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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.220 of 2010

Cuttack this the 04th day of May, 2010

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

- ...
1. Parbati Naik, aged about 53 years, W/o. late Jagannath Naik
 2. Subrat Kumar Naik, aged about 23 years, S/o. late Jagannath Naik

Both are of Village – Nuapokhari, PO-Baral Pokhari, Charampa, Dist-Bhadrak

...Applicants

By the Advocates: M/s.P.K.CHAND, D.Satpathy & J.Mohanty

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railways, Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. Chief Personnel Officer, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. Divisional Railway Manager, East Coast Railway, Khurda Road Division, Jatni, Dist-Khurda
4. Sr.Divisional Personnel Officer, E.Co. Railway, Khurda Road Division, Jatni, Dist-Khurda

...Respondents

By the Advocates: Mr.S.K.Ojha, S.C.

ORDER

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER:

1. In this Original Application, the wife of the deceased Railway Employee, Jagannath Naik, is the Applicant No.1 and her son Subrat Kumar Naik is the applicant No.2. They have approached this Tribunal with the following prayer:

“...to quash the order dated 11.9.2009 as at Annexure-A/12 to the extent in regretting to provide employment assistance on compassionate ground to the applicant No.2 and direct the respondents to consider in providing such employment assistance to applicant No.2 on compassionate ground”.

2. The brief background of this case is that the husband of the applicant No.1, while working as Khalasi under the Respondent-Railways, passed away on 16.4.2000, leaving behind him the widow, one unmarried daughter and four sons. Due to death of the sole bread earner in the family, the widow applied for compassionate appointment in favour of her eldest son Narayan Naik. While the matter for offer of compassionate appointment was under active consideration by the Respondents, the said Narayan, due to a road accident, lost his eye sight. In the above background, the widow of the deceased employee prayed for extension of compassionate appointment in favour of her second son Laxman Kumar Naik. According to applicant, the prayer for compassionate appointment was rejected on the ground that the Educational Certificate submitted by the second son was not genuine. While the matter stood thus, the mother (applicant

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No.1), again applied for extension of compassionate appointment in favour of her third son, Subrat Kumar Naik , applicant No.2 herein. Since no reply could be received, the matter had formed the subject matter of Original Application No.350/2009 before this Tribunal. This Tribunal, in consideration of the facts and circumstances therein, as per order dated 19.8.2009, directed the Respondents as under:

“Since it is the specific case of the applicants that no such order of rejection of their prayer has been received by them ever before the information obtained by them under Annexure-A/8 and under Annexure-A/8, it was only intimated that request for compassionate appointment has been regretted by the competent authority, as agreed to by learned counsel for both sides, this O.A. is disposed of at this admission stage directing the Respondents to communicate the reason of rejection of the prayer of the applicants within a period of 30 days of receipt of this order. On receipt of such order, if the applicants have any grievance on the reason of rejection, they are at liberty to make representation by way of appeal to the next higher authority within a period of seven days. On receipt of such representation of the applicants, the authority to whom it will be addressed is directed to consider and dispose of the same with a reasoned order and communicate the result thereof to the applicants within a period of 30 days. If still the applicants feel aggrieved, they are at liberty to approach this Tribunal, if so advised”.

3. In the above background, the applicant No.1 having been communicated with the order dated 11.9.2009 (Annexure-A/12) wherein the prayer for extension of compassionate in favour of her 3rd son Subrata Ku.Naik, applicant No.2 has not been acceded to by the Respondents, this Original Application has been filed with the prayers referred to earlier. The relevant portion of the order not acceding to the prayer for compassionate appointment by the Respondents, reads as under:

“Thereafter, you submitted an application dated 6.12.2005 requesting for employment assistance in favour of your 3rd son Sri Subrata Ku.Naik. The matter was placed before the competent authority who regretted the request in view of the fact that knowing fully well that the certificate of your second son is a false one, you applied for employment assistance in his favour and thereby tried to cheat the Railway Administration in order to get undue advantage”.

4. Heard the learned counsel for the parties and perused the materials on record. Prima facie, I am not convinced with the reasonings of rejection of the prayer for compassionate appointment by the Respondents inasmuch as each case has to be governed by its own facts and circumstances. Admittedly, the 2nd son of deceased railway employee had furnished a certificate in support of his educational qualification, which having not been found genuine on an inspection later on, his candidature had been rightly rejected. But the Respondents should not, keeping in mind the same factors and without verifying the genuineness of documents so submitted, have rejected the prayer of the applicant No.2 at the very threshold. It is the settled position of law that an applicant has a right to be considered for the post. As revealed from the impugned order at Annexure-A/12, the Respondents, even before taking into consideration the prayer of applicant No.2, have

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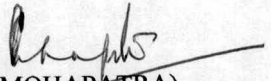
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rejected his prayer for compassionate appointment by applying the same reason and the line of consideration which had influenced their decision in case of the elder brother of the applicant No.2. Viewed from this angle, it is an arbitrary and outright rejection of the prayer for compassionate appointment without going into the merit of the case.

5. Having regard to what has been discussed above, I have no hesitation to hold that the impugned order dated 11.9.2009 (Annexure-A/12) rejecting the prayer for compassionate appointment in case of applicant No.2 suffers from arbitrariness. Accordingly, the impugned order under Annexure-A/12) is quashed and the Respondents are directed to consider the prayer for compassionate appointment in case of applicant No.2 afresh without being swayed away by the stale reasoning extraneous to this case and pass a reasoned and speaking order within a period of sixty days from the date of receipt of this order.

The O.A. is thus disposed of at the admission stage. No costs.

Send copies of this order along with copies of the O.A. to the Respondents and free copies of this order be made available to the learned counsel for the parties.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER