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OA No.333 of 2008

Pramila Bea & Anr.Applicants
Versus
Union of India & Others Respondents

ORDER DATED: 01.04.2010.

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

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Heard Learned Counsel for both sides and perused the materials placed on record.

2. Both widow and daughter of Late Bhikari Naik, who breathed his last prematurely on 17.7.1983 while working as Sweeper under the Respondents leaving behind his widow (Applicant No.1) and daughter (Applicant No.2) who is by now aged about 40 years. According to the Applicants, at the time of the death of the Railway employee Applicant No.2 was 13 years old. Therefore, on attaining majority, appointment on compassionate ground in her favour was sought. But the prayer of the applicants was rejected and communicated in letter dated 12.03.2001. This order of rejection was challenged by the applicants in OA No. 157 of 2002 and this Tribunal vide its order dated 27th August, 2003 quashed the order of rejection and directed the Respondents to reconsider the case of the Applicant. In compliance of the order of this Tribunal, Respondents reconsidered the case of the Applicants but rejected the prayer of the applicants, as it appears from the order, on the ground that the genuineness of the educational qualification of applicant No.2 was found doubtful and communicated the same to the Applicants in letter under Annexure-A/7 dated 18.01.2007. Hence by filing the present OA, the Applicants seek to quash the order under Annexure-A/7 with prayer to direct the Respondents to provide appointment in favour of applicant No.2 on compassionate ground. To buttress the stand of the

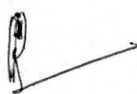
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Applicant, Learned Counsel for the Applicant relied on the decision of the Hon'ble High Court of Orissa in the cases of Mudgar Pradhan v Mahanadi Coal Fields, 2007 (Supp.II)OLR 1095, Chakradhar Das and another v Orissa Bridge and Construction Corporation Limited through its Managing Director cum Chairman and another, 1996 LAB I.C. 1621, Ranjan Acharya v Arjun Rout, 2009 (II) ILR 796 and the Rules of the Railway.

3. In the counter-reply it has been stated by the Respondents that after the orders of this Tribunal quashing the order of rejection in OA No. 157 of 2002, the grievance for appointment on compassionate appointment in favour of applicant No.2 was examined. On examination it revealed that meanwhile, Applicant No.2 got married and is having a daughter and that there has been serious discrepancy in regard to the DOB of the applicant No.2. Accordingly, Headmaster of the concerned school wherefrom she has obtained the certificate was requested to furnish report who in his report dated 13.12.2004 stated that the applicant No.2 took admission in Class 9 on 20.7.1990 and discontinued from the same class on 28.7.1990. In another certificate issued from the same school on 19.1.2001, it is stated that applicant No.1 was admitted into the institution during the academic session 1990-91 and passed Class VIII and continuing class IX. It has been stated that in view of the above the competent authority rejected the claim of the applicant and intimated under Annexure-A/7. To justify the stand the Respondents have also produced the records which have been taken note of.

4. Applicant has filed rejoinder more or less reiterating the contents made in their Original Application and trying to substantiate that the discrepancy noted by the Respondents is without any basis and non-application of mind.



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5. After giving due consideration to various submissions made by the parties with reference to their pleadings, also perused the Rules of the Railway on the subject besides the decisions relied on by the Learned Counsel for the Applicant in course of hearing. Time without number the Hon'ble Apex Court have held that no reliance be placed on a decision without discussing/looking as to how the factual situation fits in with the case under consideration. Suffice to quote one such decision of the Hon'ble Apex Court i.e. in the case of **Bharat Petroleum Corporation Ltd. & another v N.R. Vairamani & another** (AIR 2004 SC 4778). In view of the above, there is need of examination of the factual scenario/issues involved in the cases relied on by the Learned Counsel for the Applicant vis-à-vis the present one. Accordingly, on examination, it is seen that the factual aspects/issues involved in those cases are distinct and different from the present one. The cases relied on by the Learned Counsel for the Applicant have absolutely no application to the present case in any manner. In the present case no concrete evidence has been produced by the Learned Counsel for the Applicant that the widow is fully dependent on her married daughter which has not rightly been produced as the widow is in receipt of the monthly pension and there is no other member of the family. Therefore, in case the married daughter is extended the benefit of compassionate appointment then a time will come when there will be hardly any post available for open recruitment and one will claim the appointment on compassionate ground like a right to the property which is not the aim and object of the scheme.


6. Although appointment on compassionate ground is a benevolent legislation yet it is trite law that Administrative Tribunals cannot confer benediction impelled by sympathetic considerations in disregard to the facts as in the instant case. The appointment on compassionate ground is not

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another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. Employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided one must come in clean hand and situation does really exist for providing employment on compassionate ground. It cannot be provided as a matter of routine or cannot be claimed as a matter of right. In the instant case the deceased left behind his widow and one daughter who is by now 40 years of age and as per the letter of the Deputy Chief Vigilance Officer (T) under Annexure-R/1 she got married meanwhile. From the facts narrated above, this case does not appeal to judicial conscience to be a fit case necessitating interference in the order of rejection under Annexure-A/7. Interfering in this matter would tantamount to debarring another candidate who might have more genuine claim for appointment under compassionate ground in the Railway. For the reasons stated above, I find no justifiable reason to interfere in the order under Annexure-A/7; especially for the reason that the death of the railway employee occurred in the year 1982, Applicant No.2 in whose favour compassionate appointment is sought is aged about 40 years and meanwhile got married and above all the doubtfulness in the educational certificate furnished for such appointment.

7. In the result, this OA stands dismissed by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)