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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.221 of 2011
Cuttack this the 30TH day of February, 2014

Smt.Pitta Applamma & another...Applicants

-VERSUS-

The General Manager & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? ✓
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not ? ✓

R.C.Misra
(R.C.MISRA)
MEMBER(A)

A.K.Patnaik
(A.K.PATNAIK)
MEMBER(J)

14

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CUTTACK BENCH, CUTTACK

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CORAM

HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

1. Smt.Pitta Applamma,
W/o.late Dalayya
Aged about 43 years
Resident of Basava Katture Village,R.Belagam Post Office, Kanchili
Via-Srikakulam District,
Andhra Pradesh-532 291
2. Sri Pitta Hemalayya,
S/o.late Dalayya
Aged about 29 years
Resident of Basava Katture Village,R.Belagam Post Office, Kanchili
Via-Srikakulam District,
Andhra Pradesh-532 291

...Applicants

By the Advocate(s)-Mr.B.P.Yadav

-VERSUS-

1. The General Manager,
East Coast Railway,
Chandrasekhapur,
Bhubaneswar,
Orissa
2. The Divisional Railway Manager (P),
East Coast Railway,
Khurda Road Division D.R.M.Office,
Khurda Road,
PO-Jatni, Khurda Distirct
Orissa

...Respondents

By the Advocate(s)-Mr.D.K.Behera



15

R.C.MISRA, MEMBER(A)

ORDER

Applicants in this case have approached this Tribunal with a prayer that the Respondents should be directed to consider the case of the 2nd applicant for appointment to a Group-D post on compassionate ground. They have also prayed for quashing the communicated order and speaking order of the Respondents at Annexure-A/1 and A/2 to the O.A.

2. The short facts of the case are that the husband of applicant No.1 was a Group-D employee of the Railway who died while in service on 30.12.1995. Since the children of the applicant No.1 were minor at the time of death of her husband, she made a request to the concerned officials of the Respondent-Department to keep open the case of the applicant for appointment on compassionate ground until the date on which her first son would attain majority. The applicant No.1 submitted a representation on 20.2.1999 to the Respondent No.2 making a request for compassionate appointment to be given to her son, i.e., applicant No.2. Respondents allegedly did not consider the aforesaid representation and therefore, the applicant approached this Tribunal in O.A.No.1118 of 2004 in which the Tribunal at the state of admission itself disposed of the matter directing the Respondents to give due consideration to the grievance of the applicant and pass necessary orders within a period of 120 days from the date of receipt of copy of the order. This order was not complied with in time by the Respondents and therefore, the applicant filed CP No.74 of 2006. However, this Tribunal was pleased to drop the C.P. as there was no willful disobedience of the order of the Tribunal on the part of the Respondents in view of the speaking order passed by Respondent No.1 rejecting the

16

prayer for compassionate appointment to the applicant No.2 on account of the fact that he had not even passed Class-VIII to be considered for such appointment. It is the case of the applicant in this O.A. that applicant No.2 passed 8th Class privately in the month of April, 2007 and obtained 8th Class pass certificate and submitted to Respondent No.2. Although Respondent No.2 found this certificate to be genuine, he did not pass any orders in favour of the applicant and therefore, the applicant filed O.A.No.77/2008 before this Tribunal. In this O.A., the Tribunal in order dated 20.11.2008 directed the respondents for reconsideration of the case of the applicant. After the orders of this Tribunal, the Respondents refused the case of the applicant stating that the applicant's son had not qualified for the 8th class certificate at the time of his attaining majority on 20.6.2000. Therefore, aggrieved by this order of the Respondents, the applicant filed a 3rd round of litigation bearing O.A.No.358 of 2009, in which the matter was disposed of by this Tribunal directing the applicant to submit a fresh representation in view of the instructions of the Railway Board and also directed the Respondents to consider this representation and to pass a reasoned order keeping in mind the Railway Board's instructions dated 2.8.2000 and 22.2.1989. The Respondents allegedly did not pass any order in compliance of the orders of this Tribunal within the stipulated time and therefore, the applicants filed CP No.24/2010 against Respondent No.1. While the CP was pending for consideration, the Respondent No.1 called the applicant for personal interview in order to comply with the orders dated 23.10.2009 passed by the Tribunal in O.A.No.358/2009. Thereafter, the applicant personally appeared before

