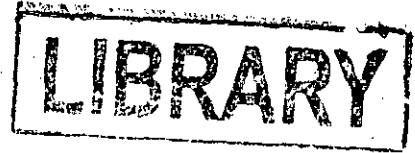


O.A. 1236/2013



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH.

Application under Section 19 of the Administrative
Tribunal Act, 1985

O. A. No. 1236 of 2013

In the matter of :

1. Smt. Azadi Hari, wife of Late
Madan Hari.
2. Kumari Pratima Hari, daughter of
Smt. Azadi Hari and Late Madan
Hari.

Both the applicants are residing at
Asansol Railpar, Dipupara, K.S.
Road, Durga Mandir, P.O. Asansol,
District Burdwan, Pin 713302

Applicants.

Versus

1. Union of India, service through
the General Manager, Eastern
Railway, 17, Netaji Subhas Road,
Kolkata-700001.

2. The Chief Personnel Officer,
Eastern Railway, 17, Netaji Subhas
road, Kolkata-700001.

3. The Divisional Manager, Eastern
Railway, Asansol, District Burdwan.
PIN 713302

4. The Senior Divisional Personnel
Officer, Eastern Railway, Asansol,
District Burdwan. PIN - 713302

Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.1236/2013

Date of order : 07.11.2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1.SMT. AZADI HARI
2.KUMARI PRATIMA HARI

VS.
UNION OF INDIA & OTHERS

For the applicants : Mr. A.K. Banerjee, counsel

For the respondents : Mr. S. Chatterjee, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been preferred by Azadi Hari, wife of Late Madan Hari and Pratima Hari, daughter of Late Madan Hari to seek the following reliefs:-

- "a) An order granting leave under Rule 4(5)(a) of the Central Administrative Tribunal(Procedure) Rules, 1987 permitting the applicant to file this application jointly;
- b) An order be passed directing the respondent to rescind, revoke and/or quash the impugned office order being No.DSC/4/Comp/41/2010/Gr.D dated 21st March 2013 issued by the Sr. Divisional Personnel Officer, E. Rly., Asansol (being annexure A-4 of the Original Application) being Respondent No.4 herein;
- c) An order do issue directing the respondents to consider the case of the applicant No.2 in accordance with the Rule and to give appointment on compassionate grounds to the applicant No.2 under 'died in harness category' in any post of Group C or Group D;
- d) To pass such other or further order or orders as this Hon'ble Tribunal would deem fit and proper."

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2. The order impugned in the present O.A. dated 21.03.2013 issued by the Senior Divisional Personnel Officer, Eastern Railway, Asansol as contained in Annexure A/4 to the O.A. is extracted hereinbelow:-

RTI Case

NO: DSC/4/Comp/41/2010/G.D
D/ 21. 03. 2013

Sub:- Assistance sought under Section 5(4) of RTI Act- information sought under RTI Act by Smt Azadi Hari, W/o Late Madan Hari, Ex. Safaiwala/Sr.DMO/STN

Ref:- APIO & DPO's letter at page below

In reference of the above, it is intimated that the above named widow had submitted an application for consideration of appointment on compassionate ground in f/o Sri Dipak Hari S/o Late Madan Hari Ex. Safaiwala/Sr.DMO/STN in Gr.D category enclosing photocopy of one school certificate of Class VIII passed issued by Headmaster, Bani Bihar High School, Viskamia Nagar, Durgapur bearing Sl.No 85 dated 10.04.93 in support of her above named son's date of birth/educational qualification. But on investigation, it revealed that the said school certificate is not genuine and correct but a fake one.

In view of submission of false school certificate the request for consideration of appointment on compassionate ground in f/o her son (Dipak Hari) could not be acceded to and regretted by the competent authority (DRM/ASN). Suitable reply had also been sent to Smt Azadi Hari, w/o deceased employee vide this office letter dated 08.08.12.

In terms of CPO/KK's letter no. CPO/SC/SA/Pol/PX(Corresp) dated 27.03.2009 it has been decided that if once a fake certificate is detected during enquiry, no further chance will be given to another son or others for appointment on compassionate ground.

Since the request for consideration of appointment on compassionate ground in f/o Sri Dipak Hari S/o Late Madan Hari, Ex. Safaiwala could not be considered in view of submission of false certificate, further request for consideration of compassionate appointment in f/o Miss Pratima Hari daughter of Late Madan Hari, Ex. Safaiwala/Sr.DMO/STN as prayed by the widow of the deceased vide her appeal dated 27.11.2012 is not coming under the purview of extant instruction contained in CPO/ER's letter cited above.

This is for kind information and necessary action please.

Ch. OS/Conf.

A bare perusal of the order would reveal and demonstrate that the respondents have refused to consider the case of Pratima Hari, daughter of Late Madan Hari for compassionate appointment on the ground that the certificates furnished earlier for consideration of employment assistance in favour of Dipak Hari, son of Late Madan Hari, was fake.

3. At hearing Id. counsel for the applicant would place the decision of the Hon'ble High Court in WPCT.249/2013 rendered in the case of **Sushila Bauri and Another Vs. Union of India & Others** to contend that submission of a fake certificate of one child should not stand in the way of consideration of the other. The relevant portion of the said decision is extracted hereunder:-

"The respondent authorities herein sought to punish the other members of the deceased family including the petitioner No.2 by refusing to grant employment on compassionate ground to the said petitioner No.2 upon considering the conduct of the elder brother of the petitioner No.2 herein. This is a misplaced punishment on an unerring person for the wrong committed by somebody else in which he had no role to play.

For the aforementioned reasons, we do not approve the decision of the Senior Divisional Personnel Officer, South Eastern Railway dated 13th June, 2012 and quash the same accordingly.

