

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL KOLKATA BENCH, KOLKATA

O.A/350/1068/2017
M.A/350/631/2017

Date of Order: 16.02.2017

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

1. Maimul Begam, wife of Late Md. Hashim age about 50 years, by faith Muslim, by occupation - Housewife, residing at Village Sasna, P.O Sisai, P.S. - Sahzidpur, District - Chapra, Bihar, Pin - 841422.
2. Md. Shazad, age about 20 years, son of Late Md. Hashim, by faith Muslim, by occupation - Unemployed, residing at Village Sasna, P.O Sisai, P.S. - Sahzidpur, District - Chapra, Bihar, Pin - 841422.

--Applicants.

--versus--

1. The Union of India, through the General Manager, Eastern Railway, 17 N.S Road, Kolkata - 700001.
2. The Secretary, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi - 110001.
3. The Chief Personnel Officer, Eastern Railway, Howrah - 711101.
4. The Divisional Railway Manager, Eastern Railway - Howrah - 711101.
5. The Sr. Divisional Personnel Officer, Eastern Railway, Howrah - 711101.

--Respondents.

For The Applicant(s): Sk. S. H Molla, counsel

For The Respondent(s): None

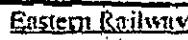
O R D E R

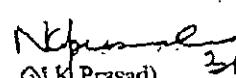
Per: Ms. Bidisha Banerjee, Member (J):

This application has been filed to seek the following reliefs:

- "(i) Leave may kindly be granted to file and hear this original application jointly before the Hon'ble Tribunal, the applicants have no other efficacious way to file the application.
- (ii) An order do issue upon the respondents particularly upon the Sr. Divisional Personnel Officer, Eastern Railway, Howrah to issue necessary order for the appointment of the applicant no. 2 on the compassionate ground by cancelling and/or quashing their office order vide no. DCC/Comp/34091209 dated 19.02.16..
- (iii) An order do issue upon the respondents particularly upon the respondent no. 3 to appoint the applicant no. 2 in the Railway service on the compassionate ground by quashing the cryptic speaking order dated 31.05.17, and to produce entire document before the Tribunal for conscientious of justice.
- iv) And any other order/orders as Your Lordship may deem fit and proper."

2. The impugned speaking order is extracted hereunder for clarity:

	Eastern Railway No:CPO/SC/SA/Comp/7668 Kolkata, Dated: 31.05.2017 Speaking Order
<p>Pursuant to direction dated 06.03.2017 passed by the Hon'ble Central Administrative Tribunal, Calcutta in OA 350/01280/2016, Maimul Begam & Another vs U.O.I & others, undersigned being the respondent No. 3, has considered the appeal dated 26/07/2016 of the applicant taking into consideration the Railway rules and regulations in this regard.</p> <p>In a nutshell, the facts of the case are that late Md. Hasim, ex Lampman under SM/Howrah expired on 06/05/2009. After death of the ex-employee, Smt. Maimul Begam, w/o Md. Hasim vide application dated 29/10/2009 applied for compassionate appointment for her 1st son Md. Azad. She also submitted a class VIII passed Transfer certificate bearing No. 159 dated 30/01/2006 issued by Headmaster, Kapildeo Uchchcha Vidyalaya, Sisai, P.O - Saran, Bihar in support of educational qualification and date of birth of her son. One Staff & Welfare Inspector of this Railway was deputed to enquire into the case. The said Inspector submitted his report wherein it is seen that the Transfer certificate could not be verified as the School authority denied to show any documents. Subsequently, communications were made with the District Inspector of School, Saran, Bihar and in reply District Education Officer/Saran vide letter No. 8521 dated 07.04.2011 declared that the Transfer certificate is false. Thereafter, Smt. Maimul Begam has applied vide application dated 04/02/2016 for compassionate appointment of her 2nd son, Md. Shazad which was turned down by the Divisional authority since once a fake certificate is submitted, no second chance is given to any other family member.</p> <p>The widow vide her application dated 26.07.2016 (Para viii) has indicated that she had changed the nomination in favour of her younger son since she felt that her elder son would not look after her which is far from truth. The change in nomination is a subsequent fall-out of confirmation of fake certificate of the elder son by DEO/Saran. She had knowingly submitted a fake certificate of her elder son and thus, attempted to cheat the administration with false document to procure a government job. She was well within her rights to offer herself for the compassionate appointment or keep the matter pending till her second son attained majority which she has not done.</p> <p>The scheme of compassionate appointment is a welfare measure to enable the family of the deceased to tide over sudden crisis arising out of death of the bread winner. Making mockery of the scheme by changing candidature and blaming the administration for non-consideration is not acceptable.</p>	

<p style="text-align: center;">:2:</p> <p>A policy decision has been taken that once a certificate has been established to be fake, no second chance will be given for compassionate appointment to any other member of the family to avoid misuse of Govt. machineries and making mockery of the compassionate appointment Scheme.</p> <p>In view of the above, I do not find any justification to consider the claim of compassionate appointment for 2nd son of the deceased employee.</p>	<p style="text-align: right;">  (N.K. Prasad) 31/5/2017 Chief Personnel Officer </p>
--	---

3. Ld. counsel for the applicants would rely upon a decision of the Hon'ble High Court in Sushila Bauri's case to strenuously urge right to consideration in favour of the applicants.

4. Per contra, respondents would vehemently oppose the claim defending the stand of the Railways.

5. We heard ld. counsel for the applicants and perused the records.

6. In **Sushila Bauri & Anr. vs. UOI & Ors.** (WPCT 249 of 2013), the Hon'ble High Court held as under:

"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"

7. The decision squarely applies to the present facts and position.

8. In such view of the matter, we quash the speaking order and direct the authorities to reconsider the claim of the applicants in the light of the ratio cited supra, and pass order afresh, untrammelled by their previous view.

The O.A accordingly stands disposed of. M.A consequently stands disposed of. No costs.

(Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)