17

Res.No.1 on 17.6.2010 along with the relevant documents and was told by the Res.No.1 that he would consider the compassionate appointment in favour of applicant No.1 but shall not accept the candidature of her son i.e., applicant No.2 on the ground that he did not possess the 8th pass certificate at the time of his attaining majority. Applicant No.1 made a prayer to the Respondent No.1 that she was a chronically sick person and therefore, the employment should be given to her son who is a physically fit person. This plea made by the applicant was not accepted by Respondent No.1. The Respondent no.2 communicated Office order dated 16.7.2010 to the applicant along with a copy of the speaking order dated 25.6.2010 of Res.No.1. In this speaking order as well as the order communicated, the prayer for compassionate appointment in favour of applicant No.2 was rejected. However, Respondent No.1 expressed his willingness to consider compassionate appointment in favour of widow, applicant No.1 for which she has to apply afresh along with the relevant documents. This order is the subject matter of challenge in this O.A.

3. The Respondents have filed their counter affidavit in this case, in which they have submitted that the husband of applicant No.1 while working as Gangman expired on 30.12.1995. Applicant No.1 submitted representation on 16.9.1996 seeking employment assistance on compassionate grounds. She was accordingly screened and empanelled for absorption in a Group-D post. The applicant was offered with appointment, but instead of accepting the offer, she applied for employment on compassionate ground in favour of her son, who is applicant No.2. Applicant No.1 filed O.A.No.1118/2004 before the Tribunal and in

compliance of the judgment dated 24.11.2004 of this Tribunal, the Respondent No.1 considered the matter and regretted the case because of lack of requisite educational qualification, i.e., Class-VIII pass in respect of applicant No.2. At a later point of time, applicant No.1 submitted representation dated 13.6.2007 enclosing Class-VIII pass certificate of her son. In the meanwhile, she also filed O.A.No.77 of 2008 before the Tribunal which was disposed of on 22.11.2008 with direction to Respondents to reconsider the case of the applicant. The competent authority, in obedience to the orders of the Tribunal considered the case of the applicant and vide letter dated 19.1.2009 regretted the request since at the time of submission of application, applicant No.2 did not possess the minimum educational qualification of Class-VIII pass. Being aggrieved, applicant No.1 again filed O.A.No.358 of 2009 which was disposed of on 23.10.2009 granting liberty to the applicant to make a fresh representation which was to be considered by the competent authority keeping in mind the Railway Board's instructions dated 1.8.2000 and dated 22.2.1989. The relevant part of the Railway Board's letter dated 1.8.2000 is quoted below.

"It has been decided that further to Board letter dated 29.7.99, the cases which were ^{under} scrutiny or under process for Compassionate Appointment in Group-D before the issue of Board's letter of 04.3.99 should be exempted ^{pending} ~~processing~~ the minimum qualification of Class-VIII. Railway Board's letter dated 22.2.1998 states that stipulations should be made in future cases where educational qualifications may be relaxed".

4. In the present case the entire case file was referred to the Zonal Headquarters office at Bhubaneswar for obtaining the decision of the competent authority, i.e., General Manager, East Coast Railways, who

19
having examined the case ab initio in the light of Railway Boards' above two circulars took the decision which is contained in the speaking order dated 25.6.2010 filed at Annexure-A/2 to the O.A.

5. It has been further submitted in the counter affidavit that date of birth of applicant No.2 is 19.6.1982. He acquired qualification of Class-VIII in April, 2007, but he had attained majority on 20.6.2000. Therefore, it has been contended that applicant No.2 did not have the prescribed qualification on 20.2.1999 and 28.5.2004 on which date(s) applicant No.1 had made her representations. Applicant No.2 acquired his qualification much after i.e., in the year 2007. Although he attained majority in the year 2000, he was neither having minimum qualification of Class-VIII pass on that date nor acquired the prescribed qualification within two years of attaining majority and he was not even having Class-VIII pass qualification on the date application i.e., 28.5.2004. Therefore, the authorities decided that it was not possible to consider relaxation of educational qualification in this case and consequently, they rejected the case of applicant No.2. However, considering the eligibility of the widow for compassionate appointment, the authorities expressed their willingness to consider the compassionate appointment in favour of the applicant – widow, who is applicant No.1, for which she was asked to apply afresh along with relevant documents.

6. Applicant has filed a rejoinder which does not state any new facts. However, it reiterates the prayer that since the applicant No.2 is physically fit he should be given appointment on compassionate ground in preference

20
to applicant No.1, the widow of the deceased railway employee who is a physically incapacitated person.

7. Learned counsel for the applicant has also filed written note of arguments, which we have taken note of.

8. We have listened ~~carefully~~ ^{to} the submissions made by the learned counsel for both the sides and also perused the records.

