

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.583 of 2016
Cuttack this the 9th day of November, 2017

CORAM:

THE HON'BLE DR. MRUTYUNJAY SARANGI, MEMBER(A)

Mritunjay Vishwakarma, aged about 27 years, S/o. late Jaypati Vishwakarma, at present residing at Railway Qrs.No.232/A, Sector-A, Village/PO-Bondamunda, District-Sundargarh

...Applicant

By the Advocate(s)-M/s.B.S.Tripathy
M.K.Rath
J.Pati

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43
2. The Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division, At/PO/Chakradharpur, Dist-West Singhbhum (Jharkhand)
3. The Senior Divisional Personnel Officer, South Eastern Railway, Chakradharpur Railway Division, At/PO-Chakradharpur, Dist-West Singhbhum (Jharkhand)
4. Smt.Rekha Devi, aged about 38 years, W/o. Late Jaypati Vishwakarma, At. Qr.No.K/1/83, Saharpura, PO/PS-Sindri, Dist-Dhanbad (Jharkhand)

...Respondents

By the Advocate(s)- Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of one Jaypati Vishwakarma, who was working as Assistant Driver/Disel Loco Shunter in S.E.

14

Railway under Chakradhapur Railway Division when he died in harness on 7.8.2005. The applicant's mother was the wife of the brother of Sri Jaypati Vishwakarma, Sri Shankar Viswakarma. After the death of Sri Shankar Vishwakarma on 7.4.1995, his wife, the mother of the present applicant, got married to Sri Jaypati Viswakarma, the deceased Railway employee. At the time of death, late father of the applicant was survived by his widow, Smt. Shyama Devi (1st wife and the mother of the applicant), applicant, Rubi Vishwakarma, Roshni Viswakarma, Smt. Rekha Devi (2nd wife of the deceased Govt. employee), Muskan Vishwakarma and Sumit Vishwakarma, the children of the 2nd wife. There was a dispute between the two wives, namely, Smt. Shyama Devi and Smt. Rekha Devi for claiming the death benefits/settlement dues of the deceased railway employee. The applicant's mother had filed O.A.No.790 of 2006 in this Tribunal which in its order dated 23.11.2006 directed the respondents to dispose of the representation to be filed by the applicant within a period of one month from the date of its receipt. Meantime, a Civil Suit was also filed in the Family Court, Rourkela which in its judgment dated 20.12.2006 declared Smt. Shyama Devi (mother of the applicant) as the legally married wife. This order was challenged by the 2nd wife Smt. Rekha Devi before the Hon'ble High Court which directed the competent authority to disburse the total DCRG amount to both the wives in equal half. Accordingly, the railway

authorities disbursed the death benefits/settlement dues equally to both the wives. The mother of the applicant made an application on 20.7.2011 to the Senior Divisional Personnel officer for providing compassionate appointment to her son (the applicant in the present O.A.). Since no action was taken, the applicant filed O.A.No.674 of 2011 in this Tribunal which directed the Respondent No.3 in that O.A. to consider and dispose of the pending representation dated 20.7.2011. In compliance of this order of the Tribunal, the Senior Divisional Personnel officer passed an order dated 5.1.2012 rejecting the request of the applicant for compassionate appointment on the ground that he is not born out of the wedlock of Smt.Shyama Devi and late Jayapati Vishwakarma and therefore, employment assistance cannot be considered in his favour. Aggrieved by this, applicant has filed the present O.A. praying for the following reliefs:

- i) To pass appropriate orders quashing the impugned order dated 05.1.12 in Annexure-A/6.
- ii) To pass appropriate orders directing the Respondents-Railways to consider the case of the applicant for providing him an employment on compassionate ground commensuration with his educational qualification.
- iii) To pass such further order/orders as may be deemed just and proper in the facts and circumstances of the case and allow this OA with cost.

