

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH : ALLAHABAD

(This the 17 day of July, 2009)

Present

Hon'ble Mr. A.K. Gaur, Member-J

Original Application No.753 of 2006

Kashmir Singh S/o Late Sri Sileti Singh aged about 45 years R/o
Village Nagla Nadia P.O. Tindauli District- Mainpuri.

..Applicant

By Advocate: Shri S.Ram.

VERSUS

1. Union of India, through General Manager, North Central Railway Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, D.R.M. Office, Allahabad.
3. Shri Ram Priyojan S/o Late Sri Sileti Singh R/o Villalge Nagla math P.O. Tindauli District – Mainpuri.

...Respondents

By Advocates: Shri A. Dwivedi.
Shri B.N.Singh.

ORDER

(By : Hon'ble Mr. A.K. Gaur, Member-J

Applicant has filed O.A. for quashing order dated 07.07.2006
communicated by SSE (P-Way) Firozabad vide letter dated 17.07.2006
(Annexure A-2) alongwith the show cause notice dated 08.09.2005
(Annexure A-1).

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2. Brief facts of the case are that the father of the Applicant Late Sileti Singh while working as Key-Man under Section Engineer (P.Way), Mainpuri, was murdered on 28.06.1995. It is alleged that father of the Applicant was murdered by his younger brother namely Ram Priyojan. The Applicant being the eldest son of the ex-employee applied for appointment on compassionate ground vide his application dated 05.12.1995 followed by another reminder dated 20/03/1996. The Applicant was constrained to file OA No. 654/1996. His younger brother Ram Priyojan also approached the Tribunal and got impleaded himself as one of the respondents vide order dated 11.11.1997. The Tribunal vide its order dated 10.12.1999 clearly held that since the Original Application of the Applicant for appointment on compassionate ground is pending since 20.03.1996, and his case for appointment is under active consideration of Divisional Railway Manager, the ends of Justice would be met if the Divisional Railway Manager is directed to decide his representation within a period of three months. After considering the representation of the Applicant, he was given appointment on compassionate ground. According to the Applicant, he never filed any affidavit of Shri Ram Priyojan at the time of seeking compassionate appointment, as alleged.

3. It is also alleged that Shri Ram Priyojan/Respondent No. 3 was living separately and was an accused of the murder of his father. The

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Respondent No. 3 filed Writ Petition No. 7262/01 Ram Priyojan Vs. CAT and others before Hon'ble High Court, challenging the order of Tribunal dated 10.12.1999, Allahabad which was dismissed at the Admission stage itself on 26.02.2001. The Respondent No. 3 who is allegedly an accused in the murder case of his father has already been acquitted by the Trial Court on technical grounds. Against the order of acquittal, the applicant has filed the Criminal Revision No. 2012 of 2001, which is pending before Hon'ble High Court, Allahabad. The Respondent No. 3 by concealing the material facts before Hon'ble Tribunal filed another OA No. 500 of 2002, seeking relief to provide appointment on compassionate ground to him in place of his brother. According to Respondent No. 3, the applicant had taken appointment on compassionate ground by fraud. He also prayed for a direction to the Respondent No. 2 to pay 50% pay and allowance from the salary of the applicant. In the OA filed by the Respondent No. 3, direction dated 13.1.2005 was issued to the Respondent No. 2 to consider and decide the representation of the Applicant by reasoned and speaking order within a period of three months. It is also submitted that the issue raised in the OA No. 500 of 2002, has already been settled by the Tribunal in the OA No. 654 of 96, Kashmir Singh Vs. Union of India. By concealing and suppressing material facts the respondent No. 3 has obtained order and direction dated 13.01.2005.

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4. The Review Application filed against the order dated 13.01.2005 was also dismissed vide judgment order dated 07.04.2005. The applicant was also given show cause notice by the Divisional Railway Manager, North Central Railway, Allahabad, as to why his services be not terminated, as he had failed to maintain his younger brother/Respondent No. 3 (Shri Ram Priyojan), who was 29 years of age at the time of murder of his father.

5. The applicant submitted his reply to the show cause notice dated 08.09.2005 on 17.09.2005. The representation of Respondent No. 3 was not decided by the competent authority within the time frame directed by the Tribunal and more that one year had already elapsed without taking decision on the above direction. The Applicant had to file Contempt Petition before the Tribunal on 12.01.2006 for non-compliance of the order and direction of the Tribunal dated 13.01.2005. To avoid Contempt of Court the order dated 07.07.2006 was issued by the Divisional Railway Manager, Northern Railway, Allahabad and communicated by post vide letter dated 17.07.2006 to the applicant. It is alleged that the representation of the Respondent No. 3 was decided after lapse of more than one year, on the false plea of negotiation between the parties the Applicant was directed to pay Rs.1000/- per month to the Respondent No. 3 and this amount of Rs.1000/-per month will be debited from the salary of the applicant till his retirement

and remitted to saving Account No. 0117066043, State Bank of India, (Mainpuri Branch) in favour of Rs. No. 3/Shri Ram Priyojan).

