

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

O.A. No.586 of 2010
Cuttack this the 2nd day of ^{April} March, 2013

**CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)**

Prasana Kumar Harpal,
Aged about 22 years,
Son of Late Kishore Harpal,
Village-Bhaligaon,
Po/Ps-ATitilagarh,
Dist. Bolangir.

.... Applicant

By the Advocates: (M/s.A.C.Mohanty,G.N.Rout,S.Bhagal)

-VERSUS-

Union of India represented through -

1. The General Manager,
South Central Railway,
Bilaspur (CG) 495 004
2. Chief Personnel Officer,
RR Personnel Department,
South East Railway,
Bilaspur (CG) 495 004

..... Respondents

By the Advocates: (Mr.Trilochan Rath)

ORDER

A.K.PATNAIK, MEMBER (I):

The Applicant claiming to be the adopted son of Ex-Railway
Employee [Late Kishore Harpal], who while working as Box Boy under

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17

the Chief Yard Master of South Central Railway, Bilaspur died prematurely on 06.03.2004, applied for employment on compassionate ground which prayer having been rejected as intimated to him on 22.10.2009, being aggrieved, he has filed the instant OA with prayer to quash the said order of rejection and allowing the original application.

2. Respondents filed their counter opposing the stand/prayer of the Applicant. Applicant has also filed rejoinder.

3. Suffice to state that the wife of the railway employee predeceased her husband. After the death of the Railway Employee, two persons applied to take the death retirement dues of the ex railway employee. In view of the above, the railway administration intimated both of them that in absence of any nomination by the deceased payment of death retirement dues would be released only on production of the succession certificate from the appropriate/competent court of law. As it appears Learned Civil Judge (Senior Division) Titilagarh issued Succession Certificate under section 377 of the Indian Succession Act XXXIX of 1925 on 19th May, 2008 empowering the Applicant to collect the debts [viz; (i) interest or dividends (ii) to negotiate or transfer and (iii) to receive interest or dividends on and to negotiate or transfer the securities or any of them] of the ex-railway employee and



on production of such certificate, the Death Cum Retirement dues of the ex employee was released in favour of the applicant where after, the applicant submitted an application on 11.09.2008 requesting employment on compassionate ground. The said prayer was considered and rejected by the DRM, South Central Railway, Bilaspur and intimated to the applicant vide letter dated 16.6.2009. Being not satisfied with the order of rejection, applicant appealed to the GM, of the South Central Railway for review of the decision of the DRM. Such request of the applicant was also rejected by the Senior DPO/RR and communicated to him through CPO. Hence this OA with the aforesaid prayer.

4. The order of rejection dated 22-10-2009 (Annexure-4) reads as under:

“1. Your application for appointment on compassionate ground was put up to the competent authority for consideration of the case. The decision is as under:

2. Your case for appointment on compassionate ground has not been considered on the ground that appointment on compassionate grounds is not a matter of right. There has to be justification for such an appointment. The primary purpose of appointment on compassionate grounds is that the deceased employee has left behind a family to be looked after. If there is no family the justification for appointment on compassionate ground does not exist.

(Signature)

3. Late Shri Kishore Harpal has left behind only the adopted son and **no other family member. His wife had predeceased him.** It has come to notice that **you are married and have two children.** It appears you are **seeking the appointment to look after your own family and not the family of the deceased employee** (which in any case does not exist). In this background the decision of the DRM not to offer appointment on compassionate ground is based on valid reasons and does not need a review.”

5. In the above backdrop, it was contended by Mr.A.C.Mohanty, Learned counsel appearing for the Applicant that the applicant is the adopted son that has been proved as per the succession certificate on production of which all the death retirement dues of his father was paid to the applicant. As per the extent rules, after the death of an employee, while in service, one of the dependent family members is entitled to employment on compassionate ground. No where in the rules it has been provided that married son cannot be provided with an appointment. None of the grounds taken in the order of rejection being not sustainable in the touch stone of judicial scrutiny, the order of rejection is liable to be set aside with direction to reconsider the case of the Applicant for appointment on compassionate ground; especially because his father was the only bread winner of the family and after his death the applicant is undergoing financial hardship/stringency.



On the other hand, Mr. Trilochan Rath, Learned Standing Counsel appearing for the Respondents strenuously objected to the arguments advanced by Mr. Mohanty, Learned Counsel appearing for the Applicant. It was contended by Mr. Rath that according to the applicant by the time this OA was filed he was 22 years old, married and has children. As such, as per the extent rules, the applicant does not come within the meaning of 'dependent' so as to be provided with an employment assistance on compassionate ground. It was submitted by him that the deceased had left no other family members and his wife predeceased him. Therefore, according to Mr. Rath, any direction to provide appointment on compassionate ground to the applicant would not only be against the Rules but also tantamount to depriving another person who deserves to be appointed but for the non availability of vacancy would be deprived of the same. In support of his arguments, Mr. Rath drew my attention to the Railway Board's Instruction for appointment on compassionate grounds issued vide No.E (NG) III/78/RC1/1 dated 30.04.1979, General Pass Rules, & the Railway Services (Pension) Rules, 1993 dealing with the definition of child and the decisions of the **Hon'ble Apex Court** in the case of **Cochin Dock Labour Board Vrs Leenamma Samuel and others**, (1998) 9 SCC 87;



UPSRTC Vrs Pukhraj Singh and others (1999) 1 SCC 190, Andhra Pradesh State Road Transport Corporation Vrs P.Pochaiah and another (1999) 1 SCC 191, the decision of the Hon'ble High Court of Delhi in the cases of Smt. Savitri Devi & Anr Vrs Union of India and others rendered in WP (C) No.4733-34/2004 dated 5th October,2005, Raja Ram Vrs M.C.D. reported on 19th September, 2007 in Indian Kanoon (<http://Indiankanoon.org>) and the decision of the Hon'ble High Court of Orissa in the case of Smt. Kuntala Mohanta Vrs Union of India (UIO) and others decided on 15th December, 2000. Accordingly he has reiterated his stand taken in the counter that this OA being devoid of any merit is liable to be dismissed.

