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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 27-08-2010

PRESENT:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of

O.A. No.409/2009

Smt.R.Kanchana & Anr. ... Applicants

Versus

Union of India & Ors. Respondents

(For Full details, see the enclosed cause title)

For Applicant: M/s. Achintya Das, D.K.Mohanty, Counsel.

For Respondents: Mr.M.K.Das, Counsel.

ORDER

MR. C.R.MOHAPATRA, MEMBER (A):

In this Original Application under section 19 of the Administrative Tribunals Act, 1985 Applicants seek to quash the letter under Annexure-A/14 dated 21/23-01-2008 and to direct the Respondents more particularly Respondent No.3 to provide employment to the Applicant No.2 on compassionate ground in term of the CPO/BBS's letter under Annexure-A/10 dated 01-12-2005. Annexures-A/10 & A/14 provide as under:

"Annexure-A/10.

Dt.01.12.2005

The instant case has been examined in detail. Ex employee expired on 21.9.1999. Application for employment assistance has been submitted on 25.01.2000 and 25.6.2004 i.e. within 05 years of death. Employment assistance has been sought for the 1st son. The candidate attained majority on 15.6.1999. The 1st application has been submitted within 02 years of attaining majority by the candidate. The candidate has passed 8th class within 05 years time limit. All these conditions make the candidate eligible for consideration of employment assistance on compassionate ground under DRM's power as clarified in this office letter No.1) ECoR/Pers/Comp Aptt/47 dated 13.5.2005 and 2) ECoR/Pers/Comp Aptt/Policy/47 dated 28.6.04.

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In view of the above, the case is clearly within the power of DRM. Therefore, the case may be processed at divisional level under DRM's power."

"Annexure-A/14

Dt.21/23.01.2008

Your request for employment assistance in favour of your son was put up to the competent authority for consideration. But the competent authority did not agree to consider your request as your case has already been regretted and need not be reviewed.

This is for your information please. "

2. Applicants' contention is that they have not received any such letter of rejection of his grievance earlier to Annexure-A/14 though it is mandatory on the part of the Respondents to intimate as to the action taken on their request for employment on compassionate ground. Further contention of the Applicants is that he has a right to be considered for appointment on compassionate ground as per the Rules of the Railway especially when in similar circumstances employment assistance has been provided by the Railway to many candidates. Next stand of the Applicant is that the Respondents intentionally and deliberately with a view to deny the applicant his legitimate right raised question on his request one after the other allowing the applicants to suffer till date though there was no reason after the letter under Annexure-A/10 and order of the higher authority i.e. Sr.DPO dated 22.2.2007 in his note at page 30 of the OA to refuse consideration on hyper technicality rather than on merit of the matter. Accordingly by attributing *mala fide* exercise of power by the authority, the Applicant has prayed for grant of the aforesaid relief.

3. The stand of the Respondents (both in the counter as well as additional counter) in support of the letter of rejection under Annexure-A/14 is that Shri R.Gaddayya, Ex-Safaiwalla was working under the Chief Health Inspector, Palasa. He expired while in service on 21-09-1999. After his death the widow applied for Employment Assistance on Compassionate ground in favour of her second son (Applicant No.2) on 25-01-2000 with Transfer

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Certificate issued on 29.11.1999 by the District Educational Officer, Srikakulam in support of his educational qualification as Class VI failed (Annexure-R/1) though the essential qualification for Gr.D service in Railway is Class VIII pass in term of RBE No.277/88 (Annexure-R/2). For the aforesaid reason i.e. lack of qualification, the prayer for employment on compassionate ground was rejected and communicated to the Applicant No.1 in Annexure-A/5. After receipt of the letter under Annexure-A/5, Applicant No.1 represented enclosing thereto mark sheet of Class X showing that he appeared at the SSC examination in the year 2000-01 in march 2001 from Zilla Parishad School, Kasibugga as a Private candidate but failed. Since the Applicant No.2 appeared at the SSC examination as a private candidate and failed he cannot be said to have passed Class VIII pass. As such he was advised to produce Class VIII or IX pass certificate from the school where he appeared at the SSC examination. But without submitting the same again on 25.6.2004 she submitted a certificate No. 1125 dated Nil issued by the District Educational officer and Chairman, District Common Examination Board, Srikakulam that the candidate appeared Class VIII common examination held in April, 2004 and has passed. Thereafter applicant No.1 was informed in letter dated 28.2.2003 that the applicant No.2 appeared at the SSC examination as a private candidate. Had he passed the examination, the same would have been accepted as SSC. But he appeared at the SSC examination as a private candidate and failed In the event of his failure in SSC examination his qualification remained as Class V pass and the mark sheet of SSC examination cannot be accepted as Class VIII pass. Applicants were not able to produce class VIII pass or Class IX pass certificate from the School which he appeared at the SSC examination as a private candidate. However, after five years applicant No.2 acquired the minimum educational qualification of Class VIII

