



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01358/2019

M.A. 350/00785/2019

Reserved on : 25.2.2020

Date of order: 3. 3. 2020

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Sri Pradip Kumar Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 40 years,
By Occupation – Unemployed.

2. Sri Manik Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 37 years,
By Occupation – Unemployed.

3. Sri Hiralal Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 34 years,
By Occupation – Unemployed,

All applicant Nos. 1 to 3 are residing at
Village and P.O. – Banchukamari,
P.S. – Alipurduar,
District – Alipurduar,
Pin – 736 122.

... Applicants

- V E R S U S -

1. Union of India,
Through the General Manager,
Northeast Frontier Railway,
Maligaon,
Guwahati – 11,
Assam – 781 011.

2. The Chief Personnel Officer,
Northeast Frontier Railway,
Maligaon,
Guwahati – 11,
Assam – 781011.

3. The Divisional Railway Manager,
Alipurduar Junction Division,

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Northeast Frontier Railway,
Alipurduar,
P.O. + Dist. – Alipurduar,
Pin – 736 123.

4. The Senior Divisional Personnel Officer / I.C.,
Alipurduar Junction Division,
Northeast Frontier Railway,
Alipurduar,
P.O. + Dist. – Alipurduar,
Pin – 736 123.

... Respondents

For the Applicants : Mr. K. Chakraborty, Counsel

For the Respondents : Ms. D. Nag, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

These applicants have approached this Tribunal in fourth stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- “(a) To file and prosecute this application jointly under Rule 4(5)(a) of the AT (Procedure) Rules, 1987 since all of them have prayed for the same relief arising out of same cause of action;
- (b) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and withdraw the purported order dated 6.8.2019 being Annexure A-14 hereto and not to give any or further effect or effects to the same;
- (c) Do issue mandate upon the respondents, their men and agents and each of them to forthwith take steps to offer an employment assistance to the applicant no. 1 Pradip Kumar Pandit on Compassionate ground forthwith without any further necessary delay in the issue;
- (d) To certify and transmit all the papers and documents in connection with the instant lis before this Id. Tribunal for kind perusal and on such kind perusal do conscionable justice to the applicants;
- (e) Grant cost of this proceeding in favour of the applicants;
- (f) Pass such other or further order or orders, direction or directions, mandate or mandates as may appear to be fit and proper.”

2. An M.A. bearing No. 350/00785/2019, filed praying for joint prosecution under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 is allowed and disposed of on ground of commonality of interest and common cause of action, subject to payment of individual court fees.

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3. Ld. Counsel for the applicant would submit that the applicant's late father had been decategorized on medical grounds on 9.4.1999, long before his date of normal superannuation. Consequent to such medical decategorisation, one Alok Kumar Pandit secured compassionate appointment with the authorities. The said Alok Kumar Pandit, however, was not the biological son of the employee, and, subsequently, as Alok Kumar Pandit was found to have adopted fraudulent means to secure his appointment, he was dismissed from service.

The widow of the employee along with her sons, who are applicants in this present O.A., thereafter prayed for compassionate appointment in favour of the applicant No. 1 of the instant O.A., namely, Shri Pradip Kumar Pandit. As no response was received despite series of representations, the applicants and their widow mother filed O.A. No. 933 of 2012 which was disposed of by this Tribunal on 26.6.2014 directing the respondents to decide on the matter of compassionate appointment of applicant No. 1 based on the outcome of the pending enquiry / disciplinary proceedings against Alok Kumar Pandit. The respondent authorities, however, vide their Office Order dated 24.10.2014 turned down the legitimate prayer of the applicants and another O.A. bearing No. 1650 of 2014 was filed challenging such illegal and unjustified act of the authorities. The said O.A. was disposed of on 4.12.2015 directing the respondents to consider the case of applicant No. 1, Shri Pradip Kumar Pandit, for compassionate appointment, within a specified period of time. As his candidature was again rejected arbitrarily on 4.4.2016, the applicants again filed O.A. No. 350/00719/2016 challenging the said arbitrary order of rejection and the Tribunal on 13.11.2018 issued a direction on the respondents to consider the candidature of applicant No. 1 for compassionate appointment. Such



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prayer again was turned down by the respondents on 6.8.2019. Challenging the same, the applicants have come up with the instant O.A. in the fourth stage litigation.