6. It has been contended by the applicant that the Respondent did not even follow the ratio of the case law decided by this Tribunal in O.A. No. 740/1991 Malti Devi Vs. Union of India & others decided on 28.01.1992, wherein, it is clearly laid down that even son would not be entitled to get any maintenance on attaining age of majority from the appointee on compassionate ground. According to the applicant he never gave any undertaking either verbally or in writing to pay Rs.1000/-to Respondent No. 3 who was accused in the murder case of his father. A Criminal Revision against his acquittal is already pending. It is also urged on behalf of the Applicant that as per Railway Board's policy, ***'dependents' only as per Railway Servants (Pass) Rules are entitled to be supported by the appointee on the compassionate ground till he attains the age of majority and no other person who are not covered, are entitled to be supported as per Master Circular No. 16.***

7. In the Counter Reply filed by official respondents, it is submitted that the Respondent No. 3 had filed OA No. 500 of 2002 seeking direction to the competent authority to consider and decide the representation of the Applicant by reasoned and speaking order to be

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passed and communicated to the Applicant within a period of three months from the date of receipt of a copy of the order.

8. Review Application No. 10 of 05 filed by the Applicant, was also rejected by this Tribunal on 07.04.2005. After considering the direction of this Tribunal the competent authority issued a show cause notice dated 08.09.2005 to the applicant and after receiving his reply the decision was taken by the competent authority on 17.07.2006.

9. It is also submitted that by the answering Respondents that Respondent No. 3 was acquitted by the Trial Court on technical grounds against which the applicant has filed Criminal Revision No. 2012/2001 before the Hon'ble High Court, Allahabad, which is still pending.

10. In the Rejoinder Reply filed by the applicant it is submitted that the Counter Reply has been filed by an incompetent authority. In support of this contention the Judgment rendered by this Tribunal in 1999 (8) ATC 16 Ram Rakha Vs. Union of India and others and P. Prahaladan Vs. Supdt. of Post Offices reported in 2003 (2) SLJ 432.

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11. The Respondent No. 3 has obtained directions in O.A No. 500 of 2002 from the Tribunal by adopting fraudulent methods and suppressing the material facts. On the same issue the Hon'ble High Court had dismissed the Writ Petition of Respondent No. 3. The OA No. 500 of 2002 was disposed by this Tribunal vide its order dated 13.01.2005. The respondents have utterly failed to cite the relevant rules for taking decision of recovering Rs. 1000/- per month from the salary of the Applicant. There is no provision under the Railway Rule that the ward who was appointed on compassionate ground on the direction of the Tribunal should maintain his younger brother aged about 29 years and not dependent of his late father. The Respondents did not follow any provision or rule to show that recovery from pay of the applicant can be made to benefit such a son, who was major at the time of murder and was major and was not dependent, as per definition of "dependents relative" or "family" given in Rule 3 of Railway Servants (Pass) Rules, 1966, which is appended below :-

3. (C) *'dependent relative' in relation to a railway servant, whose father is not alive, means :-*
- (i)
- (ii)
- (iii) *Brother/step brother under twenty one years of age provided he resides with and is wholly dependent on the railway servant*
- (e) *'Family' includes:-*
- (ii) *Son or sons who have not attained the age of 21 years and are wholly dependent on the Railway servant*
- (iii) *son or sons of the age of 21 and above who are*

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- (a) *bonafide students of any recognized educational institution;*
- (b) *engaged in research work and do not get any scholarship/stipend;*
- (c) *working as an article clerk under the Chartered Accountant*
- (d) *invalid, on appropriate certificate from Railway Doctor;*

12. In the Counter Reply filed by Respondent No. 3, it is submitted that the brother of the Respondent No. 3, the applicant had given affidavit dated 26.02.1997 before the appointment to the competent authority, clearly giving an under taking in writing that he will maintain the other family members properly and if he does not maintain the dependent of deceased employee then his services could be terminated. After getting appointment the applicant started neglecting Respondent No. 3/his younger brother, aggrieved thereby Respondent No. 3 made representation to the competent authority. Supplementary Counter Reply and Supplementary Rejoinder have been filed by the parties.

