

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 40 of 96

Present : Hon'ble Mr. D. Purkayastha, Judicial Member.

Smt. Fumoni Maity, W/O Late Rashbehari Maity,
Ex-Khalasi, under D.S.T.E.-W-I, S.E. Rly., Kharagpur,
residing at Vill + P.O. - Kashinathpur,
Dist.-Midnapore.

...Applicant

- v e r s u s -

1. Union of India, service through the General Manager
S.E. Railway, Garden Reach, Calcutta-43.
2. The Chief Personnel Officer, S.E. Rly., Garden
Reach, Calcutta-43.
3. The Divisional Signal & Telecommunication Engineer,
(W-I), S.E. Rly., Kharagpur.

...Respondents

For the applicant : Mr. A. Chakraborty, counsel.

For the respondents : Ms. B. Ray, counsel.

Heard on 16.9.98

Order on 16.9.98

O R D E R

D. Purkayastha, JM

One Smt. Fulmoni Maity, widow of the deceased Railway servant Rashbehari Maity, Ex-Khalasi, under D.S.T.E.-W-I, S.E. Railway, Kharagpur filed this application before this Tribunal seeking direction upon the respondents for giving her an appointment on compassionate ground. It is stated in the application by the applicant that her husband died in harness leaving seven dependants including the applicant on 10.1.91 in a truck accident. But he ^{her husband} was not regularised in service before his death though he was screened and declared medically fit for appointment in the railway. It is stated that as per circular bearing R.B.'s No. E(NG)II-84/CL/28 of 4.5.84 and 31.12.86, the General Manager has discretionary power for giving appointment to eligible and suitable ward

of such casual labours having acquired temporary status, on compassionate ground in order to mitigate the extreme hardship, meriting special consideration. But the Railway Authorities on receipt of the said application filed by the applicant, by a letter dated 28.10.92 (Annexure-B to the application) directed the applicant to submit two copies of date of birth certificate (as per Affidavit) for forwarding the same to HQrs. in connection with compassionate appointment. Accordingly she filed affidavit on 16.11.92 and submitted the same alongwith birth certificate to the authorities. Thereafter the respondents vide its another letter dated 24.12.92 (Annexure-C) directed the applicant to file a fresh affidavit duly sworn by some senior relatives of the applicant (Smt. Fulmoni Maity) for the purpose of consideration of her application. Accordingly she also filed another affidavit on 29.1.93. Thereafter nothing has been informed to the applicant regarding her application for compassionate appointment. Since the matter ^{is pending} ~~has been elapsed~~ more than four years, she has filed this application for getting compassionate appointment before this Tribunal with a prayer as mentioned above.

2. The respondents filed written reply in this case. Subsequently on 18.5.98 the Id. counsel for the respondents submits that respondents would not rely on the said written reply filed before this Tribunal and ~~so~~ the respondents may be allowed to withdraw the same and be allowed to file a fresh reply to the original application. Id. counsel for the applicant had raised objection. After hearing the Id. counsels of both the parties, the prayer of withdrawal of the reply was rejected but liberty was given to ^{file} better written statement, if they think so. But till date respondents did not yet file any better statement, as ordered earlier. The case is taken up for hearing today. Since the respondents did not rely upon the written reply filed on 9.12.96 thereby, it is useless to mention the contents of the reply dated 9.12.96 ^{has not been presented} filed by the respondents. ^{in this judgment}

3. Mr. Chakraborty, Id. counsel appearing on behalf of the applicant submits that the General Manager has discretionary power to consider the case of the applicant in view of the circular dated 31.12.86 mentioned above. Since the family members of the deceased are still in indigent circumstances because they had/have no source of income and ^{the} deceased Railway servant died leaving seven dependants including the applicant.

It is stated by the Ld. counsel Mr. Chakraborty that she did not even receive any family pension under the scheme of the family pension framed by the Railway respondents. It is further stated by Mr. Chakraborty, Id. counsel for the applicant that respondents be directed to consider the case of the applicant in view of the circular dated 31.12.86 of the Railway Deptt., since the applicant's case is covered by the said circular and is still in operation.