4. Heard rival contentions of both Ld. Counsel, examined documents on record. The matter is taken up for disposal at admission stage.

5.1. To adjudicate on this issue, we primarily refer to the orders of the Tribunal dated 13.11.2018 in O.A. No. 719 of 2016 which was disposed of by the Tribunal by observing as follows:-

"5. A bare perusal of the order supra would in explicable demonstrate that the direction of this Tribunal upon respondents, in the earlier O.A., to consider the case of the applicant Pradip Kr. Pandit, was given a complete go bye.

The respondents have in fact refused to consider his case on weird, untenable and frivolous grounds.

The tenor of the order was misread either deliberately or with total non-application of mind.

The respondents were bound to consider Pradip Kr. Pandit on merits when Alok Kr. Pandit was dismissed. The respondents are yet to form an opinion that Pradip Kr. Pandit is not the son of deceased or is an imposter in that way.

6. The order impugned, being thus tainted with the vice malafide, arbitrariness, non application of mind and upon misreading and misinterpreting the order of this Tribunal, is quashed."

Accordingly, by virtue of the orders of the Tribunal, the respondents were directed to consider the case of Pradip Kumar Pandit afresh untrammelled by their earlier considerations. Further, while disposing of O.A. No. 701 of 2016 (M.A. No. 436 of 2016) on 7.5.2019 (filed by Alok Kumar Pandit and in which Pradip Kumar Pandit had sought impleadment), this Tribunal, while dismissing the Original Application of Alok Kumar Pandit on merit, held that the scope of compassionate appointment of Pradip Kumar Pandit remains alive. Accordingly, the directions of this Tribunal dated 7.5.2019 in continuation to the directions of this Tribunal dated 13.11.2018 were to be complied with by the respondent authorities in the absence of any successful challenge.



5.2. The respondent authorities have issued a speaking order dated 6.8.2019 (Annexure A-14 to the O.A.) which is under challenge in the instant O.A. and the said order is reproduced as under:-

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ANNEXURE A14

- मंडल रेल प्रबंधक (कार्मिक) का कार्यालय

Office of the Divisional Railway Manager, (P)

पू० सी० रेलवे, अलीपुरदुआर जंक्शन, N.E. Railway, Alipurduar Junction

No. E/208/Z/OA/350/719/2016

Dated:-06/08/2019

Sri Pradip Kr. Pandit
 To - Late Lalit Mohan Pandit
 Anjali Pandit
 To - Late Lalit Mohan Pandit
 Both are residing in
 P.O. - Banchukantari
 S - Alipurduar, Dist. - Alipurduar
 PIN - 736122

SPEAKING ORDER

Sub - Consideration of representation of Shri Pradip Kr. Pandit in compliance of Hon'ble CAT/CAL Order dated 13.11.2015 in OA No. 719 of 2016. [Anish Pandit & Ors Vs UOI & Anr.]

Hon'ble CAT/CAL has disposed the OA with a direction to consider the CGA case of Pradip Kr. Pandit "afresh, untrammelled by earlier consideration and with issuance of appropriate order within 03 months from the date of communication of this order".

Accordingly to comply with the order of Hon'ble CAT/CAL in light & spirit undersigned has gone through the application dt. 31.03.2011 for CGA submitted by Anjali Pandit (for his son pradip Pandit) the OA with annexure filed by the applicant, the Judgment Order date 11.11.2018 passed by the Hon'ble Tribunal in the said OA and the relevant Railway Rules regarding compassionate appointment in the Railway.

As per records & document available on file, it is seen that Late Lalit Mohan Pandit i.e. husband of Anjali Pandit has worked as Khatast/Helper under SSE/Signal/NCB. He was declared medically unfit for all categories of railway Service and accordingly took voluntary retirement on medical ground on 13.03.1999 and later on expired on 15.09.2006.

After his voluntary retirement, Late Lalit Mohan Pandit applied for compassionate appointment for Alok Kr. Pandit declaring him as elder son and accordingly compassionate ground appointment in favour of Alok Kr. Pandit in group D post as traffic Gateman on 16.06.2001 was given.

