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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.475 of 2011
Cuttack this the 19th day of June, 2013

CORAM

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

Ch.Srinivasa Rao, aged about 25 years, S/o. late Muniswar Rao, Ex-Stream Man/Loco/Palasa/S.E.Railway(now East Coast Railway) Permanent resident of Vill-Narsipuram, PO-Kasibugga, Dist-Srikakulam, PIN-532222, Andhra Pradesh

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Mishra,
T.K.Choudhury,
S.K.Mohanty

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar, Dist-Khurda
2. Chief Personnel Officer (Admn.), East Coast Railway, Rail Vihar, Chandrasekharapur, Bhubaneswar
3. Divisional Railway Manager/East Coast Railway, Khurda Road Division/Jatni, Dist-Khurda
4. Senior Divisional Personnel Officer/East Coast Railway/Khurda Road Division/At/PO-Jatni, Dist-Khurda

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

The applicant in this Original Application challenges the order of rejection of his prayer for employment assistance issued by the authorities of East Coast Railways on 24.1.2011, and has approached this Tribunal with a prayer that he



should be given an employment on compassionate grounds by the Railway authorities, and accordingly, sought a direction from this Tribunal.

On a perusal of the Original Application, the facts that emerge are in short as follows:

2. The applicant's father while serving in the Railways expired on 26.12.1990. His wife had predeceased him on 13.10.1980 leaving behind one daughter. The applicant's father had got married to one Ch.Kumari on 14.3.1981. The said Ch.Kumari also died on 28.10.1989 leaving behind one daughter and one son (the applicant). When the applicant's father died in the year 1990, the legal heirs that he left behind were widow mother, two minor daughters, and one minor son. The widow mother of the deceased railway employee applied to Respondent No.3, i.e., D.R.M., Khurda Road Division to provide a compassionate appointment to another son of hers. This application was rejected on the ground that the scheme for compassionate appointment no longer provided for such appointment in favour of a near relative of the deceased railway employee. Then the widow mother of the deceased railway employee made a prayer that since her grandson, i.e., the present applicant was a minor, compassionate appointment may be kept open for him till he attains majority. In the meantime, the legal heirs received the family pension as per the Rules. When the applicant became a major, he made an application to Respondent No.3 for providing him appointment in the railways on compassionate grounds on 10.3.2004, enclosing copy of death certificate, legal heir certificate and school leaving certificate to support his claim. As demanded



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by the respondents, the applicant's two sisters submitted their no objection declaration. L

3. The Respondents vide their letter dated 2.11.2010 asked the applicant to submit additional documents, i.e., legal heir certificate, succession certificate (if any), pass declaration or copies of privilege pass/PTO issued to his father, marriage declaration by his father (if any), and marriage certificate with second spouse (if available). The applicant on 7.12.2010 replied to this letter, enclosing attested legal heir certificate issued by the Mandal Revenue Officer, Palasa, the marriage certificate of his father with his mother issued by Tahasildar, Palasa, Mandal. He could not produce any succession certificate, copies of privilege pass, or marriage declaration, and requested the authorities to process his case for compassionate appointment. On 24.1.2011 a letter was issued by the Asst. Personnel Officer-I for DRM to the applicant conveying that the competent authority has passed the following order.

"Since the papers are incomplete, the case can not be considered now after 20 years:.

This order of rejection is subject of challenge in this O.A.

4. The case made out by the learned counsel for the applicant is that the Railway authorities have brought out a scheme for appointment on compassionate grounds which is applicable to the dependants of railway servants who lose their lives in course of duty or die in harness or become crippled while in service or medically incapacitated or decategorized. Son/daughter/widow/



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widower of the employees are eligible for appointment on compassionate ground. The applicant being the son of the deceased employee in this case is eligible for such compassionate appointment. The applicant also made his application immediately after he attained his majority. The scheme provides that "a period of five years from the date of occurrence of event is prescribed as period of eligibility of entitlement of appointment on compassionate ground which may be relaxed upto 20 years with the approval of General Manager. In all cases of death of an employee while in service and in cases where the widow can not take up employment and sons/daughters are minor, the case may be kept pending till the first son/daughter becomes major. The argument of the learned counsel for the applicant is that as per provisions of the scheme, his application for compassionate appointment has to be legitimately considered.