For the identical reasons, the impugned order passed by the learned Tribunal also cannot be affirmed and the same is set aside.

The respondent authorities, particularly the respondent Nos.4 and 5 herein, are directed to take immediate appropriate decision with regard to the claim for reemployment of the petitioner No.2 herein on compassionate ground without any further delay but positively within a period of three weeks from the date of communication of this order without being influenced by the earlier decision of the Senior Divisional Personnel Officer, South Eastern Railway in respect of the elder brother of the petitioner No.2.

With the aforesaid observations and directions, this writ petition stands disposed of."

4. Refuting the claim Id. counsel for the respondents would place Eastern Railway circular dated 27.03.2009 which stipulates as under:-

Confidential

Eastern Railway

No. CPO/SC/SA/PO1/PLX(Corrsp)

Kolkata,

dt. 27/03/2009

IRM, HWH, SDAH, ASN, MLDT

W.M. KPA, LLH, JMP

SE DPO's HWH, SDAH, ASN, MLDT

WTO's KPA, LLH, JMP

Sub: Appointment on compassionate grounds-Fake School Certificate

Of let it has been observed that some cases, at the time of submission of application for appointment on compassionate grounds 1st time for 1st child or other child or others with fake school certificates and same detected during enquiry then the widow applied for 2nd child or 2nd time feigning ignorance. This only encourages the spirit of taking chances of submitting fraud certificate and escaping with it, if luck be. Accordingly, a written clarification may be obtained from the party concerned at the time of Payment of Settlement dues or at the time of enquiry by the W/P through a written letter that if the documents submitted are found fake afterwards then no second chance will be given and said letter/undertaking may also be kept record in file.

In view of the above, competent authority has also decided that if once a fake certificate is submitted, no second chance will be given.

27/3/09
(B.N. Hansda)
Sr. Personnel Officer/RP
for Chief Personnel Officer

5. The respondents have relied upon a decision in W.P.(S)No.434 of 2014 rendered by Hon'ble High Court of Jharkhand at Ranchi delivered on 17.07.2014 . Relevant portion of the said judgment reads as under:-

"8.....It is settled law that appointment on the compassionate ground is not a matter of right rather it flows from the scheme formulated by the institutions as per terms and conditions. Admittedly there is specific instruction as noted in the letter CPO/SC/SA/PO1/Pt.X(corrsp) dated 27.03.2009 that if the certificate is found to be fake no second chance can be given and the relief as sought for by the petitioner cannot be granted.

9. Thus, there is no merit in this writ petition and the petitioner is not entitled to be appointed on the compassionate ground. Hence, the same is, hereby, rejected."

This decision was rendered having considered the decision of this Tribunal in O.A.No.607/2017 [Zahida Khatoon & Another vs. Union of India & Others(E. Rly.)] wherein it was held that :-

"2.....A person, who seeks a job basing on a forged document, is not entitled to get any job in the Government on compassionate grounds. Ld. Counsel for the applicant submits that the applicant was an illiterate poor person so without any motive he submitted a false certificate. We are not convinced by such submission, because the very submission of a false certificate seeking a job thereon, ex facie reveals the malafide intention of the applicant.

3. Under the circumstances, we are not inclined to issue any direction to the authorities to consider the case of the applicant. The applicant's claim is thus devoid of merit and thus rejected."

6. In the aforesaid backdrop, confronted with the rival contention and the contradictory decisions, we discern the following position:-

(i) While considering the case of Dipak Hari, his school certificate was verified by deputing a Welfare Inspector when the Headmaster, Bani Bihar High School, Viskarma Nagar, Durgapur could not certify that the certificate was a genuine one due to non availability of school records, as communicated vide his letter dated 11.11.2010, as alleged by the respondents but not annexed to their reply. It has been claimed by the respondents that the matter was referred to District Inspector of Schools who sent the copy of the enquiry report conducted by Assistant Inspector of Schools(SE), Durgapur Sub-Division, Burdwan, marked as Annexure R/2, but once again no copy has been annexed to the reply. The respondents have further claimed that this was informed to the applicant on 08.08.2012 and referred to

the Annexure R-3 which has also not been annexed to the reply. The applicant has alleged that without the documents being furnished along with the reply he was not in a position to controvert the statements made in the reply;

In absence of relevant documents certifying that the school certificate produced by Dipak Hari was a fake one, it cannot be safely concluded that Dipak Hari, the brother of Pratima, had submitted fake certificate to secure employment. Hence the decision of Hon'ble High Court at Jharkhand may not apply to the present fact situation.

(ii) The prayer made by the widow to seek employment assistance in favour of her daughter as was made on 27.11.2012, (annexed as A/2 to the O.A). It was her appeal to cancel her previous application for employment assistance in favour of Dipak Hari, on the ground that Dipak was her married son who was not looking after his widow mother or his unmarried daughter. Therefore, the widow did not seek employment assistance for her daughter after her son's case was rejected.

That her son's certificate was a fake one and was communicated to her on 21.03.2013 (Annexure A/3) long after her prayer dated 27.11.2012, that too while answering her application under RTI Act.

(iii) In absence of the documents that were required to be supplied by the respondent authorities justifying rejection of the case of the applicant, Pratima Hari on the ground that a fake certificate was furnished for consideration of the case of Dipak Hari, the present application for consideration of Pratima could not be thrown away in view of the decisions cited by the applicants.

7. Since the applicants have claimed that they are virtually reeling under penurious circumstances, the O.A. is disposed of with a direction to the respondent authorities to consider the matter in the light of the decision in WPCT 249/2013 (Sushila Bauri and Another Vs. Union of India & Others), ascertain the financial condition of the family and pass orders in regard to the claim for employment assistance in favour of Pratima Hari.

8. Appropriate orders be issued within 3 months from the date of receipt of a copy of this order:

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member