After this appointment, Even before this appointment there was no claim made by Anjali Pandit or any other dependent of Late Lalit Mohan Pandit for CGA. After death of Lalit Mohan Pandit on 15.09.2006, Anjali Pandit submitted a claim for CGA for his son Pradip Kr. Pandit on 31.03.2011 & also lodged a complaint to Vigilance organization that Alok Kr. Pandit is not his son, the said complaint ultimately resulted in the dismissal of service of Alok Kr. Pandit on 15.10.2014 for fraudulent act of giving false declaration to secure Railway job.

It can be seen that the claim for CGA for Pradip Kr. Pandit was made by Anjali Pandit on 31.03.2011 & there is no dispute with regard to this.

I have gone through the relevant policy regarding compassionate appointment in railway, the main object of the policy is to enable the family of deceased/medically incapacitated staff to get over the sudden financial crisis. The underlying intention is that the family is not deprived of the means of livelihood on death/medical incapacitation of staff/sole earning member of family.

The appointment on compassionate ground is not a source of recruitment but merely an exception, such a claim cannot be upheld on the touchstone of Art 14 or 16 of the constitution of India. However such claim is considered as reasonable & permissible on the basis of sudden crisis occurring in the family of such employee who has served the organization and dies/medically incapacitated while in service, and therefore appointment on compassionate ground cannot be claimed as a matter of right.

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ANNEXURE

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In this case, the claim has been made by Anjali Pandit after 10 Yrs. of the 1st appointment of Alok Kr. Pandit and 05 Yrs. after the death of her husband in 2006 is against the basic policy of compassionate ground appointment. Here the employee Lalit Mohan Pandit was medically decategorised on 13.03.1999 & ultimately died on 15.09.2006 but the claim for CGA was made in 2011(31.03.2011) by Anjali Pandit thus defeating the very purpose for which CGA is being granted.

Moreover, the circular regarding appointment on CGA of dependent of medically unfit staff on railway categorically state that it will be at the discretion of the concerned medically decategorised/incapacitated Railway employee to request for a job to either spouse or ward as per his/her choice and in this case the concerned staff (Lalit Mohan Pandit) has exercised his discretion and proposal CGA for Alok Kr. Pandit, which was considered by the administration and appointed and therefore the claim now being made by Anjali Pandit cannot be entertained as per policy.

That it is also seen that Sri Pradip Kr Pandit the name of which is being proposed by Anjali Pandit for CGA is non-metric and as per railway policy "no appointment to the ward of deceased/medically unfit Railway staff can be made, if they does not possess the minimum educational qualification of class-X pass or ITI for the post of level-2.

That further there is also a clear policy that CGA cannot be more than one appointment against one death/medical incapacitation.

In view of above, and considering the fact that the claim for CGA was made in 2011 i.e. 13 Yrs. after medical invalidation and 05 Yrs. after the death of employee and therefore Sri Pradip Kr. Pandit cannot be given Compassionate Appointment as it is not a vested right, which can be exercised at any time. The purpose behind such an appointment is to provide immediate succor against destitution to the family of the deceased/medically incapacitated employee to address a legitimate expectancy of the survivors seeking financial tide over due to sudden death/incapacitation of sole earning member but in this case it is not and therefore request for CGA cannot be consider. Moreover the compassionate appointment is a matter of policy of employer and employer cannot provide CGA contrary to its policy/scheme and therefore the request for CGA made by Anjali Pandit for his son Pradip Kr Pandit cannot be considered and hence regretted.

This disposes off your representation dated 31.03.2011 in compliance of Hon'ble CAT/CAL's order dated 13.11.2018 please.



2-06/05/19
(N.C. SAHA)
DPO/APDJ
For: DRM(P)/APDJ
भंडार कार्यालय अधिकारी
Divisional Personnel Officer
पू० री० रेलवे, अलीपुरद्वार जं०
N.F.Railway, Alipurduar Jn.

The following is inferred from the above noted speaking order of the respondents:

- (i) The ex-employee Lalit Mohan Pandit voluntarily retired on 13.3.1999 and later on passed away on 15.9.2006.
- (ii) The late Lalit Mohan Pandit had applied for compassionate appointment for Alok Kumar Pandit purportedly declaring him as his elder son and the said Alok Kumar Pandit was thereafter offered with a Gr. 'D' post.