5. Secondly, the learned counsel has argued that the ground of "the papers are incomplete" given for rejection is an example of intentional harassment of the applicant. Some of the documents have been asked for with a rider, 'if any', of 'if available', and the reply given by the applicant is a reasonable explanation. So, this is not a valid ground for rejection of the prayer of the applicant.

6. The other ground of the case being twenty years old has been challenged by the learned counsel on the ground that the applicant became a major only in 2004, and thereafter made the application.



7. The learned counsel for the applicant has submitted a written note in which he has challenged another ground of rejection. Vide a letter dated 20.8.2007 the Respondents have conveyed as follows. "You are the son of second wife of late Ch.Muneswar Rao, as such the request has not been agreed to". Subsequently, however, the matter was reconsidered and documents were called for from the applicant by the letter dated 15.06.2010. The learned counsel has argued that the use of the expression "Second wife" is absolutely incorrect. After the death of Ch.Ratnavathi the father of the applicant was married to Ch.Kumari, and as such the status of both remains as wife, and not first and second.

8. The learned counsel for the Respondents, on the other hand, submits that the deceased employee did not obtain any permission from railway administration for second marriage after the death of his wife. In terms of CPO/GRC's Estt.Srl.No.20/92, the second widow and her children are not to be considered eligible for compassionate appointment unless the administration has permitted the second marriage taking into account the personal law. On the basis of representation of the applicant, the matter was referred to Senior Law Officer who quoted the relevant Section of the Hindu Marriage Act, 1955, and opined that the competent departmental authority may take an administrative decision after examining Estt.Srl. issued by the Board: One of the conditions for a Hindu Marriage quoted by the Sr.Law Officer is that 'neither party has a spouse living at the time of the marriage'.



9. The learned counsel further submits that 'in case of double wives' the documents like succession certificate, pass declaration, marriage declaration of the second spouse are required to ascertain the genuineness of the claim. In this case, the applicant did not provide the required documents, and therefore, the respondents were justified in rejecting the case on the ground of non-submission of required papers by the applicant.

10. On the above aspect of the submission of the learned counsel for Respondents, the learned counsel for the applicant submitted his rejoinder in which he asserted that there is no question of two wives in this case. The applicant's father married Ch.Kumari after the death of his spouse, and it was a perfectly legal marriage. He submits the medical certificate of tubectomy operation of mother of applicant Ch.Kumari dated 7th February, 1986, in which Ch.Kumari has been mentioned as the wife of Ch.Muneswar Rao. The mother of the applicant was allowed to go for tubectomy operation by the railway authorities and the same has already been recorded in the service record of the deceased employee.

11. The learned counsels for both sides submitted their written notes. The learned counsel for Respondents submitted citations regarding the scope of compassionate appointment. But before discussing the same, it is important to first deal with the grounds on which the respondents rejected the prayer for compassionate appointment made by the applicant. The facts of the case are admitted. The deceased railway employee married again after the death of the



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first wife, and the applicant is the son of the second wife. But there is no question of two wives or two widow in the case, since the deceased railway employee married again only after the demise of his wife. The senior Law Officer has quoted the provision of the Hindu Marriage Act, and opined that the authorities need to take an administrative decision in the matter. The Respondents wanted to give an opportunity to the applicant, and asked for some documents, but in the case of many of these documents, a rider was given, 'if any', 'if available'. In the reply, the applicant has mentioned the difficulty about availability of certain documents. When the authorities have themselves mentioned that some documents may be supplied 'if any', and 'if available', their subsequent rejection of the case on the ground that documents were not supplied, reveals a certain level of non-application of mind. In the first instance, the prayer is rejected because the applicant is the son of the second wife. This was not a valid ground of rejection, since this was not a case of two wives or two widows. Thereafter, the authorities reconsidered their stand and provided opportunity to applicant to submit certain documents. In the second instance, the rejection was ^{based} ~~based~~ upon applicant not providing some documents, when the submission of certain document was made conditional on availability. From the records placed before us, we have got an impression that the rejection of the prayer in the place of admitted facts was more on the basis of technicalities, rather than on substantive grounds. From the outline of the compassionate appointment scheme of the Railways that have been mentioned already in the course of the order, and from the admitted facts pertaining to the case of the applicant, it is quite evident that the respondents



should have considered the prayer of the applicant on merit, rather than rejecting the prayer at two stages, ^{based on} ~~based~~ upon reasoning ^{rejecting} ~~rejecting~~ that does not pass the test of validity in the face of the guidelines of the compassionate appointment scheme formulated by the Railways. The period of twenty years as mentioned in the rejection order is again something that is covered by the scheme itself in case of minors who on attaining majority would become eligible under the scheme, and also the powers of General Manager in this regard. The applicant's prayer, therefore, deserves reconsideration.

