

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 151 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Smt. Murthy Mahnikyamma, aged about years
2. Sri M. Prasad Rao, aged about years

Both are widow and son respectively of Late M. Narayan Rao, Ex- Cabin Master under SS/SLRD/E. Co. Rly./ Khurda Road, resident of Vill/Town- Surla Station Road, P.O. – Girisola, P. S. – Golanthara, Dist. – Ganjam, Odisha.

.....Applicants.

VERSUS

1. Union of India, represented through the General Manager, E. Co. Rly., E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda.
2. Chief Personnel Officer (Admin.), E. Co. Rly., Rail Vihar, Chandrasekharpur, Bhubaneswar.
3. Divisional Railway Manager/ E. C. Rly./ Khurda Road Division/ Jatni, Dist. Khurda.
4. Senior Divisional Personnel Officer/ East Coast Railway/ Khurda Road Division/ At./P.o – Jatni, Dist. – Khurda.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate

For the respondents: Mr. M. K. Das, Advocate

Heard & reserved on : 28.02.2020

Order on : 18.05.2020

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *To quash Para-6 of the decision dtd. 20.06.2012 communicated vide guideline dt. 25.06.2012 under Ann.-A/9.*
- (ii) *To quash the order of rejection dtd. 26.02.2014 and 23.02.2015 under Ann.-A/5 and A/8.*
- (iii) *To direct the Respondents to provide employment in favour of the applicant No. 2 in Railway on compassionate ground.*
- (iv) *And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.*

2. The case of the applicants in brief as averred in the OA is that the husband of applicant No. 1 while working as Cabin Master, under SS/SLRD/East Coast Railway/Khurda Road died on 05.10.2010 leaving behind his widow applicant No.1, two sons and three daughters. Applicant No. 1 submitted necessary papers for release of death-cum-financial benefit and also submitted an application seeking employment assistance in favour of her elder son M. Srinivas Rao under compassionate ground. After scrutiny of the application the railway authorities found that the son of the applicant did not possess the minimum qualification for appointment in Railway. After receiving the letter from the railway when the applicant No. 1 was getting ready to submit further application, the concerned Welfare Inspector Sahadeb Barik advised for collection of Class – IX certificate and submitted a fake certificate to the said Welfare Inspector along with Rs. 5000/- and gold ring as per his demand. The claim for appointment in Railway on compassionate ground was rejected vide order dated 26.02.2014 Annexure A/5. Applicant No. 2 (son of deceased employee) submitted a representation dated 05.11.2014 vide Annexure A/6 to respondent no. 1 to consider his case for appointment in Railway on compassionate ground. Since no communication was received by him on the said representation, applicant no. 2 again submitted another representation dated 11.02.2015 vide Annexure A/7 to respondent no. 1 further requesting for

consideration of his case for appointment in railway on compassionate ground. Thereafter, Respondent No. 1 vide order dated 23.02.2015 Annexure A/8 disposed of both the representation of the applicant by rejecting the request. Hence this OA.

3. Respondents in their counter averred that the husband of the applicant No. 1 was working as Cabin Master, under Station Superintendent/Surla Road Railway Station and expired on 05.10.2010. After his death applicant No. 1 submitted an application dated 29.06.2011 Annexure R/1 requesting for employment assistance in favour of her son Murthy Srinivasa Rao on compassionate ground. In the said application a School Transfer Certificate No. 424 dated 12.06.1992 Annexure R/2 from Pratiba School, Kasibugga was enclosed, which certified that the said Murthy Srinivasa Rao was studying in Class IX at the time of leaving the school and nowhere the name of school was mentioned as Pratibha School. The respondents in order to process the case deputed Sectional Staff & Welfare Inspector to ascertain the genuineness of the claim and a letter dated 07.07.2011 (Annexure R/3) was sent to Principal Pratibha School requesting to verify the 8th pass TC with records available in the school and to certify it or otherwise. In his reply the Principal, Pratibha School vide letter dated 12.07.2011 Annexure R/4 informed that the records prior to the year 2000 is not available with them however he opined that the documents may be genuine to the best of his knowledge and requested to consider the case. Since the genuineness of the school certificate could not be ascertained the respondents vide letter dated 03.08.2011 and 06.02.2012 Annexure R/5 and R/6 requested the District Education Officer, Srikakulam to verify and intimate whether the transfer certificate and class IX mark sheet are genuine or otherwise and also to intimate whether the said school is recognized institution or otherwise. DEO (FAC), Srikakulam vide their letter dated 20.03.2012