6. I have considered the rival submission of the parties and perused the materials placed on record. Estt. Srl.No.61/97 dated 15.4.1997 [RB Letter No.E (NG)11/86/RC-1/1 dated 11.12.1996, deals with regard to providing appointment on compassionate ground in case of death of a railway servant to the adopted sons/daughters in which it has been stated as under:

“Appointment on compassionate grounds adopted sons/Daughters.

“Attention is invited to Board's letter No. E (NG)11/78/RC-1/1 dated 30.4.1979 wherein it has been laid down that for the purpose of compassionate appointment, the



definition of dependants will be the same as in the **Pass Rules**.

1. On a question whether adopted Sons/Daughters are eligible to be considered for compassionate appointment, Board had decided vide letter No.E (NG)II/86/RC-1/1 Policy dated 20.5.1988 that an adopted son/adopted daughter will also be eligible to be considered for appointment on compassionate grounds (in the circumstances in which such compassionate appointment is permissible) in case the conditions given therein are satisfied.

3. The matter has been reviewed by Board and it has been decided that adopted sons/daughters can be considered for compassionate appointment provided such adoption has been accepted for the issue of privilege Pass/PTOs as per provisions under the **Pass Rules**."

7. Railway Board's instruction No. E (NG) III/78/RC1/1 dated 30.04.1979 (appointment on compassionate grounds) further provides that **"the definition of dependent for this purpose will be the same as for Pass Rules."**

8. General Pass Rules issued by Railway Board provides as under:

"2 (c) 'dependent relative' in relation to a railway servant, whose father is not alive, means:-

- i. mother including a divorced mother;
- ii. unmarried or widowed sister;
- iii. brother/step-brother under twenty one years of age provided he resides with and is wholly dependent on the railway servant;
- iv. invalid brother of any age, and
- v. brother who has attained the age of twenty one years and is a bonafide student of a recognized educational institution;



- vi. legally divorced sister;
- vii. widow mother-in-law in case of widows appointed on compassionate grounds, whether her father is alive or not.

Provided that a person shall not be considered to be a dependent relative if his/her income from all sources including pension dearness relief, etc. exceeds 15% of pay per month of the Railway servant or the amount arrived at by adding Rs.500 to the dearness relief admissible to the pensioners/family pensioners on pension of Rs.500 and rounded off to the nearest ten rupee figure, whichever is more.

Provided further that a Pass or Privilege Ticket order may be issued in favour of dependent relatives mentioned at (iv) and (v) only on production of a certificate from a railway medical officer or the head of the recognized institution, as the case may be.

Provided further that dependent relatives may be included in the Privilege Passes/PTOs given to the railway servants in cases where father is missing for a period of at least 7 years passes/PTOs can also be given to the sister in similar circumstances. However, an affidavit as to the period since when the person is missing, duly attested by a Magistrate is necessary.”

9. The connotation/definition of the family has also been dealt into in clause 2 (d) of the said Pass Rules in which it has been provided as under:

“2(d) ‘family’ includes:-

- i. spouse of a railway servant whether earning or not;
- 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 any research work and do not get any scholarship/stipend;
- c. working as an articled clerk under the Chartered Accountant;
- d. invalid on appropriate certificate from Railway Doctor;
- e. unmarried daughters of any age whether earning or not;
- f. widowed daughters provided they are dependent on the railway servant;
- g. Legally divorced daughter who is dependent on the railway servant."

10. I have also gone through the decisions relied on by Mr.T.Rath, Learned Standing Counsel appearing for the Respondents but do not find substance for emphasis in view of the specific provision available in the Railway. The above rules have also not been challenged by the applicant in this OA.

11. It is well settled law that Courts and Tribunals while deciding case of compassionate appointment should not confer any benediction impelled by sympathetic consideration. Therefore, appointment on compassionate grounds should be strictly in accordance with the scheme/rules and regulations framed for that purpose. The main concern of the Courts/Tribunal in such matters is to ensure the rule of law and to



see that the executive acts fairly and gives a fair deal to the grievance consistent with the requirements of Rules/regulations. Where appointment on compassionate ground is related by rules/regulations, the consideration for appointment must be made in accordance with those rules/regulations and if any appointment is made in breach of such rules/regulations, the same would be illegal.


12. It is settled law that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning the same has to be given effect to, even if it causes hardship or possible injustice. Therefore, even if the provisions cause hardship to some of the people, it is not for this Tribunal to amend the law. A legal enactment must be interpreted in its plain and literal sense as that is the first principle of interpretation.

13. Admittedly, this OA was filed by the applicant on 31st August, 2010 and at that relevant time he was aged about 22 years, got married and has children. Therefore, it is to be held that applicant's wife and children as the case may be, being his dependant(s) it would be illogical and irrational to hold that the applicant is the dependant on his



26

deceased father deserving compassionate appointment. Besides, the above, despite adequate opportunity, no material has been produced by the Learned Counsel for the Applicant that the adoptee father of the applicant had ever availed pass during his service career, in respect of the Applicant. The Applicant being over 22 years and does not come within, any of the ingredients, provided in 2(d)(iii) (a to g) of the Rules he cannot be treated to be dependent member of the ex employee so as to be provided with appointment on compassionate ground. Hence I find no flaw in the order of rejection impugned in this OA. Hence this OA stands dismissed by leaving the parties to bear their own costs.


(A.K.Patnaik)
Member (Judicial)