

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 115 OF 2011
CUTTACK, THIS THE 10th DAY OF March, 2014

S. Harish.....Applicant

Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(A.K.PATNAIK)
MEMBER (JUDL.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. NO. 115 of 2011

Cuttack this the 10th day of March, 2014

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

S. Harish, aged about 22 years,
Son of Late S. Simhachalam &
S. Laxmi, At-Shri Bhatapada,
Po/Ps. Titilagarh,
Dist. Bolangir,
Orissa.

...Applicant

(Advocates: M/s- S.K. Mohapatra, M.R. Mohanty)

VERSUS

Union of India Represented through

1. The General Manager,
East Coast Railway,
Rail Bhawan,
Chandrasekharpur,
Bhubaneswar,
Dist- Khurda,
Orissa.
2. Divisional Railway Manager,
Waltair Railway Division,
East Coast Railway,
Visakhapatnam,
Andhra Pradesh.
3. Senior Divisional Personnel Officer,
Waltair Railway Division,
East Coast Railway,
Visakhapatnam,
Andhra Pradesh.

...Respondents

(Advocates: Mr. – S.K. Ojha)

W. A. Lee

ORDER

A.K. PATNAIK, MEMBER (JUDICIAL):

This OA has been filed by the Applicant namely Shri S.Harish, Son of Late S.Simhachalam praying to quash the letter of rejection dated 24.11.2010 and consequently direct the Respondent-Railway to consider the case of the applicant for appointment on compassionate ground. The said letter of rejection reads as under:

“.....the competent authority has considered your case and regretted the same since employment assistance on compassionate grounds is not permissible in this instant case in terms of RBE No. 01/92(Estt.Srl.No.20/92) as the employee died leaving behind two wives and you being the son of the 2nd wife of ex-employee.”

The provision of RBE No. 01/92(Estt.Srl.No.20/92) reads as under:

“It is clarified that in the case of railway employees dying in harness etc. leaving more than one widow along with children born to the second wife while settlement dues may be shared by both the widows due to Court orders or otherwise on merits of each case, appointments on compassionate grounds to the second widow and her children are not to be considered unless the administration has permitted the second marriage in special circumstances, taking account the personal law etc.

2. The fact that the second marriage is not permissible is invariably clarified in the terms and conditions advised in the offer of initial appointment.

3. This may be kept in view and the cases for compassionate appointment to the second widow or wards need to be forwarded to Railway Board.”

It is not in dispute that the applicant is the son of Late S. Simhachalam who while working in the Railway as Head clerk on 10.12.1998. The applicant is the son of second wife who was 12 years old at the time of the death of the railway servant. Soon after the death of the railway servant a case was filed in the Court of Civil Judge (Senior Division), Titilagarh (MJC No.42 of 1999) making the Divisional Manager, Railway Personal Waltair Visakhapatnam as one of the Opposite Parties



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which ended with a compromise vide order dated 04.01.2000 with the following observations:

“3. That, as per the instruction of the South Eastern Railway Visakhapatnam the compromise petition should be submitted to the Railway authority for the disbursement of the financial arrear of the petitioner.

4. That the conditions of the compromise between the petitioner No.1 and Opp. Party No.1 mentioned as follows:

- (i) That, the total amount (Total financial arrear) of late S.Simahachalam who died on 10.12.98 leaving behind the petitioner should be divided into two share. One share is to be given to the petitioner No. 1 and another share be disbursed in favour of the Opp. Party No.1.
- (ii) That, the petitioner No.4 S.Harish S/o late S. Simahachalam aged about 12 years may get a service in place of his late father S.Simahachalam.
- (iii) The total pension amount may be allowed to take by the Opp. Party No.1 S.Laxmi.
- (iv) The House rent in which the Opp. Party No.1 is residing (Railway House) the house rent may be deducted from the share of the Opp. Party No.1.”

Thereafter, the applicant applied for providing appointment on compassionate ground but the railway rejected the said prayer as above.

The Respondents opposed the prayer of the applicant on the ground that as the ex employee did not take permission for second marriage as a pre condition provided in RBE No. 01/92(Estt.Srl.No.20/92) he is not entitled to the relief claimed in this OA. Besides the above, they have also opposed the very maintainability of this OA on the grounds of jurisdiction and delay. Applicant has also filed rejoinder.