12. The learned counsel for the Respondents has cited a number of important decisions of the Hon'ble Apex Court concerning compassionate appointment. In Civil Appeal No.5101 of 2005 Bhawani Prasad Sarkar vs. Union of India, while considering a Railway case, the Hon'ble Apex Court laid down the principles that compassionate appointment should be considered strictly in keeping with the governing scheme; the prayer for this should be made without undue delay and considered within a reasonable time, and it should never be granted as a largesse irrespective of the financial condition of the concerned family. In Civil Appeal No.6224 of 2008, Union of India & another vs. Shashank Goswami and another decided on 23rd May, 2012, (ref.judis.nic.in) the Hon'ble Supreme Court has held, "there can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim can not be upheld on the touchstone of Article 14 or 16 of the Constitution of India Appointments on compassionate ground have to be made in accordance with the



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rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased". The same view has been expressed by the Hon'ble Apex Court in the case of State Bank of India & another vs. Somvit Singh, 2007(2) Supreme Court 336, and State of U.P. vs. Paras Nath (1998) 2 SCC 412.

13. In State of UP and Ors. Vs. Paras Nath 1998 (2) 412, the Hon'ble Apex Court has held that the considerations for compassionate appointment can not operate when the application is made after a long period of time. The learned counsel for Respondents has further brought to our notice the judgment of Hon'ble Apex Court in the case of Union of India vs. Bhagwan Singh (1995) 6 SCC 436 where it was observed that since the family did not apply for a job on compassionate ground for nearly 20 years they were not eligible for such appointment.

14. Therefore, law is well settled in various judgments of the Hon'ble Apex Court that there is no vested right to be considered for appointment on compassionate ground. The purpose of granting compassionate appointment is to help the family to overcome the immediate distress. Therefore, long delay in applying for such a job, affects the very basis of such consideration. Citing the above mentioned judgments, the learned counsel for the respondents has assailed strongly the prayer made by the applicant.

15. Having considered the submissions of the learned counsels for both sides, perused the case laws cited, and the documents produced, we have to take into



account the specific facts of the case in question. The present case is to be considered in the light of the scheme for appointments on compassionate grounds formulated by the railway authorities, a copy of which has been enclosed as Annexure-A/15 of this O.A. The prayer of the applicant needs to be examined by the authorities in the light of specific provisions of the scheme. The time limit for consideration of such prayers is also specified in the scheme itself. It is specified that normally, the appointment on compassionate grounds should be made within one month for item (i) and within three months for others, but all out efforts should be made to offer appointment as early as possible. A period of five years from the date of concurrence of event is prescribed as period of eligibility of entitlement of appointment on compassionate ground which may be relaxed upto 20 years within the approval of General Manager. In all cases of death of an employee while in service and in cases where the widow cannot take up employment and sons/daughters are minor, the case may be kept pending till the first son/daughter becomes major. In the light of provisions of the scheme only, the prayer of the applicant needs to be considered.

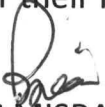
16. Law is well settled that the Tribunal cannot issue a direction that appointment on compassionate ground be provided. But, the authorities need to consider a prayer on merit under the provisions of the scheme that they themselves have formulated. In the earlier order of rejection, the respondents have not considered the merit of the prayer in the light of the provisions of the specific scheme formulated by the Railways, as discussed in detail in earlier parts of this order. The impugned order of rejection dated 24.01.2011 is therefore,



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quashed and the matter is remanded to the respondents for fresh consideration in view of the discussions made above.

With these observations and directions, the O.A. is disposed of. Parties to bear their respective costs.


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER(J)