2. The applicant has mainly used the ground that as the adopted son of the deceased employee, he is entitled to all the legal benefits including compassionate appointment after the death of his father. After the death of the Government employee, his family is in indigent condition and he is qualified for a job under the Railways. He has enclosed his HSC certificate as a proof of his educational qualification. His application for compassionate appointment has been rejected mechanically without taking into account all aspects of the case and therefore, the impugned order is liable to be quashed.

3. The respondents in their counter reply filed on 16.5.2017 have contested the claim of the applicant. It is their contention that the applicant and his two sisters were born out of his mother's marriage to Shri Shankar Vishwakarma and not Sri Jayapati Vishwakarma, the deceased Government employee. The issue with regard to marital status of both the widows and the declaration regarding adoption of applicant by late Jayapati Vishwakarma has not been conclusively decided by any Court of Law. After the order was passed by the Hon'ble High Court dated 2.2.2011 allowing 50% share each to both the wives of the DCRG amount, the order of the Family Court declaring the applicant's mother as the legally wedded wife has become inoperative and lost its entity. The applicant has been born out of wedlock of Smt. Shyama Devi and late Shankar Viswakarma and is therefore not entitled to compassionate appointment.

Moreover, both the wives have not been made party in the present O.A. and therefore, the applicant has not established his right for compassionate appointment. Since the death of the Government employee occurred in the year 2005 and the application for compassionate appointment was filed in the year 2011 and the present O.A. filed in August, 2016 the same is barred by limitation. There is no immediate hardship to the family. Mere consideration of representation cannot take away the effect of the limitation on the present litigation. The applicant has not submitted any adoption deed to show that he has been legally adopted by the deceased Government employee. The Respondents' contention is that the Hon'ble Supreme Court in the case of *National institute of technology vs. Miraj Ku. Singh* [(2007) 1 SCC (L&S) 668] and in *Mohan Mahto vs. Central Coal Field* [(2007) 8 SCC 549] has specifically held that there is no need to extend the benefit of compassionate appointment after a long gap of many years. Therefore, the present O.A. is liable to be dismissed.

4. The applicant has filed M.A.No. 459 of 2016 praying for condonation of delay on the ground that after the death of his father the condition of the family was very indigent and there was no source of income for him to approach earlier to challenge the rejection of his application for compassionate appointment dated 5.1.2012. The Respondents on the other hand, filed objection to this M.A. on the ground that indigent

condition cannot be taken as a valid ground for condonation of delay and that the applicant could have taken the help of Legal Aid to file his case. The applicant has approached this Tribunal after a gap of more than 11 years for getting compassionate appointment. Since the family has been able to survive for so many years, there is no need to consider the applicant for compassionate appointment.

5. Applicant filed his rejoinder on 31.8.2017 reiterating his stand that as an adopted son he is eligible for all benefits of the deceased Government employee. The applicant's mother was the legally married wife of the deceased Government employee and as the adopted son the applicant is entitled to all the benefits including the compassionate appointment after the death of the father. The applicant has also filed a copy of the affidavit dated 24.1.2003 executed at Dhanbad to show that he is the adopted son.

6. I heard the learned counsels for both the sides on 26.10.2017. The respective counsels also cited their case laws. The learned counsel for the applicant has cited the judgment of the Hon'ble High Court of Orissa in *Mihir Kumar Bal reported in 2012 (1) ILR-CUT-436*. In that case there was a dispute between the applicant and another lady who claiming to be the wife of the deceased had applied for compassionate appointment. The Hon'ble High Court after considering the merits of the case had held that the delay and laches of 25 years will not be hindrance

for consideration of compassionate appointment since the petitioner had approached the authorities earlier for compassionate appointment immediately after the death of his father. The RBI was directed to offer compassionate appointment to the petitioner in a suitable post.

7. The Respondents in their written note of submission have cited the judgment of the Hon'ble Supreme Court in *C.Jacob vs. Director of Geology & Mining & Anr. [AIR 2009 SC 265]* in which it was held that if the representation made to the authority is on the face of it is stale or does not contain particulars to show that it is regarding a live claim, then the Court/Tribunal should desist from directing consideration of such claims. In Chennai M.W. Supply and Sewereage Board vs. T.T.Murali Badu [AIR 2014 SC 1141], the Hon'ble Supreme Court had held that while considering equity, the Court should keep in mind that delay comes in the way of equity and laches should not be liberally brushed aside. Similarly, in *Local Administration Department vs. M.Selvanayagam [AIR 2011 SC 1880]*, the Hon'ble Supreme Court had held that appointment to the son of a deceased employee who had applied 7 ½ years after the death of his father cannot be said to subserving the basic object and purpose of the scheme and such belated appointment would be in conflict with Articles 14 and 16 of the Constitution of India. In *State of Chhatisgarh vs. Dhirjo Kumar Sengar [AIR 2009 SC 2568]*, the Hon'ble Apex Court had observed that the adoption

20

deed on the basis of which the respondent had established his right to succession was executed on a stamp paper of Rs.2/- and not registered. On other relevant grounds, the compassionate appointment given to the respondent Dhiroj Kumar Sengar was set aside by the Hon'ble Apex Court. The Respondents have also relied on the judgment of the Hon'ble Apex Court in *National institute of Technology & Ors. vs. Niraj Kumar Singh* [(2007) 1 SCC (L&S) 668] in which it was held that compassionate appointment cannot be given after a long lapse of time after the death of the employee. When the employee died his son was only one year and it was held that compassionate appointment cannot be granted to the son after he attained majority.

8. The applicant's mother had submitted a representation on 20.7.2011 which was considered and the letter dated 5.1.2012 was issued rejecting the request for compassionate appointment. The relevant paragraphs of the rejection order dated 5.1.2012 is quoted hereunder:

vii) Further, your mother had submitted representation dated Nil, addressed to Sr.DPO/CKP, wherein she had prayed for employment assistance on compassionate ground in your favour. The representation was examined and replied vide Sr.DPO/CKP's letter No.E/Rectt.Misc./M.Vishwakarma/11 dated 26.09.11 stating that you were born out of wedlock of Smt.Shyama Devi and late Shankar Vishwakarma and not that of Smt.Shyama Devi and Lt. Jaypati Vishwakarma, the ex-employee. So employment assistance cannot be

2)

considered in your favour, as it is not coming under the purview of Railway rules: It will be relevant to mention here that Annexure-A/4 is a true copy of the aforementioned representation. You had suppressed the fact from the Hon'ble Tribunal that your representation with the same prayer has already been disposed off by the Respondent.

viii) Nevertheless, the matter has once again been examined in the light of extant Railway rules. It is seen that employment assistance on compassionate ground can only be provided to the son, daughter, widow or widower of the Railway employee. Since you are the son of Lt. Shankar Vishwakarma & Smt. Shyama Vishwakarma and you do not fulfill this criteria, your prayer for employment assistance on compassionate ground cannot be considered".

9. It is found from the records that the case of the applicant had already been considered for compassionate appointment. In the letter to Smt. Shyama Devi dated 26.9.2011, the following observations were made:

Sub: Request for employment assistance to Sri Mritunjay Vishwakarma in Group C category on compassionate ground.

Ref: Your letter No. Nil dated Nil.

Your representation dated nil for employment assistance on compassionate ground in favour of Sri Mritunjay Vishwakarma in Group C category has been carefully examined. It is observed that the candidate was born out of wedlock of Shyama Devi and late Shankar Vishwakarma as per Hon'ble High Court of Orissa, Cuttack' judgment in the matter of MATA No.2 of 2007 and departmental heir ship certificate but not born out of the wedlock of Smt. Shyama Devi

22
and late Jaypati Vishwakarma, who was working as Sr.D/Asst.Under CCC(L)/BNDM expired on 07.08.2005.