2. Arguments were heard and prused the masterials placed on record. The short point for consideration in this Original Application is whether the applicant born out of the wedlock of second marriage during the existence of first wife has a right to be considered for appointment on

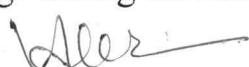


compassionate ground in terms of the provision in RBE No. 01/92(Estt.Srl.No.20/92) vis-a-vis the decree passed by the Court of Civil Judge (Senior Division), Titilagarh (MJC No.42 of 1999) in which Railway was one of the Opposite Parties and various judicial pronouncements. In this connection, by placing reliance on the aforesaid decree and the decision of the Hon'ble Apex Court in the case of **Rameshwari Devi –Vrs-State of Bihar** reported in AIR 2000 SC 735 and the decisions of the Hon'ble High Court of Orissa in the case of **Smt. Sudha Das and others –Vrs- Collector, Rayagada and others**, reported in 2009 (I) OLR 44 it was contended by Mr. S.K.Mohapatra, Learned Counsel for the Applicant that children born out of second marriage during subsistence of the first marriage is entitled to share on the property/dues of his father. He has contended that the applicant cannot say whether the second marriage was with due permission of the authority or nor and for the fault of his father he being the legitimate child cannot be deprived of his right for consideration for appointment on compassionate ground especially when the other members of the family have no objection. Further contention of Mr. Mohapatra is that the Respondents rejected the prayer for providing appointment on compassionate ground without taking note of the decree in MJC No.42 of 1999 in which they themselves were parties to the proceeding and, as such, the applicant is entitled to the relief claimed in this OA. As regards on the point of jurisdiction by placing reliance on the relevant provision of the A.T. Act, 1985 it was contended by him that as the applicant is residing in the State of Odisha and the impugned order was communicated to him to his address in Odisha this Bench of the Tribunal has jurisdiction to entertain and decide on the merit of the OA. With regard to the delay it was contended by

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him that as the rejection of the claim of the applicant was not on the ground of delay but for the reason of the RBE the Respondents are now estopped under law to take the stand of delay. However, by narrating the incident Mr. Mohapatra submitted that there is in fact no delay and in case this OA is dismissed on the ground of delay the injustice caused to him in the decision making process would be allowed to perpetuate.

3. By referring to the provision of the aforesaid RBE Mr. S.K.Ojha, Learned panel Counsel for the Railway-Respondents vehemently opposed the submissions advanced by Mr. Mohapatra. It was contended by him that the order of rejection dated 24.11.2010 cannot revive a stale claim as the consideration of the representation of the applicant was in compliance of the order of this Tribunal dated 25th August, 2010 in OA No. 450 of 2010. In this context Mr. Ojha placed reliance on the decision of the Hon'ble Apex Court in the case of C.Jacob-Vrs-Director, reported in AIR 2009 SC 264. He has also contended that this being not a case of disbursement of pension or any pensionary dues or a case where an order of termination and removal has been challenged merely because the applicant is residing in the State of Odisha, this OA is not maintainable. In so far as the binding nature of the aforesaid decree is concerned, it was contended by him that any compromise arrived at between the wives of the deceased employee is not binding on the railway. Moreover, decision made in MJC No. 42 of 1999 does not give any right to the applicant or any other person to claim benefit of compassionate appointment. Benefit of compassionate appointment only can be given under the scheme and as per the scheme the children of the second wife is not entitled to such benefit if the father has not taken the permission of the authority before solemnizing second marriage during the subsistence of the



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first wife. Mr.Ojha contended that nobody can claim appointment on compassionate ground as a matter of right, has placed reliance on the decision of the Hon'ble Apex Court in the case of State of Chhatisgarh & Ors Vrs Dhiraj Kumar Sengar, reported in (2010) 1 SCC (L&S) 281 and that similar matter having been dismissed by this Tribunal in OA No. 22/2006 dated 03.10.2010 (A.D.Senapati Vrs UOI & Ors) this OA is liable to be dismissed.