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pass for appointment in Gr. D post in Railway. In view of the above, vide letter dated 11-03-2005, the matter was referred to the Zonal Head Quarter for clarification. The competent authority vide letter dated 01.12.2005 clarified that the as applicant No.1 submitted application within 02 years from the date of attaining majority by the applicant No.2 it is within the power of Divisional level. After receipt of such clarification from the Head Quarter's office, the case of the applicant No.2 was duly considered. During examination it was noticed that at the time of death of the employee, applicant No.2 already attained majority but he possessed only Class V pass which is not permissible for consideration against Gr.D post in the Railway. Further stand of the Respondents is that as Applicant No.2 possessed the essential educational qualification thereafter that too without obtaining permission from the Railway in terms of RBE No.88 of 2007 the competent authority did not agree to consider the case of the Applicant N.2 for appointment on compassionate ground. Accordingly, Respondents prayed for dismissal of this OA.

4. Learned Counsel appearing for both sides laid emphasis on the averments taken in their respective pleadings and having given thoughtful consideration to the submissions of the respective parties perused the materials placed on record. In course of submission Learned Counsel for the applicant relied on and produced the official noting of various authorities including the Sr.DPO while dealing with the grievance of the applicant obtained by him through RTI. Therefore, to verify the contentions, the original file was called for and produced by the Respondents' Counsel and the same was also perused by this Tribunal. The noting of the Sr.DPO dated 22.2.2007 reads as under:

"Late R.Gaddayya Ex-Sr.S./Walla/PSA expired on 21.9.1999. The widow applied for EA to Sri R.Govindu son DOB 15.6.1981 and passed IXth class as per mark sheet at F-28 and genuine at Folio-27. His name included in the settlement document and PI through his enquiry report certified the bona fide of the candidate. Age of the candidate is tally with pass

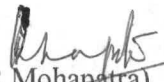
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declaration. As advised by CPO/BBS, this case can be considered by DRM at F-35. **May kindly indicate orders to call for Gr.D screening on compassionate ground."**

5. From the above it is clear that the applicant No.2 meanwhile possessed the essential educational qualification class VIII pass required for appointment in Gr. D post in Railway but according to the Respondents as the applicant acquired such qualification after the stipulated time of five years and without obtaining the prior permission of the Railway in terms of RBE No.88 of 2007, he is not entitled to such appointment. I do not find in any of the documents either placed by applicant or by Respondents that this was the reason for which his grievance was rejected. For the aforesaid reason it is to be examined whether the ground taken in the counter is sustainable. In this connection the law laid down by Their Lordships the Hon'ble Apex Court in the cases of **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR (39) 1952 SC 16 and **Mohinder Singh Gill v. Chief Election Commissioner**, AIR 1978 SC 851 is relevant in which it was held by Their Lordships that "When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, orders bad in the beginning may, by the time it comes to court on account of a challenge, get validated in additional grounds." Besides the above, it is seen that the applicant prosecuted and possessed the VIII pass certificate as it was insisted that irrespective of the SSC failed certificate he has to produce the Class VIII pass certificate. He has admittedly submitted application in the first instance within the time. This apart, after being satisfied on due enquiry when Sr. DPO has specifically sought the orders of the DRM to indicate about calling for Gr.D screening on compassionate ground, the case of the applicant ought not to have been rejected without assigning any reason.

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The letter under Annexure-A/14 does not show that while rejecting the case of the applicant the noting of the Sr.DPO has been taken into consideration. No reference has also been given in Annexure-A/14 as to when the request of applicant was rejected and intimated to him. No reason of rejection has also been ascribed in the said order under Annexure-A/14. Therefore, viewed the matter from any angle it cannot be said that the impugned order under Annexure-A/14 is sustainable in the eyes of law and hence dismissal of this OA on the hyper technical law of limitation would tantamount to allowing the injustice caused to the applicant in the decision making process of the matter to perpetuate. Hence the impugned order under Annexure-A/14 dated 21/23.01.2008 is hereby quashed. The matter is remitted back to the Respondents to give fresh consideration to the case of the Applicant keeping in mind the letter under Annexure-10 and the order of the Sr.DPO at page 30 of the OA and communicate the decision taken in the matter in a reasoned order to the applicant. The entire exercise, in any event, should be completed within a period of 120 days from the date of receipt of this order. In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. Mohapatra)
Member (Admn.)