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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.588 OF 2011

Cuttack this the 10th day of September, 2011

CORAM

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

Nrupa Nial
Aged about 27 years
S/o. late Hazari Nial
At-Temere
PS-Junagarh
Dist-Kalahandi
At present At/PO-Chatikona
PS-Bisamkattack
Dist-Rayagada

...Applicant

By the Advocate(s)-M/s.S.Mohanty
S.Moharana
S.Routray

-VERSUS-

Union of India represented through

1. The Secretary to Government of India
Ministry of Railway
Rail Bhawan
New Delhi
2. The General Manager
East Co.Railway
Chandrasekharapur
Bhubaneswar
Khurda
3. The Divisional Railway Manager
East Coast Railway
Visakhapatnam
Andhra Pradesh
4. Pravanjan Nial
S/o.Prahallad Nial
Vill/PO-Khairapadar
Dist-Kalahandi

...Respondents

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By the Advocate(s)-Mr.S.K.Ojha
M/s.M.Chand
B.Parida
M.B.Patra
P.R.Mishra
J.Paikray
Miss.J.Sahu
(Res.No.4)

ORDER

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

Applicant in this Original Applicant has approached this Tribunal with a prayer for direction to the Railway Authorities to institute an inquiry through their departmental vigilance team as to whether Respondent No.4 herein is the son of the deceased railway employee and as to whether the applicant's family is the victim of fraud practised by the said Respondents. His other prayer is that the Railway Authorities should also be directed to give the applicant all the service benefits of his father along with a job for his rehabilitation.

Short Facts:

2. Applicant's father was serving as a Gangman in the S.E.Railway. When his father was posted outside Orissa, the applicant and the other family members were all residing in the native village at Temere in the District of Kahalahandi. Later on when the applicant's father was posted at Rayagada in the state of Orissa, the family moved along with him to Rayagada. It is alleged that the applicant's father had married for a second time since the first wife who is the applicant's mother was mentally retarded. Applicant's father died in harness and was survived by his first wife, a daughter who was 12 years old, the present applicant, who was six years old, his second wife and her son, who was only two months old. One

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Prabhanjan Nial, who is Respondent No.4 in this O.A. came to the rescue of the family and later on managed to obtain a legal heir certificate from Tahasildar, Dharamgarh in which he is mentioned as the eldest son of the deceased railway employee. Consequently, he got all the service benefits as well as a job on compassionate grounds under the Railways. The applicant after growing up came to know about the alleged fraud perpetrated by the Respondent No.4 and moved for a legal heir certificate from the Tahasildar, Bisamkattack and in the legal heir certificate issued by the said Tahasildar, he was shown as the eldest son of his father late Hazari Nial. He also obtained copy of voter list of the year 1988 wherein Respondent No.4 was shown to be the son of one Prahallad Nial of Village-Khairapadar in Dharamgarh Tahasil. After collecting the documents, the applicant submitted a number of representations to the Railway Authorities alleging perpetration of fraud by Respondent No.4, but did not receive any response. His prayer is that since he has been defrauded by Respondent No.4, the service benefits as well as appointment under rehabilitation scheme in the Railways should be withdrawn from Res.No.4 and be given to him on the basis of the legal heir certificate that he has obtained from the Tahasildar, Bisamakatak, after due inquiry to be conducted by the Railway Authorities.


Facts stated in the counter:

3. The Respondent-Railways have filed their counter affidavit, in which they have mentioned that one Hazari Nial, while working as Gangman in the Railways expired on 10.6.1990. The Tahasildar, Dharamgarh had issued a legal heir certificate dated 30.7.1992, declaring respondent No.4 and



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others entitled to pension, GPF and gratuity. The Department sanctioned the family pension in favour of the first son of the first wife till he attained majority and later on, the family pension was sanctioned in favour of the applicant till he attained the age of 25 years since the applicant was the 2nd son of the first wife of the deceased. Thus, the applicant also has been given the benefit of family pension by the railway authorities, who have gone strictly by the legal heir certificate issued by the Tahasildar, Dharamgarh. Compassionate appointment also was given to Respondent No.4 on the basis of the legal heir certificate issued by the Tahasildar, Dharamgarh after an application was received from him by the Railway authorities. This is for the first time ^{that} the applicant has raised his dispute to the payment of settlement benefits and also the compassionate appointment even though he has himself received the family pension. He has submitted another legal heir certificate issued by the Tahasildar, Basamkatak, which is not available on record with the departmental authorities. The legal heir certificate issued by the Tahasildar, Dharamgarh has not been challenged by the applicant in the appropriate forum. It thus continues to be a valid document on the basis of which the retirement benefit as well as compassionate appointment has been given by the Respondents. The applicant was also aware of the benefits given to Respondent No.4 on the basis of the legal heir certificate and he himself is ^R a beneficiary of the family pension as per the rules. The deceased railway servant died in the year 1990 and thereafter the applicant has become major in the year 2002 and after a long lapse of time, he has approached this Tribunal and therefore, the respondents have pleaded that the claim is



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severely barred by limitation. In relation to the prayer made by the applicant that the Railways should institute a vigilance inquiry due to fraud committed by Respondent No.4, the counter affidavit mentions that the departmental vigilance has no authority to do so and this is very much outside the scope of working of the railway vigilance. Besides the above, points mentioned in the counter affidavit, it has been further argued that appointment on compassionate ground is not a matter of right and in the present case, the railway authorities have decided all the retirement benefits as well as compassionate appointment very much based upon the valid document, i.e., legal heir certificate of the Tahasildar, Dharamgarh. Therefore, they have strongly challenged the case made out by the applicant and pleaded for its dismissal.