Annexure R/7 informed that as per the verification report of the Mandal Educational Officer, Palasa, the TC and marks memo of Sri Murty Srinivas Rao s/o Narayanrao is not genuine. Thereafter the employment assistance case of the applicant was put up before the Competent Authority i.e. DRM/E.C. Railway/Khurda who regretted the same on 03.04.2012 and the applicant No. 1 was intimated vide letter dated 09.04.2012 Annexure R/8 that her request for compassionate appointment was rejected as the 9th class certificate submitted by her is a fake one. Applicant No. 1 after remaining silent for near about two years again submitted a representation dated 17.01.2014 Annexure R/9 for employment assistance in favour of another son (Applicant No.2) having qualification of 9th pass and in that application applicant no 1 had not mentioned about rejection of her earlier application. The case was put up before the Competent Authority and the same was again regretted basing on the guidelines of Chief Personnel Officer/E. Co. Railway Bhubaneswar circulated under Note dated 25.06.2012 Annexure R/10. The said note had instructed that “all such candidates, who are submitting forged or false documents and after scrutiny, if it is found that the documents are forged, fabricated and false, such candidates should be blacklisted forever. A database of such candidate be prepared and updated in every six months. They or their family members/siblings even, will not be recruited in future permanently. This decision has been taken because the onus of giving correct certificate lies on the parents/guardian and not on their children. Therefore, the guardian or parent should be debarred from taking the benefit of employment of compassionate appointment. This practice is being followed in S.C. Railway, S. E. Railway and elsewhere too”. Accordingly the decision was intimated to the applicant vide letter dated 26.02.2014. Thereafter, Applicant No. 2 made another representation to General Manager, E.Co. Rly, Bhubaneswar

on 05.11.2014 for employment assistance. The entire case file was called by Chief Personnel Officer, E.Co. Railway, Bhubaneswar and the entire employment assistance case was sent to Headquarter and was put up to General Manager, E.Co. Railway, Bhubaneswar who after considering the entire fact regretted the case and the applicant No. 2 was informed vide letter dated 23.02.2015.

4. Learned counsel for the applicant has relied on following decisions:

A) Order of this Hon'ble Tribunal in O. A. No. 204/2013 dated 21.01.2019.

5. Learned counsel for the respondents has relied on following decisions:

- 1) (2008) 15 SCC 560 (SAIL vrs Madhusudan Das)
- 2) (2011) 4 SCC 209 Bhawani Prasad Sonkar vrs Union of India
- 3) Hon'ble High Court of Jharkand in W.P. (S) No. 434 of 2014 in the matter of Azij Ansari versus Union of India & Anr.,
- 4) 1994(4) SCC-138 in the case of Umesh Ku. Nagpal V/s. State of Haryana.
- 5) J.T. 1994(3) SC 525.
- 6) 2006 (4) SCC-322 in the case of Karnataka Power Corporation Ltd Vrs K. Thangappan
- 7) 2007 (1) SCC(L&S) Page-500 in the case of Chairman UP Jal Nigam Vrs Jaswatin Sing.

6. There is no dispute to the legal position that the compassionate appointment cannot be claimed as a matter of right. This tribunal cannot also direct authorities to give appointment to any particular person i.e. in the present case the applicant for compassionate appointment. The authorities should look into the matter in proper perspective and consider as to whether the applicant or their family members have approached the authorities within reasonable time for

compassionate appointment. In the present facts and circumstances of this case it cannot be said that there has been any undue delay by the applicant in approaching the authorities requesting for compassionate appointment. The materials on record do not show that the applicants are not undergoing financial crisis and that they are not in need of succour. The mere fact that family members might have some income cannot be a factor by itself to come to the conclusion that the said income is sufficient enough for family to survive and to further conclude that the family is not in need of any compassionate appointment. Just because there has been delay either by the respondents or due to pendency of this case before this Tribunal, cannot deprive the applicants to put forth their grievance and prayer regarding compassionate appointment in favour of applicant no. 2. In the absence of any material to the contrary that they are not in any need of compassionate appointment and that they have got sufficient income to survive, the said delay in processing the application for consideration of the application and for disposal of their grievance by this Tribunal cannot be used against them and the respondents cannot also take the same as a stand to hold that the applicants have not approached the authorities within reasonable time and that they are not entitled to any such relief. In case this Tribunal accepts such plea of the respondents then it may amount to adding insult to the injury.

7. The mere fact that one fake/false certificate was submitted by brother of applicant no 2 cannot be a ground to hold that applicant No. 2 is not entitled to make such prayer. In the rejection order vide Annexure A/5 dated 26.02.2014, it has been mentioned that since Shri M. Srinivas Rao, the son of applicant No. 1 had submitted false school transfer certificate of class 8, therefore, guardian or parents of the candidate are not entitled for consideration for employment on compassionate ground. But it is seen in the present case, the applicant no. 2 Shri M. Prasad Rao is neither the guardian nor

the parents of Shri M. Srinivas Rao. Therefore there is no legal bar for consideration of application of applicant no 2 for employment under compassionate ground. No reason has at all been mentioned for rejection of application vide as per order at A/8 dated 23.02.2015.

8. In view of discussions already made, this Tribunal finds that there has been non-application of mind, while passing orders vide annexure A/5 & A/8 and the same has been passed arbitrarily. Hence this Tribunal holds the same to be illegal and accordingly both the orders are hereby quashed.
9. Accordingly the OA is allowed and the respondents are directed to reconsider the application of applicant no. 2 for employment under compassionate ground in accordance with extant rules and communicate the result thereof to the applicant by passing speaking and reasoned order within three months from the date of receipt of copy of this order. There shall be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)