

22

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/721/2012

Cuttack this the 24th day of March, 2017

CORAM:

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

S.Eswara Rao, aged about 32 years, S/o. late S.Appala Swamy, of
Village-Gurudaballi, PO-Bondapalli, Dist-Vizianagaram, Andhra
Pradesh

...Applicant

By the Advocate(s)-M/s.A.Mohanty
P.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railways, Rail Kunj,
Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railways, Waltair
Division, Waltair, Dist-Andhra Pradesh
3. Senior Divisional Personnel Officer, East Coast Railways,
Waltair Division, Waltair, Dist-Andhra Pradesh
4. Senior Personnel officer (IR & G), East Coast Railways,
Rail Kunj, Bhubaneswar, Dist-Khurda

...Respondents

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



23

ORDER
R.C.MISRA, MEMBER(A):

Applicant in this O.A. is the son of a deceased railway employee, who has come up before this Tribunal making a prayer that the Respondents may be directed to appoint him in the post of Group-D on compassionate ground and letters dated 7.12.2011 and 17.05.2012 vide A/5 and A/8, respectively, conveying the rejection of his request for compassionate appointment may also be set aside.

2. The short facts of this case are that the applicant's father while working as Khalasi in the Railways, died in harness on 27.4.2010. After the death of his father, applicant, on 28.3.2011 filed a representation before the Divisional Railway Manager, East Coast Railways, Waltair (res.no.2) making a prayer for employment assistance on compassionate ground. To the representation, he had enclosed ~~with~~ his educational certificate of having passed Class-VIII. By an order dated 25.3.2011, the representation of the applicant was rejected and conveyed to the mother of the applicant. Thereafter, applicant filed an appeal before the competent authority making a request for reconsideration of his case. Again in response to this appeal, it was conveyed to the applicant by a letter dated 7.12.2011 that since he had passed SSC(APOSS) in the year 2011 whereas he had submitted his application for employment assistance on compassionate ground on 15.11.2010 and at that point of time, he was only VIII pass, as

per Estt.Srl.No.20/27, the qualification acquired after submission of application for compassionate appointment would not be considered and accordingly, his appeal was regretted by the competent authority being devoid of merit. Subsequently, the railway authorities held an Adalat for compassionate appointment to consider the case of the applicant along with other cases. On 9.11.2011, the Senior Divisional Personnel Officer, E.Co. Railways (res.no.3) noted against the applicant that the candidate produced voter I.D., household card and the case may be put up to the D.R.M. for review. Even though it was indicated that the matter would be submitted to the D.R.M. for review, no further action was taken thereby compelling the applicant to file another representation dated 17.3.2012 to the General Manager (res.no.1) along with the certificate showing that he has passed Class-X, thus making a request for reconsideration of the matter. In response to this, the General Manager, East Coast Railways (res.no.1) called ~~upon~~ the applicant for a personal interview on 19.03.2012. After this, a letter dated 17.5.2012 was sent by the Senior Personnel Officer (IR&G), East Coast Railways to the applicant in which it was informed that he had appeared in Class-VIII examination in April, 2010 and now he has submitted Class-X certificate in less than 02 years. The General Manager had asked him to write 'Andhra Pradesh Open School Society, Garudbali', which, he could not be able to write it in English



with proper spelling. Therefore, Class-X certificate of the applicant was questioned by the authorities and with the orders of the General Manager, the matter was rejected. This decision of the General Manager dated 17.5.2012 and the communication dated 7.12.2011 have been challenged by the applicant in the instant O.A.

3. Respondent-railways have filed their counter-affidavit in which it has been submitted mainly that the applicant had not possessed the minimum qualification for appointment to Group-D post. The other submissions made in the counter-affidavit are that the widow of the deceased employee had expired before consideration of the claim and all the three legal heirs were major and self-reliant by the time the railway employee had expired. The settlement dues of the deceased employee have already been disbursed and received by the legal heirs. The other ground of rejection is that by the time the railway employee passed away, he ^{was} ~~had~~ left with only three months and four days' service. In the counter-affidavit, the respondents have also pointed out certain discrepancies in the signatures and date of birth etc. of the applicant.

4. Applicant has also filed a rejoinder in which he has pleaded that at the time of submission of application, he had passed only Class-VIII and subsequently, he acquired the higher qualification. With regard to the contentions of the respondents that he having appeared in Class-VIII examination in April,



2010 how could he submit Class-X certificate in less than 02 years, applicant in his rejoinder has stated that there is no prohibition under the law for acquiring higher qualification at any stage. In fact the applicant has annexed a clarificatory letter dated 11.12.2014(A/9) to the rejoinder in which Viswa Vignana Vidyalayam, recognized by the Government of Andhra Pradesh, has mentioned that one may appear Class-X after attaining 14+ years irrespective of one's qualification as per the norms laid in the National institute of Open Schooling (NIOS) and Andhra Pradesh Open Schooling System (APOSS) as per G.O. No.723 dated 27.09.2008. Applicant, has therefore, assailed the orders of the authorities in summarily rejecting his application for compassionate ^{appointment} without taking into consideration the submissions made by him.