Private Respondent No.4 though has been represented by the learned counsel, yet no counter has been filed on his behalf.

Contentions made by both the parties:

4. The learned counsel for the applicant has taken a stand that Respondent No.4 has subjected the family of the applicant a lot of harassment and even though he was not the son of the deceased railway servant by an act of fraud he has managed to obtain a legal heir certificate and also further benefits from the railway department. The applicant was not aware of the act of fraud for many years and later on when he grew up, he has approached the Tribunal for relief after obtaining the documents like, voter list as well as legal heir certificate from the Tahasildar, Bisamkatak dated 22.8.2008 in which Respondent No.4 does not figure and the applicant has been mentioned as the eldest son of the deceased railway

[Signature]

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servant. His further argument is that at least this matter requires a thorough investigation by the vigilance department of the Railways since the fraud has been committed on the Railways by submitting false certificate to the authorities and taking advantage of the same in obtaining a compassionate appointment. He emphasized that the truth will come out after the investigation into the allegations and on the basis of the result further course of action should be taken by the Railways to cancel the compassionate appointment in favour of Respondent No.4 and also to extend the said benefit to the applicant.

5. On the other hand, the learned counsel for the Respondents who also has filed a written note of submission has ~~to with~~ described the O.A. as a concocted story. The learned counsel for the Respondents has strongly pleaded that this O.A. is hopelessly barred by limitation and on this ground alone, this is not maintainable. It is further pleaded by him that the applicant also received the family pension as he was only eight years ^{old} in the year 1992 and his family pension continued till he attained 25 years of age as per Rule-75 of the Railway Pension Rules, 1993. After he attained majority he has not made any representation to the railway authorities alleging any fraud or illegality. The legal heir certificate of the Tahasildar, Dharamgarh is a valid document on the basis of which the Respondents have taken a decision and the same document has not been challenged by the applicant in the appropriate forum. Since the legal heir certificate of Tahasildar, Dharamgarh has not been cancelled, it continues to be the basis for the settlement of the retiral benefits. The learned counsel for the Respondents has strongly argued that the applicant has never filed any

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representation to the railway authorities although he has made such a claim in the O.A. His claim to compassionate appointment is not a matter of right as has been held by the Hon'ble Apex Court in the case of State of Chhatisgarh v. Dhiroj Kumar Sengar (AIR 2009 SC 2568). He has also quoted the decision of the Hon'ble Apex Court in the case of Local Administration Department & Another vs. M.Selvanayagam @ Kumarvelu (AIR 2011 SC 1880) in which it has been laid down that compassionate appointment cannot be extended to a family after a long lapse of time. In the present case the applicant is seeking appointment on compassionate ground after 21 years from the date of death of the Railway employee and nine years from the date he attained majority. Apart from that, compassionate appointment has already been given to Respondent No.4 based upon the valid legal heir certificate.

Discussion:

6. Having heard the learned counsel^l for both the sides, I have also perused the records. It is clear from the counter affidavit filed by the Railways that the family pension was paid to Respondent No.4 and the applicant was sanctioned family pension till he attained 25 years of age and this was^d done on the basis of the legal heir certificate issued by the Tahasildar, Dharamgarh. It is therefore, not admissible that the applicant should challenge this legal heir certificate when he has received the family pension as admissible on the basis of that document.

7. Coming to the question of compassionate appointment, Respondent No.4 has been given the same on the basis of the document as mentioned above. Although a considerable period of time has passed, this was not



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challenged by the applicant in any forum. In the said legal heir certificate, Respondent No.4 has been described as the eldest son and the present applicant has been described ^{as} himself the 2nd son of the deceased railway servant. The legal heir certificate of Tahasildar, Dharamgarh has not been challenged in the appropriate forum. In addition to the same, under what circumstances the applicant has obtained another legal heir certificate dated 22.8.2008 from the office of Tahasildar, Bisamkatak in which he figures as the eldest son of the deceased railway employee is ~~not~~ a matter which is not expected of the Tribunal to investigate as this ^{is} not within its powers, authority and jurisdiction. Even the other documents, ^{i.e.} like voter list is something which ^{the} Tribunal does not feel inclined to enquire into it since it is beyond the scope of the jurisdiction of this Tribunal. The applicant, if he was aggrieved by the documents as a result of which ^{the alleged} fraud has been perpetrated by Respondent No.4, he could have challenged the same in the appropriate forum as provided under the law. In none of these points, the learned counsel for the applicant has been able to adduce any convincing arguments.

8. Coming to the main prayer, it is to be noted that the applicant has prayed that the Railway Vigilance should conduct an inquiry. The stand taken by the learned counsel for the Respondents that such an inquiry is not possible to be conducted by the departmental vigilance team appears to be correct. It is not the case of the applicant that the Railway Administration has done anything wrong or any railway officer has adopted any fraudulent means to confer benefit on Respondent No.4. It is not understood how the Railway Vigilance team would be empowered to

investigate whether the legal heir certificate was obtained through fraud. That certainly does not come within the scope of the vigilance team of the Railways. Such a prayer made by the applicant is misconceived and therefore, is not maintainable.

9. Finally, the question of limitation also stares at the applicant. The deceased Government servant had passed away in the year 1990 and the applicant attained majority in the year 2002. He has approached the Tribunal ^{on 2} in the year 16.8.2011, i.e. after about nine years of attaining majority. Therefore, the O.A. is hopelessly barred by limitation.

Conclusion:

From the discussions on various issues made above, it is very evident that the O.A. is devoid of merit and in consequence, the same is dismissed with no order as to costs.



(R.C.MISRA)
MEMBER(A)

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