

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 643 of 2009

Cuttack, this the 04th day of November, 2010

Kanchan Behera & Anr. Applicants
Versus
Union of India & Ors. Respondents

CORAM:


THE HON'BLE MR. C.R. MOHAPATRA, ADMN. MEMBER

.....

Undisputed facts of the case are that Applicant Nos.1 & 2 are the widow and daughter of Late Nilamani Behera who died prematurely on 16.2.2004 while working in the East Coast Railway, Puri Railway Station as Waiting Room Bearer. They filed this OA U/s.19 of the A.T. Act, 1985 seeking direction to the Respondents to consider/reconsider the case of the Applicant No.2 for appointment in the Railway on compassionate ground.

It is not in dispute that the ex railway employee left behind his widow (Applicant No.1), and two daughters, Applicant No.2 is one of them. It is also not in dispute that after the death of the husband of applicant No.1, she applied for appointment in favour of her married second daughter (Jharana Behera). But the said request was considered by the Respondents but regretted as is evident from the letter under Annexure-A/6 dated 02.11.2006. Through representation under Annexure-A/8 dated 'nil', it appears from the postal receipts filed along with the representation in Annexure-A/8, to have been sent on 18.4.2009, applicant No.1 requested the Respondents to provide appointment in favour of her first widow daughter i.e. Applicant No.2 on compassionate ground as Applicant No.1 is residing with Applicant No.2. Hence this OA with the aforesaid relief.

2. Respondents have filed their counter in which it is stated that earlier while submitting the application dated 4.11.2005 by the applicant no.1 in favour of her second married daughter, she had stated that her elder



4

daughter Smt. Kausalya Behera was living with her husband at Radha Kishorepur and her younger daughter Smt. Jharana Behera with her husband, Shri Pankaja Behera were residing with her. Another affidavit dated 02.12.2005 submitted by the applicant No.1 at that time in which she has stated that the elder daughter, Kausalya Behera had married to one Pravakar Samal of Village Radhakishorepur and she is residing in her law's house. The younger daughter Jharana Behera aged 25 years had married to one Pankaja Behera and residing in her parent's house to serve her old age widow mother. In paragraph 2 the applicants stated that husband of first daughter expired on 16.3.99. There was nothing mentioned about the death of the husband of first daughter either in her application dated 4.11.05 or affidavit dated 2.12.05. Rather she had mentioned that her elder daughter is living with her husband at Radhakishorepur in her law's house. The Applicant No.1 is getting monthly family pension @ Rs.1865/- + IR. The married daughter for whom the Applicant No.1 is seeking employment assistance on compassionate ground cannot be said to be dependent. Accordingly, Respondents have prayed for dismissal of this OA. However, no rejoinder has been filed by the Applicants.

3. Heard Mr.P.K.Chand, Learned Counsel for the Applicant and Mr.M.K.Das, Learned Additional Standing Counsel for the Respondents and perused the materials placed on record. By placing reliance on the Railway Board's instruction issued vide No. E(NG) II/2001/RC-1/ER/5 dated 21-11-2001 it has been contended by Learned Counsel for the Applicant that when Railways framed rules for providing employment on compassionate ground rejection of the case of the second daughter earlier and non-consideration of the case of the Applicant No.2 till date amounts to violation of the Rules besides sitting tight over the right accrued to a candidate. Hence, in view of the Railway Board's instruction dated 21.11.2001 applicant No.2, being the

R

8

dependent widow daughter is entitled to favourable consideration for appointment on compassionate ground.

Besides reiterating the stand taken in the counter in regard to dependency and prevaricating statements etc., Learned Counsel appearing for the Respondents by placing reliance on an earlier decision of this Tribunal dated 16th April, 2009 in OA No. 698 of 2006 (Smt. Pilaka Gunnamma v Union of India and others) it was submitted by Leaned Counsel appearing for the Respondents that in view of the decision rendered in the case of Smt. Plaka (supra) applicant NO.2 being a married daughter is not entitled to appointment on compassionate ground. This apart it was contended by him that one cannot claim appointment on compassionate ground as a matter of right irrespective of time consumed and financial indigence. It was contended that the father of the applicant No.1 died on 16.2.2004. The first prayer was rejected in letter dated 2.11.2006. As such even if it is accepted that applicant no.1 sought appointment in favour of applicant No.2 through representation under Annexure-A/8 that representation was of dated 18.4.2009 there was no occasion for the Respondents to revive the consideration which was set at rest by the letter of rejection dated 2.11.2006. In this OA, the Applicants have not impugned the order of rejection dated 2.11.2006. Accordingly, Respondents' counsel has stated that this OA being devoid of any merit is liable to be dismissed,


4. It is recorded that although appointment on compassionate ground is a benevolent legislation, yet it is trite law that Administrative Tribunals cannot confer benediction impelled by sympathetic considerations in complete disregard to the facts as in the instant case. The appointment on compassionate ground is not another source of recruitment but merely an exception to the requirements taking into consideration the fact of the death of

2

9

employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over the sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions. Employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of the unexpected death of the bread earner while in service. To alleviate the distressful condition of the family, such appointments are permissible on compassionate grounds provided one must come with clean hands and situation does really warrant the same. No explanation is made as to why the widow herself did not choose to opt for appointment on compassionate ground after the death of her husband if really such appointment was necessitated. The widow first requested appointment in favour of her second daughter. The said request was rejected but she did not challenge the same at any point of time not even in this OA. The Applicant No.1 cannot seek such appointment in a piecemeal manner as has been done in the present case; especially when no unimpeachable material has been placed on record to show that Applicant No.1 is really dependent on Applicant No.2.

5. In view of the above, ~~we~~ find no merit in this OA. This OA stands dismissed by leaving the parties to bear their own costs.


(C.R. MOHAPATRA)
Member (Admn.)