5. Upon perusal of records, I have heard the learned counsel for both the sides.

6. To start with, I would like to observe that compassionate appointment cannot be claimed as a matter of right. In a catena of decisions, the Hon'ble Supreme Court has repeatedly emphasized the law that compassionate appointments can be considered by the authorities only within the provisions of the scheme set out in this regard. The Courts/Tribunals must not direct the respondent-authorities to provide compassionate appointment since strictly speaking, it is a special dispensation of the concerned authorities and is not to be taken as a regular

process of employment. On perusal of records of this O.A., I find that on 25.3.2011, the order of rejection was passed in a cryptic manner without discussing the grounds of such rejection. In the order dated 7.12.2011, the order of rejection has been passed on the ground that the applicant produced a certificate of SSC(APOSS) in the year 2011 whereas, he had sought for compassionate appointment on 15.11.2010 and at that point of time, he was only Class-VIII pass. Therefore, his case for compassionate appointment could not be considered. Although in the Adalat for compassionate appointment, it was decided to put up his case to the D.R.M. for review, finally, the General Manager examined this case and after looking into his educational qualification, rejected the prayer of the applicant. It is to be noted here that the other aspects of compassionate appointment, like, income, indigent condition, liability etc. of the family were never discussed or dealt by any of the authorities while rejecting the applicant's claim for compassionate appointment. In the beginning the prayer of the applicant was rejected on the ground that he had produced only a certificate of Class-VIII pass which did not meet the requirement of educational qualification for compassionate appointment. Consequent upon submission of SSC(APOSS) certificate which the applicant got subsequently in the year 2011, even though there should not have been any difficulty in considering his application ^{upon} ~~and~~ his acquiring higher

qualification in the meantime, the same was not considered on the grounds as already mentioned above. Therefore, the only question that arises for determination is whether the Secondary School Certificate as produced by the applicant from Andhra Pradesh Open Schooling System in June, 2011 which has created a doubt in the minds of the respondents as to how before completion of two years after the passing of Class-VIII, applicant could obtain Class-X certificate could be accepted and treated for the purpose of acquiring the higher educational qualification for compassionate appointment.

7. In the rejoinder, applicant has produced a clarification in this regard which says that one may appear Class-X examination after 14+ years as per the norms laid in the National Institute of Open Schooling(NIOS) and Andhra Pradesh Open Schooling System (APOSS) as per G.O.No.723 dated 27.09.2008. This clarification dated 11.12.2014 was obviously not before the respondent-authorities when the request of the applicant for employment assistance stood rejected. At this juncture, Mr.Ojha, learned panel counsel pointed out that before acquiring higher qualification, applicant ought to have taken permission of the respondent-authorities. I do not consider it to be ~~more~~ significant inasmuch as after rejection of the applicant's request for compassionate appointment on the ground of his having less qualification, there was ~~any~~ ^{no} need to take permission of the respondents for

prosecuting higher studies. Be that as it may, it is for the respondent-authorities to decide as to whether the applicant has possessed the minimum required qualification for the post in question. However, before taking a final decision, clarification now produced by the applicant has to be taken into consideration by the respondent-authorities, which, in my considered view, would meet the ends of justice. The other aspects of compassionate appointment, like the condition of the family after the passing away of the sole breadwinner, the present income and liabilities should also be considered and only after consideration of all the parameters, a decision is required to be taken by the authorities concerned. I am aware that in this matter the General Manager himself has taken some interview and also recorded some remark about the writing ability of the applicant. Even then I consider that the applicant's case deserves to be reconsidered and in the process of such reconsideration, the clarification with regard to Secondary School Certificate as well as the other parameters as laid down in the scheme for compassionate appointment should be taken into account and a final decision arrived at.

8. Having regard to what has been discussed above, , impugned orders dated 7.12.2011(A/5) and 17.05.2012(A/8) are quashed and set aside. Consequently, the respondents are directed to reconsider the case of the applicant for compassionate appointment in the light of the observations

30

made above and pass a reasoned and speaking order within a period of ninety days from the date of receipt of this order.

Ordered accordingly.

9. With the above observation and direction, the O.A. is disposed of with no order as to costs.


(R.C.MISRA)
MEMBER(A)


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