

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

714

Original Application No. 840 of 2008

Allahabad, this the 16th day of August, 2012

Hon'ble Mr. Shashi Prakash, Member (A)

Smt. Kusum, aged about 41 year, Widow of Late Shiv Kumar, R/o
H. No. 20, Tikoniya, Pulia No. 9, Jhansi.

Applicant

By Advocate: Mr. S.M. Ali

Vs

1. Union of India through General Manager, North Central Railway, Allahabad.
2. The Divisional Rail Manager, North Central Railway, Jhansi.
3. The Senior Divisional Personnel Officer, North Central Railway, Jhansi.
4. The Station Superintendent, North Central Railway, Jhansi.

Respondents

By Advocate: Ms. Nandita Adaval

ORDER

By Hon'ble Mr. Shashi Prakash, A.M.

Instant O.A. has been filed with the prayer to quash the impugned order dated 31.03.2008 (annexure-1), rejecting the claim of applicant for appointment on the basis of compassionate grounds. The applicant has further prayed to direct the respondents to consider his claim for compassionate appointment.

2. The applicant has filed the present O.A. mentioning the following facts: -

6

(15)

The applicant's husband-Late Shiv Kumar was engaged as casual labour with temporary status and also acquired status of Month Rated Casual Labour (for short MRCL) in the year 1990 after qualifying the prescribed medical test in B-1 category. The name of applicant's husband was in the Casual Labour Live Register at serial No. 612. However, the services of applicant's husband were terminated along with others in the year 1991 without following the prescribed procedure of temporary servants. They raised industrial dispute in Labour Court and the C.G.I.T. passed award in favour of Workmen by Order dated 26.04.1996 by reinstating them. Against the Order of the C.G.I.T., the respondents filed Writ Petition No. 132 of 1997 before the Hon'ble High Court, and by the interim Order dated 15.10.1997 the Hon'ble Court held that *the award of Labour Court shall remain stayed provided the petitioners pay to the Workmen their wages at the rate of which is last drawn and continue to pay till disposal of the Writ Petition as per Section 17 (b) of the Industrial Disputes Act*. It is further averred that during pendency of the above Writ Petition, the Railway Board formed a scheme for absorption of ex-casual labour by Circular dated 28.02.2001 and 20.09.2001 from Casual Labour Live Register with certain condition of working days and age, and the concerned D.R.M. issued notification dated 30.08.2001 calling bio data from ex casual labour up to 30.09.2001. The applicant's husband filed his bio data through Depot in Charge within time. But, unfortunately the applicant's husband died on 29.10.2001 before screening during pendency of absorption process. It is averred that in the year 2004, the respondents filed Supplementary Affidavit in the

(16)

Writ Petition and praying to allow them to withdraw the pending Writ Petition and made a promise that the services of every Workmen would be regularized. The applicant filed a representation dated 04.01.2005 to issue in her favour the order of appointment on compassionate grounds but, the respondents' authority did not consider the same hence, she filed an O.A. No. 1149 of 2007 before this Tribunal. The Tribunal directed the respondents to consider her representation by passing a reasoned and speaking order as per rules on 01.02.2008. The respondent No. 3 by the impugned order dated 31.03.2008 rejected the claim of the applicant by passing a non-speaking order. The applicant has alleged that at the time of death, her husband was in service of the respondents' department hence she is entitled for compassionate appointment. Aggrieved with the illegal action of the respondents, the applicant filed the present Original Application.

3. By filing the Written Statement, the respondents have not admitted the contentions of the applicant, averred in the O.A., and have submitted that the husband of applicant had worked as Hot Weather Watermen in broken periods, and he lastly worked on 22.07.1991 under the Station Superintendent, Jhansi. The husband of the applicant died on 29.10.2001 and at that time he was not in railway service. Hence, as per Railway Board letter dated 31.12.1986, the applicant is not entitled for compassionate appointment. The respondents have submitted that in compliance of the Order of this Tribunal, the respondents passed a well reasoned and speaking order. As the applicant is not entitled for

Sn

12

compassionate appointment, the respondents have prayed for dismissal of the O.A.

4. The Rejoinder Affidavit has been filed by the applicant, rebutting the averments made in the C.A. and also reiterating the facts averred in the O.A.

5. Heard, Mr. S.M. Ali, Counsel for the applicant and Ms. Nandita Adaval, Counsel for the respondents and perused the pleadings on record.

6. A glance at the facts on record of case indicate that while the husband of applicant, who had been working as MRCL in the respondents' department, applied for regular appointment, unfortunately died before he could appear for screening test. The applicant has claimed that as her husband got the temporary status and died during an ongoing screening process, hence she is entitled for compassionate appointment. On the other hand, it is the averment of the respondents that since the husband of the applicant died before his regularisation in service could take place, she is not covered under the Scheme framed by the Railway for consideration of compassionate appointment, wherein it has been made explicit that the benefit of the Scheme is to be given only to the dependent of the staff who are regular employee. Having regard to the above stated position, it is clear that the applicant is not eligible to be considered for compassionate appointment under the Scheme. While we may have sympathy with applicant but given the statutory position, it will be difficult to entertain her claim. The Hon'ble Supreme Court in the case of '*Life Insurance*

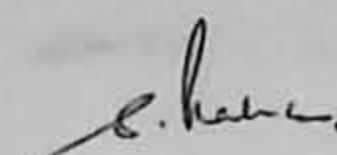
81

Corporation of India vs. Asha Ramchandra Ambekar' has

held as under: -

"...The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done."

In view of the above facts, circumstances and law position, I am of the view that there is no merit in the O.A. Accordingly, O.A. is dismissed. No order as to costs.


Member-A

/M.M/