Hence, your request for employment assistance on compassionate ground in favour of Sri Mritunjay Vishwakarma in Group C category is not coming under the Railway rules and no further correspondence in this regard shall be entertained by the Administration".

10. The issue involved in the present O.A. is whether the applicant claiming to be the adopted son of the deceased employee has any right for consideration for appointment on compassionate ground. As per the scheme adopted by the Railways for compassionate appointment, widow or the dependent children of the deceased Government employee can apply for compassionate appointment and can be considered for the same. It does not distinguish between the sons born out of wedlock of the parents or the adopted sons. Under the Civil Law, the adopted children have the same rights as the children born out of wedlock. The applicant has annexed two documents in support of his claim as the adopted son of the deceased Government employee. One of the documents is the order of the Principal Judge, Family Court, Dhanbad dated 13.3.2003 restoring the conjugal life between the mother of the applicant and the late Jaypati Vishwakarma to live together from that date. It also mentions the declaration by the mother of the applicant that they were married on 10.6.1996 according to the Hindu customs. The 2nd document is an unregistered Affidavit

under the title "Adoption Deed" signed on 24.1.2003 in presence of two witnesses. As per the above Deed, the applicant was declared to have been adopted on 15.06.1995. Records also show that as per the Legal Heir Certificate issued by the Tahasildar, Rourkela dated 23.11.2005, the following were mentioned.

- i) Smt.Shayama Devi ...Wife (First widow wife)
- ii) Rubi Vishwakarma ...Daughter
- iv) Mirtunjay Viswakarma ...Son
- iv) Roshni Vishwakarma ...Daughter
- v) Rekha Devi ...Wife (second widow wife)
- vi) Muskan Viswakarma ...Daughter
- vii) Sumit Viswakarma ...Son

11. As per the H.S.C. certificate, the applicant's date of birth is shown as 21.8.1989. Although the applicant was less than 15 years at the time of adoption recorded in an affidavit, it is pertinent to note that the affidavit has not been registered in the appropriate Court. As per Section 16 of the Hindu Adoption and Maintenance Act, 1956, any presumption as to the compliance of the provisions of the Act will be only with reference to the registered document. It reads as follows:

"16. Presumption as to registered documents relating to adoption : - Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved".

24

12. The applicant has not produced any document where the records in the Railways have shown him to be the adopted son of the deceased Government employee. Although the legal heirship certificate has mentioned him as the son, no mention has been made about him and the other family members in any railway pass or other documents issued by the Railways. The applicant's reliance on the judgment of the Hon'ble High Court of Orissa in Mihir Kumar Bal (supra) is misplaced and is not applicable in the present O.A. since the matter in that case related to a dispute between the son of the deceased and the 2nd wife of the deceased for compassionate appointment. In view of Section-16 quoted in Para-11 above, in the absence of a registered document, reliance upon an unregistered affidavit to establish the right of the applicant for consideration for compassionate appointment is not unfettered and cannot be strictly sustained.

13. I have considered the case laws cited by the respondents and accept their contention that there has been a delay in claiming compassionate appointment by the applicant [Local Administration Department vs. M.Selvanayagam (supra)], [National institute of Technology & Ors. vs. Niraj Kumar Singh(supra)]. The Government employee died in 2005, the prayer for compassionate appointment was made after a gap of six years in 2011. The Hon'ble Supreme Court has in a catena of

25

25

judgments laid down the principle that compassionate appointment cannot be claimed as a matter of right and compassionate appointment should be given in close proximity to the time of death of the Government employee [State of U.P. vs. Paras Nath (1998) 9 SCC 458, Haryana SEB vs. Krishna Devi (2002) 10 SCC 246, Union of India vs. Bhagvan Singh (1995) 6 SCC 476, Santosh Kumar Dubey vs. State of U.P. (2009) 6 SCC 481 & V.Sivamurthy vs. State of A.P. (2008) 13 SCC 730]

14. In view of the above, I find no merit in the O.A. It is accordingly dismissed with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

BKS