4. Mrs. B. Ray, Id. counsel appearing on behalf of the respondents relied on the judgment in a case of Dhalla Ram Vs. Union of India and Ors. reported in 1998 SC SLJ Pt.2 155 where the Lordship has considered the question of limitation for filing application for compassionate appointment in respect of the applicant while attaining the majority. Relying upon this judgment Mrs. Ray, Id. counsel for the respondents submits that the Govt. servant died in the year 1991 and applicant approached this Tribunal by filing this application on 8.1.96 after five years from the death of the deceased Govt. servant. So application should be rejected.

5. I have considered the submission of the Id. counsels of both the parties. I have also perused the judgment relied upon by Id. counsel Mrs. Ray on that score. But I find that the said judgment of the Hon'ble Apex Court does not help the respondents in any way where Hon'ble Apex Court had reiterated that the appointment on compassionate grounds is not a method of recruitment but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. I find that the applicant being widow applied for compassionate appointment within one year from date of the death of the deceased Railway servant and the respondents kept the matter under process and under consideration till date of filing this application. It is found from the letter dated 28.10.92 (Annexure-B) and letter dated 24.12.92 (Annexure-C) that applicant had promptly complied with the direction of the respondents contained in the letter dated 24.12.92 (Annexure-C) by submitting affidavit as asked for. But respondents remained silent after receipt of the same. No

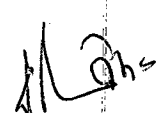
communication has been made to the applicant intimating about the fate of application for compassionate appointment as prayed for. Mrs. Ray, Id. counsel for the respondents produced a letter dated 12.4.93 at the time of hearing; and that letter indicates that her case was forwarded to the C.P.O./S.E. Railway, Garden Reach by D.S.T.E.(Works-I)/KGP for consideration of her case in the year of 1993. The C.P.O./S.E. Railway, Garden Reach did not take any action on the letter dated 12.4.93. Id. counsel Mrs. Ray submits that she had no further instruction from the respondents about the latest position of the case of the applicant.

6. I find from the records stated above that there was laches and omissions on the part of the respondents in respect of taking any action in the matter of consideration for appointment on compassionate ground as applied for. I also find that the respondents had overlooked the very object of the compassionate appointment which was to be provided ^{W.T.} immediately for rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. I find that the respondents slept over the matter for more than 5 years without granting any relief to the concerned dependants of the deceased railway employee where the deceased died leaving seven dependants at the time of death and leaving no other source of income. It is found from the records (Annexure-R/1) that applicant was paid only Rs.8,841/- as D.C.R.G. money on 8.4.96.

7. In a case of Auditor General of India Vs. G. Ananta Rajeshwar Rao reported in 1994 SCC (L&S) 500, Hon'ble Supreme Court has upheld the Govt. of India O.M. dated 25.11.78 to the extent it provides for compassionate appointment to son, daughter and widow of the Govt. servant who died in harness. Hon'ble Supreme Court has also observed that appointment on compassionate ground in exceptional circumstances is justified though the relevant Govt. memorandum discouraged the belated reasons for compassionate appointment. In view of the aforesaid decision of the Hon'ble Apex Court and decision relied upon by the respondents, I find that the applicant applied for compassionate appointment within one year from the death of the deceased employee. But the respondents did not take any action till date and there is ² fault on the part of the applicant.

8. In view of the aforesaid circumstances, I find that it is a fit case for issue direction upon the General Manager, S.E. Railway, Garden Reach, Calcutta to consider the case of the applicant for appointment on compassionate ground in the light of the decision and discussions made above and in view of the circular dated 31.12.86 as referred to above within three months from the date of receipt of this order. I also direct the General Manager (respondent No.1) to exercise his discretionary power vested upon him in the light of the material facts and circumstances stated above in order to remove injustice caused to the applicant due to inaction and omission on the part of the respondents, if vacancy is available.

9. In view of the aforesaid circumstances, I allow the application awarding costs of Rs.500/- to be paid to the applicant by the respondents.


(D. Purkayastha)
M e m b e r (J)