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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 382 of 2011
Cuttack, this the 2nd day of ^{April} March, 2013

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

.....

Radhe Shyam Bhue,
aged about 40 years,
S/o. Late Apkari,
Resident of
Vill.- Jamsar,
P.O.-Chhatamakhana,
P.S.-Bolangir,
Dist-Bolangir,
Orissa.

....Applicant
(Advocate(s) : M/s. K.C.Kanungo, H.V.B.R.K.Dora)

VERSUS

Union of India Represented through

1. Chairman, Railway Board,
Railway Bhawan,
New Delhi-110001.
2. General Manager,
South Eastern Railway,
11, Garden Reach,
Kolkata-700043,
West Bengal
3. Divisional Railway Manager (P),
South Eastern Railway,
P.O. Chakradharpur,
Dist-West Singhbhum,
Jharkhand-833102.

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4. Sr. Divisional Personnel Officer,
South Eastern Railway,
P.O. Chakradharpur,
Dist-West Singhbhum,
Jharkhand-833102.

(Advocate: Mr. T.Rath)

.... Respondents

O R D E R

A.K.PATNAIK, MEMBER (J):

In this O.A. applicant, Radhe Shyam Bhue, has called in question the legality and validity of the order dated 26.2.2009 (Annexure-A/5) wherein his request for compassionate appointment has been rejected by the Respondents. In the circumstances, he has prayed for quashing the said Annexure-A/5 with direction to respondents to consider and provide him an employment in any Group-D post on compassionate ground.

2. Shorn of unnecessary details, it would suffice to note that while working as Khalasi under the respondent-Railways, applicant's father passed away on 22.02.2007. In the above ground the applicant's prayer for compassionate appointment having been rejected, this O.A. has been filed with the aforementioned prayer.

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3.

Respondent-Railways have filed their counter opposing the prayer of the applicant. Since the main thrust of the counter is based on the contents of Annexure-5, the same is reproduced hereunder:

“Your representation has been carefully examined and it is observed that your mother is predeceased. You have already attained 38 years of age & also married and therefore cannot be dependent on your father. Accordingly, the case was regretted by the Competent Authority and the same has already been informed to you vide this office letter No-E/Rectt/Comp/Gr.’D’/221/08/RB/23 Dated 05.02.09 which has been acknowledged by you on 06.02.09.

Considering the above, there is no reason to review the case.”

4. In the rejoinder to the counter filed by applicant, it has been submitted that since the scheme of compassionate appointment adopted by railways does not deny the employment assistance on the ground of age of the defendant and his marital status and that the indigent condition of the applicant having not been disputed Annexure-A/5 is not legally sustainable.

5. I have heard Sri K.C.Kanungo, Ld. Counsel for the applicant and Sri T.Rath, Ld. Standing Counsel for the Railways, and perused the materials on record. I have also gone through the written note of

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argument filed by the applicant and the written note of submission filed by the Respondents.

6. Here is a case where the mother of the applicant predeceased her husband (applicant's father). Therefore, after the death of the applicant's father there are two surviving members viz; applicant (Radheshyam Bhue) and his brother Rajendra Bhue. In the circumstances, the sole point for consideration herein is whether applicant Radheshyam Bhue who is now aged about 40 years by the time this OA was filed i.e. on 8th June, 2011, could be considered as dependant of the deceased railway employee. It is the case of the Respondents that the applicant having attended 40 years of age and also married cannot be said to be the dependant on his father particularly when his mother has predeceased his father. It is also the case of the Respondents in the written note of submission that as per Railway Service (Pension) Rules, 1993, the applicant cannot be a dependent family member so as to provide with an employment on compassionate ground. 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

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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 W P (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 (UOI) 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.

7. 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:

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"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**."

8. 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.**"

9. 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;

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- 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.”

10. 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:-

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- 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;**
 - 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.”

11. 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.

12. 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

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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.

13. 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.

14. Admittedly, this OA was filed by the applicant on 8th June, 2011 and at that relevant time he was aged about 40 years, got married and has children. Therefore, it is to be held that applicant's wife and

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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 deceased father deserving compassionate appointment. The applicant being over 40 years and does not come within, any of the ingredients, provided in the Rules/instructions extracted above, he cannot be treated to be a 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
(A.K. Patnaik)
Member (Judicial)