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- (iii) As per rules, compassionate appointment was offered to Alok Kumar Pandit as the late employee had nominated such Alok Kumar Pandit on grounds of his medical incapacitation. The claim of the widow hence could not be entertained as per policy as the late employee did not nominate Shri Pradip Kumar Pandit for appointment.
- (iv) The widow of Late Lalit Mohan Pandit, Anjali Pandit preferred a claim for compassionate appointment for Pradip Kumar Pandit on 31.3.2011 which is five years after the demise of Late Lalit Mohan Pandit on 15.9.2006. The widow also complained to the vigilance department of the authorities stating that Alok Kumar Pandit is not the biological son of Late Lalit Mohan Pandit. Such complaint resulted in dismissal of Sri Alok Kumar Pandit on 15.10.2014.
- (v) That, compassionate appointments are primarily offered to enable the bereaved family to face the sudden financial crises that occurs in the family of employee, who passed away or became medically incapacitated while in service and such appointments cannot be claimed as a matter of right.
- (vi) The speaking order also elucidates that the widow Anjali Pandit had sought compassionate appointment in favour of son, Pradip Kumar Pandit nearly after 10 years after appointment to Alok Kumar Pandit, hence, the claim of the family is untenable on account of delay.
- (vii) The applicant, Shri Pradip Kumar Pandit, does not possess the minimum educational qualification of Class X passed or ITI for the post of Level - I.




Hence, the respondent authorities rejected the prayer of Pradip Kumar Pandit primarily on the grounds of delay, that Pradip Kumar Pandit was not the nominee of the late employee and also that Pradip Kumar Pandit lacks the basic educational qualification to deserve appointment with the authorities.

This Tribunal, while disposing of O.A. No. 719 of 2016, had quashed the speaking order dated 29.10.2014 in which the prayer of Pradip Kumar Pandit was turned down on ground of nomination of Late Lalit Kumar Pandit in favour of Pradip Kumar Pandit. This Tribunal held that the speaking order was based on frivolous grounds and the result of total non-application of mind. Vide such orders, the Tribunal further held that the respondents were bound to consider Pradip Kumar Pandit on merit when Alok Kumar Pandit was dismissed, and the authorities were directed to consider the case of Pradip Kumar Pandit untrammelled by the earlier considerations.



5.3. Unfortunately, in the reasoned speaking order dated 6.8.2019, the respondent authorities have reiterated the grounds of nomination of the deceased employee in favour of Alok Kumar Pandit (since dismissed) and the consequent delay in claiming appointment of Pradip Kumar Pandit. These grounds can no longer be advanced by the authorities given that the Tribunal in its earlier orders in O.A. No. 719 of 2016 categorically held such reasoning to be untenable.

5.4. It is also borne out by facts that the decision on Pradip Kumar Pandit's appointment was subject to the outcome of the O.A. filed by Alok Kumar Pandit challenging his dismissal. The said O.A. was dismissed vide this Tribunal's orders dated 7.5.2019. Alok Kumar Pandit's prayers had been closed conclusively with the passage of orders in O.A. No. 701 of 2016 and no reports of successful challenge has been furnished by the

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respondents during hearing. The only issue which the respondents have advanced afresh is that the applicant, Pradip Kumar Pandit, does not possess the minimum education qualification of Class X passed or ITI for the post of Level I.

Accordingly, we would direct the respondent authorities to reconsider the prayer of Pradip Kumar Pandit without recourse to the grounds of delay, absence of nomination by Late employee or the fact that more than one appointment cannot be granted on grounds of medical incapacitation. The said respondent authority, while reconsidering the prayer of Pradip Kumar Pandit, will explore, in accordance with law, the possibilities of relaxation of minimum educational qualification of Class X passed or ITI for the post of Level I in the case of compassionate appointment in the context of medical incapacitation.



The authorities may decide in the light of the decision of Hon'ble High Court of Calcutta in **WP (C) No. 74 of 2016 with CAN No. 3935 of 2017 [Union of India & ors. v. Lakshman Chandra Bhandary & ors.]** whereby the Hon'ble High Court had directed the respondent authorities to consider the case of appointment of land losers without denying their claim on grounds of overage, if a power of relaxation is indeed available to consider invocation of such power and if the merits of the case so demands.

The competent respondent authority will issue his orders within a period of 12 weeks from the date of receipt of a copy of this order.

6. The O.A. is disposed of accordingly.

Applicants are directed to pay their individual court fees.

(Dr. Nandita Chatterjee)
Administrative Member
SP

(Bidisha Banerjee)
Judicial Member