13. I have heard Shri S. Ram for the Applicant and Shri A. Dwivedi and Shri B.N. Singh for the official respondents and private respondent respectively. It is seen from the record that the order dated 20.7.2006 was passed at admission stage of the O.A. after hearing the parties for the counsel. The Tribunal also directed the respondent to indicate the relevant provision and rule under which the said amount of Rs. 1000/- has been directed to be debited from the salary of the applicant.

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14. I have carefully perused the Railway Board's letter dated 08.04.2002 and in my considered view the said letter is not applicable to the case of Respondent No. 3 in as much as at the time of murder of Late Sileti Singh the Respondent No. 3, had already attained the age of about 29 years. It is noticed that the Respondent No. 3 was living separately from his father and was not at all dependent on the deceased employee. Learned counsel for official respondent could not indicate any Rules laid down by the Railway Board to indicate that the major son who was not dependent on the deceased Railway employee is entitled to get maintenance.

15. It is also settled principle of law that appointee on compassionate ground is supposed to maintain only dependent family members of the deceased Railway Employee, who was not major, as per definition of dependent relatives or family enshrined under Rule 3 of the Railway servant (Pass) Rules 1966. In view of the said Rule. Respondent No. 3 has got no claim. Learned counsel for the Applicant has vehemently argued that the Respondent No. 3 obtained direction of the Tribunal to decide his representation by the competent authority, by adopting fraudulent methods and suppressing material facts that on the same issue the Hon'ble Court had dismissed Writ Petition of Respondent No. 3. The Respondent No. 3 did not disclose this vital fact in his

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Original Application. In spite of there being a clear direction of the Tribunal, the Respondents have utterly failed to cite the relevant rules for passing impugned order. I may also observe that there is no such provision that the ward who was appointed on compassionate ground on the direction of the Court should maintain the major son who was not dependent on his father at the time of his death. Admittedly the applicant was 29 years of age at the time of murder of his father. Criminal Revision against his acquittal on technical grounds, is still pending before Hon'ble High Court, Allahabad. I have also carefully gone through the provisions of Rule 3 of Railway Servants (Pass) Rules, 1966 and I am of the considered view that by no stretch of imagination, the Respondent No. 3 could be included under the definition of the family.

16. It is also noticed that the direction to decide the representation of the Respondent No. 3 has also been obtained, by suppressing material fact in as much as that the Hon'ble High Court had already rejected the Writ Petition vide order dated 26.2.2001, but this fact was not disclosed by Respondent No.3 in the O.A. No. 55 of 2002 filed by him. The Hon'ble Supreme Court has clearly held in the case of S.P. Chengalvaraya Naidu (dead) by L.Rs Vs. Jaggannath (dead) by L.Rs. & ors. (C.A. No. 994 of 1972 decided on 27.10.1993), that 'a person

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whose case is based on falsehood, can be summarily thrown out at any stage of the litigation.'

17 The learned counsel for the Applicant would contend that the Respondent No. 2 has not followed the provisions of Article 14 and 16 of the Constitution of India while passing order to recover Rs.1000/- per month from the regular salary of the applicant till his retirement and pay it to the Respondent No. 3. The perusal of the record clearly indicates that the Respondents have utterly failed to cite the relevant rules for taking decision so passed in the impugned order. There is no such provision under Rule that the ward appointed on compassionate ground, on the direction of the Tribunal should maintain the major son, who was not dependent on his father at the time of his death. As per Railway Board policy, the dependents as per Railway Servants (Pass) Rules are only entitled to be supported by the appointee on the compassionate ground till the dependents attain the age of majority and no other persons who are not covered under Rule or entitled to be supported.

18. In my considered opinion the action taken by the Respondent No. 2 is illegal, arbitrary and without jurisdiction. The issue that the major son would not be entitled for maintenance from the person who is appointed on compassionate ground is no longer res-integra in view

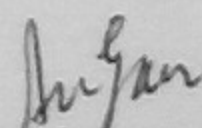
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of settled position of law laid down by the Tribunal in the case of Malati Devi Vs. Union of India and others.

19. I have carefully considered the various arguments advanced by learned counsel for official Respondents and the private respondent and in my considered opinion the Railway Administration has passed orders dated 7/17.7.2006 after giving show cause notice to the applicant.

20. Having given my anxious thought to the pleas advanced by the parties counsel and the pleas taken in the written arguments, I am of the considered view that the answering respondents have passed order dated 7/17.7.2006 in utter violation of Railway Rules and the same deserves to be quashed and set aside.

21. In view of my aforesaid observations, I hereby allow the original application. The order dated 17.7.2006/Annexure A-2 alongwith show cause notice dated 08/09.2005/ Annexure A-1 are quashed and set aside. No order as to costs.


Member - J

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