9. It is quite clear from the facts of the case that the applicants have approached this Tribunal a number of times in the past and this Tribunal, in consideration of the prayer made by them, has directed the Respondents to consider as well as reconsider the case of the applicants keeping in mind the relevant circulars of the Railway Board. We have to now consider the latest order passed by the Respondents, which is under challenge in the present O.A. It will not be necessary, however, to deal with the earlier observations of the Tribunal which in any case have been stated clearly in the O.A. The latest speaking order dated 25.6.2010 of Respondent No.1, viz., General Manager, East Railways which has been communicated the applicant on 16.7.2010 vide Annexure-A/1 is relevant for discussion. This order has been passed in compliance of the O.A.No.358/09 which was disposed of by the Tribunal on 23.10.2009. In this order, the Tribunal granted liberty to the applicants to make a fresh representation enclosing the Railway Board's instructions relied on by them to the competent authority and the Respondents were directed to consider the matter, keeping in mind the Railway Board instructions dated 1.8.2000 and dated 22.2.1989 and communicate their decision with a reasoned order to the applicants. The gist of the Railway Boards instruction dated 1.8.2000 was



21

that the cases which were under scrutiny before the issue of Board letter

dated 4.3.1999 should be exempted from the passing minimum qualification of Class-VIII. This letter had been examined in the speaking order along with the Board's letter dated 22.2.1989. Having considered, Respondent No.1 came to the conclusion that on the date of application, ~~ie. 2000~~, applicant No.2 was not having the prescribed qualification and he acquired the qualification only in 2007 at a much later point of time even though he had attained majority on 20.6.2000. Therefore, the Respondent No.1 has found it not possible to offer compassionate appointment to applicant No.2. However, he has considered the eligibility of the widow for compassionate appointment and has asked the applicant No.1 to give a fresh application with the relevant documents so that her case could be considered for compassionate appointment as per her eligibility. On examination of this order, we do not find any infirmity therein. The Respondents have given due consideration to the prayer of the applicants keeping in mind the instructions issued with regard to compassionate appointment. Although they have rejected the case of the applicant No.2 they also have made an offer to applicant No.1 for a compassionate appointment.

10. We would stop here for a while to consider and capture the spirit of compassionate appointment scheme, which has been formulated by the Department of Personnel & Training, Government of India. Appointment on compassionate ground is a measure which has been provided for rescuing the family which has been subjected to distress because of untimely passing away of a Government servant. It is admitted that the sudden



22

death of a Government servant while in service brings untold misery to the bereaved family. They need immediate financial assistance and security for their future. Therefore, compassionate appointment has been intended as a measure which would help and rehabilitate the family to get over the time of acute financial distress.

11. The other point which has to be noted is that compassionate appointment is not a matter of right and is not an alternative mode of employment. Therefore, nobody can claim it as a matter of right. The spirit of compassionate appointment has been repeatedly emphasized by the Hon'ble Apex Court in various judgments.

12. The Hon'ble Supreme Court in C.A.No.6468 of 2012 reported in 2013 SLR 1 (SC) Stage of Gujarat & Ors. Vs.Arvind Kumar Tiwari & another has held as under.

"It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status on it".

13. In the present case, the admitted fact is that the Railway servant passed away in the year 1995 and therefore, the representation for compassionate appointment has been repeatedly considered and

23

reconsidered under the scheme and the applicants have approached this

Tribunal a number of times and this Tribunal has also passed orders from time to time to Respondents to give consideration to the case of the applicants. In the meantime, a lot of time has elapsed and therefore, strictly speaking, the intent and purposes of compassionate appointment do not exist at this point of time. However, the Respondents in their speaking order dated 25.6.2010 have made an offer to the widow - applicant No.1 to make a fresh application for compassionate appointment.

In so far as exemption for educational qualification is concerned, applicant No.2 attained majority in the year 2000 and by that time, he had not possessed the minimum educational qualification of Class-VIII pass. A prayer for exemption of educational qualification could have been made at that point of time. However, he acquired the educational qualification of 8th class pass in the year 2007, which was at a much later point of time. Therefore, we do not find fault with the orders of the Respondents with regard to their decision of not accepting this plea at such belated stage. Therefore, the order of rejection of the case of the applicant No.2 appears to be justified.

14. Coming to the other part of the order, we would direct the Respondents that if they receive the required application and document from applicant No.1, they shall duly consider her case for providing compassionate appointment as early as possible.

15. With the above observation and direction, this O.A. is disposed of. No costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)