4. In view of the law laid down by the Hon'ble Apex Court in the case of **Rameshwari Devi (supra)** and by the Hon'ble High Court of Orissa in the case of **Smt. Sudha Das and others (supra)**, it is no more res integra that children born out of the second wedlock during the subsistence of the first wife being the legitimate child are entitled to all benefits. In this connection, it is profitable to note the relevant portion of the decision of the Hon'ble High Court of Orissa rendered in the case of **Smt. Sudha Das and others -Vrs- Collector, Rayagada and others**, reported in 2009 (I) OLR 44 which is read as under:

“In view of the aforesaid discussion of the case laws, the order of the Tribunal dated 2.8.2007 is quashed and this writ application is allowed holding that the petitioner's minor children, namely, Mamata Das and Rooja Das are entitled to an equal share of the family pension of Late Kishore Chandra Das as his other dependent children and are also entitled to get other benefits of gratuity, provident fund and unutilized leave salary in equal share.

Accordingly, we hold that the children of Late Kishore Chandra Das, born through the first wife Baidei Das as well as the children born through Sudha Das, shall be entitled to get family pension, gratuity, provident fund etc. in equal share in accordance with the provisions of Family Pension Rules and this would be determined by the employer namely, Tahasildar, Rayagada within a period of three months from the date of receipt of this judgment. Till determination is made by the Tahasildar, Rayagada, the Accountant General, Orissa shall issue necessary direction not to release any benefit to any party and in the event, any benefit has

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already been released, the same shall be computed and adjusted from payments due to be made in terms of the directions contained hereinabove."

5. I do not find any substance on the submission advanced by Mr.Ojha in so far as Jurisdiction of this Bench is concerned as Rule 6 of the CAT (Procedure) Rules, 1987 is very clear and impugned order has been sent to the applicant in the address situated within Odisha. In so far as limitation is concerned, I fully agree with Mr.Mohapatra that law is well settled in a plethora of judicial pronouncements sufficte to quote one of such decisions of the Hon'ble Supreme Court rendered in the case of Commissioner of Police Bombay Vs Gordhan Das Bhanji, AIR (39) 1952 SC 16 in which it has been held by the Apex Court that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what in intended to do. Public orders made by public authorities are meant to a public effect and are intended to effect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to a language used in the order itself. In the instant case the representation of the applicant was dealt into and rejected by the Respondents on merit which gave rises a cause of action to the applicant to approach this Tribunal in the present OA. Even other wise also in the case of Tukuram Kana Joshi and Others the Power of Attorney Holder-Vrs-M.I.D.C. and Ors, AIR 2013 SC 565- while dealing with the **doctrine of delay and laches and condoning** the same –held as under:

"10. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status

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beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another fact. **The Court is required to exercise judicial discretion.** The said discretion is dependent on facts and circumstances of the case. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. **There can be mitigating factors, continuity of cause action, etc.** That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. **Thus analyzed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.**

11. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in the matter, after the passage of a certain length of time. There may be a case where the **demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay.** Ultimately, it would be a matter within the discretion of the Court and **such discretion must be exercised fairly and justly so as to promote justice and not to defeat it.** The validity of the party's defence must be tried upon principles substantially equitable(Vide P.S.Sadasivaswamy v State of T.N., AIR 1974 SC 2271; State of MP & Ors V. Nandlal Jaiswal & Ors, AIR 1987 SC 251; and Tridip Kumar Dingal & Ors V. State of West Bengal & Ors, (2009) 1 SCC 768=AIR 2008 SC (Suppl.) 824)."

6. In view of the facts and law enumerated above, I am inclined to deal with the matter on merit. With regard to the merit, I find that the order/decrees passed by the Civil Court has reached its finality and as per the law the same is binding on all the parties in which Railway was one of the Opposite Parties. In the above circumstances, if the authority of the zonal railway did not find it feasible to concede to the request of the applicant, in

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terms of the provision in paragraph 3 of the aforesaid RBE they should have referred the matter to the Railway Board instead of taking a decision at their level. In view of the above provision of the RBE and the law laid down by the Hon'ble Apex Court in the case of **Rameshwari Devi (supra)** and by the Hon'ble High Court of Orissa in the case of **Smt. Sudha Das and others (supra)**, I find serious flaw in the decision making process of rejecting the case of the aplicant in letter dated 24.11.2010 and accordingly, the said order of rejection is quashed. The matter is remitted back to the Respondents to give fresh consideration to the case of the applicant notwithstanding the provison at Annexure-R/1 and keeping in mind the judgment and decree passed by the competent Civil Court and the well settled position of law, referred to above, and communicaste the result of such reconsidration within a period of 90(ninety) days from the date of receipt of copy of this order.

7. In the result this OA stands allowed to the extent stated above. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)