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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 5th day of July, 2001.

Original Application No.693 of 1997.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Arun Kumar Tiwari,
Son of Late Anirudh Tiwari,
Resident of 253-A, Loco Colony,
Allahabad.

(Sri G.D. Mukherjee/Sri S. Mukherjee, Advocates)

. Applicant

Versus

1. The Union of India, through
Chairman Railway Board,
Rail Bhawan, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Allahabad.

(Sri Amit Sthalaker, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. SKI Naqvi, J.M.

Sri Arun Kumar Tiwari has come up seeking the relief to the effect that the respondents be directed to provide him appointment on compassionate ground. As per applicant's case, his father Late Sri Anirudh Tiwari was a Motor Driver-cum-Mechanic in the respondents' establishment and died in harness in the year, 1994 leaving behind him a family consisting of the applicant, one brother and two sisters. The applicant moved for appointment on compassionate ground and made representation also but of no avail. Therefore, he has come up before the Tribunal for seeking relief as above. The applicant has also explained that no doubt his father was removed from service w.e.f. 24.7.1989 on the ground of conviction in a criminal case under Section 411

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IPC but when he died a criminal Revision was pending before the Hon'ble High Court against ~~which~~ the the First Appeal decided by the Session Judge upholding conviction and, ^{for which} ~~therefore~~, on the death of the father of the applicant the Criminal Revision abated. Therefore, it is a case of death in deemed harness.

2. The respondents have contested the case, filed the counter reply mainly on the ground that when the father of the applicant died, he was not in the service of the respondents and, therefore, it is not a case of death in harness giving rise to any claim for compassionate ~~ground~~ appointment.

3. Heard learned counsel for the parties and perused the record.

4. The main controversy in the matter is that as to whether the father of the applicant died in harness or is a case of death in deemed harness or death when he was not more in service. The respondents have a submission that when the applicant's father died on 14-6-1994 he was no more in service as per removal order dated 24-7-1989 which was confirmed in the departmental appeal as well as ⁱⁿ Revision and not challenged before any Court. Whereas the learned counsel for the applicant mentions that when the father of the applicant died ^{the} ~~which~~ conviction was already stayed ^{and also} ~~i.e.~~ before the date when removal order was passed. Being more specific, he mentions that the Hon'ble High Court stayed the operation of the conviction and sentence on 22-7-1989 whereas the removal order has been passed on 24-7-1989 and thereby it was passed when the order of conviction and sentence was not in operation and being so the position removal of the father of the applicant from service was bad in law and void ab initio, and hence he shall be deemed to be in service...

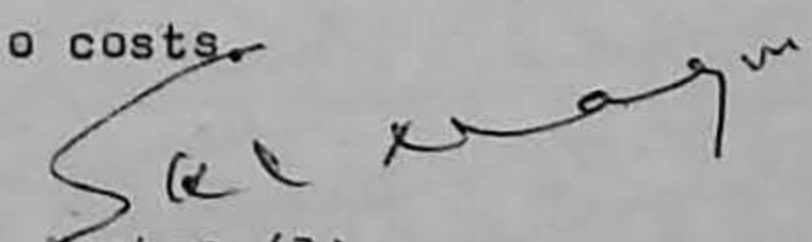
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and died in harness for which the applicant is entitled to press his claim for appointment on this ground. Learned counsel for the applicant cited the law as provided in PK Sharma Vs. UOI, OA No.1309/1998 decided on May, 1989 by this Bench published in 1990 (1) UPLBEC 60.

5. Considering the facts and circumstances of the matter, the arguments placed from either sides, and the law cited by the learned counsel for the applicant, it is found that there is no controversy regarding the narration of the facts. The main controversy is regarding death 'in harness' or death in 'deemed harness'. The learned counsel for the respondents mentions that there is no departmental or judicial order through which the order of removal of the father of the applicant has been stayed, suspended or quashed or set aside and, therefore, it is evident that the father of the applicant was no more in the service of the respondents right from 24-7-1989. Sri S. Mukherjee, counsel for the applicant brings a new theory of "deemed harness" and relies on Sri PK Sharma Vs. UOI case (supra) and wishes to apply the law laid down therein in which the removal was challenged in the Court, but in the present matter it has not been challenged before the Court. Before placing reliance over the decision cited, learned counsel for the applicant must have been conscious of the fact that the father of the applicant preferred departmental appeal and departmental Revision against the order of removal but did not succeed there and preferred not to go to invoke the jurisdiction of the Court or Tribunal even though he lived for so many years after exhausting the departmental remedy.

6. For the above, I do not find any merit in the matter to provide the relief sought for. The OA is dismissed accordingly with no order as to costs.


Member (J)

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