and also against judgment and (Remand) order dated 05.04.2018 in writ petition No. 13034 of 2017 passed by Division

Bench of Hon'ble Allahabad High Court in the light of Master Circular No. 16 read with circular 3.02.1981 and 08.07.2014.

- (ii) **Issue order, direction in the concerned respondents to grant family pension after deceased employee death from date of applicant divorce with effect from 28.08.2017 (Not pressed of prayer of this O.A. – Sd/ S.A Siddiqui, counsel for applicant).**
- (iii) **Issue any other order or direction as per fact of the applicant case”.**

2. Brief facts of the case are that on death of Ganga Prasad father of applicant Tejaswani Gautam on 23.06.2013 while serving in the respondents department, applicant filed an application for appointment on compassionate grounds. It is the further case of applicant that her husband was a patient of Epilepsy and unable to earn his livelihood and, therefore, applicant along with her three children, were living with her father Ganga Prasad. That her application for compassionate appointment was rejected by the department vide order dated 12.03.2014 (Annexure A-6) on the ground that petitioner was not dependent upon her father and there is no other dependent of her deceased father. Her O.A. against the rejection order was dismissed by the Tribunal vide order dated 16.01.2017 which was set aside by the Hon'ble High Court, Allahabad vide order dated 05.04.2018 and remanded the matter to General Manager, N.E Railway, Gorakhpur to consider the matter in light of Master Circular as well as circular dated 3.2.1981. In the order of the Hon'ble High Court, it was observed that it is evident that a married daughter can be offered compassionate appointment and the matter has to be examined and satisfaction has to be recorded by General Manager that petitioner is a dependent family member and bread-winner of the family.

3. It is the further case of applicant that at the time of death of the deceased employee dated 23.06.2013, the applicant was living with her father under desertion from his ex-husband as she was married under fraud with one infirm and disable person who was suffering from epilepsy and was unable to earn a single pie for his livelihood then applicant filed Divorce Suit No. 110 of 2015 before Family Court, Basti and applicant obtained judgment/decrees of

Divorce dated 28.08.2017 (Annexure A-10) passed by Additional Session Judge/FTC-II (Additional Family Judge), Basti.

4. Applicant further avers that her request for compassionate appointment was rejected by respondent No. 5 on instruction of respondent No.2 vide impugned order dated 25.07.2018. It would be pertinent to extract the contents of the impugned order as under:-

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5. In the counter affidavit, the respondents have taken the view that the impugned order has been passed in accordance with law and being the reasoned and speaking order, the O.A. deserves to be dismissed.
6. I have heard and considered the argument of learned counsel for the parties and gone through the material on record.
7. It would be pertinent to note the directions given by the Hon'ble High Court in Writ - A No. 13034 of 2017 filed by applicant regarding her claim for compassionate appointment wherein the Hon'ble High Court held that:-

“6. From perusal of Master Circular read alongwith circular order dated 3.2.1981 which is filed at page-13 of the counter affidavit, it is evident that a married daughter can also be offered compassionate appointment. Matter has to be examined and satisfaction has to be recorded by General Manager that petitioner is a dependent family member and bread winner of the family.

7. Counsel for the respondents could not dispute that this fact has not been considered by competent authority.

8. In view thereof, we allow this writ petition and set aside order dated 16.1.2017 passed by Tribunal and quash order dated 12.3.2014 passed by Sahayak Karmik Adhikari, Bareilly (Respondent no. 5). We remand the matter to General Manager to consider in the light of aforesaid provision of Master Circular read with Circular dated 3.2.1981 and pass a fresh order in accordance with law, expeditiously and in any case within a period of 2 months from the date of filing of certified copy of this order before him”.
8. However, as per the impugned order the respondents/competent authority has dismissed the claim of applicant for compassionate appointment on the ground that as per the documents filed by the applicant, she resides at Belwadad, District Basti whereas deceased employee was residing in the Railway Quarter at Barielly and this shows that they were living separately. Looking to the circumstances of the case, undersigned has come to the conclusion that applicant married daughter of Ganga Prasad at the time his death was not dependent upon the deceased and, therefore, does not fall within the definition of bread-winner.
9. The impugned order has to be set aside on the simple ground that finding of the competent authority that the applicant and her father (deceased employee) were living separately and, therefore,

she was not dependent upon the deceased or the bread-winner of the family cannot be sustained. The ground advanced by the competent authority for rejecting the request of compassionate appointment of applicant is unreasoned and cannot be accepted. Accordingly, the impugned order dated 25.07.2018 is set aside. The case is remanded back to competent authority to reconsider the matter and dispose of the same by way of reasoned and speaking order within two months from the date of receipt of a certified copy of this order with intimation to the applicant and keeping in view the directions given by the Hon'ble High Court in the aforementioned Writ Petition.

10. O.A. is accordingly disposed of. No costs.

(RAKESH SAGAR JAIN)

Member (J)

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