

Smt. S.Bhanu Applicant
Versus
Union of India & Others Respondents

Order dated: 23/02/2010

C O R A M
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Claiming non-consideration for employment on compassionate ground, the Applicant (Smt. S.Bhanu) stating to be the wife of Late Bairagi who expired prematurely on 12.02.2000 while working in the Railway has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 seeking direction to the Respondents to consider and provide her appointment on compassionate ground in the Railway. Respondents while denying receipt of any such representations as alleged in the petition, have stated that even if it is accepted that such representations were submitted by the applicant, even then this Original Application is liable to be dismissed on the law of limitation as admittedly the husband of the applicant expired in the year 2000 whereas this Original Application has been filed on 16.12.2008 and it is trite law that successive representation shall not save the limitation. In regard to merit of the matter, it has been contended by the Respondents that the contention of the applicant that the deceased left behind five female members is false. As per the affidavit filed by the applicant, the deceased employee had left behind him three married daughters and the applicant who is his second wife. From local enquiry it revealed that the first wife of the deceased had died on 20.09.1989. The Applicant is his second wife to whom he got married on 16.03.1992. The fact of remarriage of the applicant after the death of his first wife was not made known to the Respondents by the deceased during his service career. However, after the

death of the railway employee with the consent of the married daughters of the ex employee the applicant was paid all the death benefits including family pension and, as such the plea of the Applicant that she is continuing in indigent condition is an after thought. Next contention of the Respondents that the case of the applicant was duly considered and it was rejected and intimated to her in letter dated 19.12.2000 under Annexure-A/2 and on receipt of representation through Union the grievance of applicant was once again considered but it was not found feasible to provide her appointment on compassionate ground for the reason that there is no liability, financial condition of the applicant was not so poor and the remarriage of the applicant was never intimated to the Respondents by the deceased during his service career. Accordingly, Respondents opposed the prayer of the applicant and have prayed for dismissal of this OA.

2. Learned Counsel appearing for both sides reiterated the stand taken in their pleadings and having given a patient hearing of the matter perused the materials placed on record. In Annexure-A/2 it was intimated to the Applicant as under:

“It has been decided that the instant case is not a fit case for consideration of employment assistant on compassionate ground.

Hence, the request for employment assistance is regretted.”

3. Again in Annexure-R/2 dated 145.2.2001 it was intimated to the Applicant as under:

“The employment assistance case of widow of late S.Bairagi, Trackman was considered in detail even before receipt of your letter. After looking into the various aspects, a decision has been taken that the above case is not a fit case for consideration of employment assistance and accordingly the request for providing employment assistance on compassionate ground had been rejected.

Each and every case of providing employment assistance in this division is analyzed in detail and in an sympathetic manner before final decision is taken either to

provide employment assistance or to reject the same after ascertaining the merits of the case.

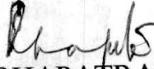
As such, your comments that any discretion in this connection should go in favour of the family member in providing employment assistance is neither acceptable nor appreciated.

The decision already taken in this connection by rejecting the request of the employment assistance on compassionate ground stands and there is no question of further reconsideration of decision taken at this stage please.”

4. In the counter as also in course of hearing of the matter it was the case of the Respondents that the applicant is not entitled to any appointment on compassionate ground as she is the second wife of the deceased and at no point of time during the service career, the deceased informed the authorities regarding his remarriage to the applicant and that after the death, the applicant has been paid all the dues and as such she is financially sound and not indigent and the third round of objection is that no liability is left behind by the deceased warranting compassionate appointment to the applicant. From the above, it is evident that no reason was ascribed in the order rejecting the grievance of the applicant in Annexure-A/2 and R/2 whereas now they have come forward with the reason for not accepting the request of the applicant. Recording of reasons in support of a decision by an authority is obligatory, as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency and that failure to give reasons amounts to denial of justice. Further it is trite law that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated in additional grounds. In view of the above, the order under Annexure-A/2 & R/2 cannot be sustained in the eyes of law. Also none of the reasons given in the counter by

the Respondents is sustainable as there are instructions in the Railway that financial condition and liability cannot be a criteria for denying appointment on compassionate ground and that after the payment of the retiral dues to the applicant the plea of non-disclosure of the remarriage is no more available to be taken as a ground as has been done in this case for denying the employment to the applicant. Hence, this is a fit case which needs issuance of direction for reconsideration or else it would tantamount to allowing the injustice caused to the applicant in the decision making process of the matter to perpetuate. Accordingly the DRM (P), ECoRly, Khuda Road, Jatni, (Respondent No.2) is hereby directed to consider the case of the applicant and pass a reasoned order and communicate the same within 90 (ninety days) from today.

5. In the result, this OA stands allowed to the extent indicated above. No costs.


(C.R. MOHAPATRA)
Member (Admn.)