

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 1329/1996

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

Malati Kar

vs.

Union of India & Ors.

For the applicant : Mr. A. Chakraborty, counsel

For the respondents : Mr. P. Chatterjee, counsel

Heard on : 24.6.99

Order on : 24.6.99

O R D E R

Heard 1d. counsel for both the parties.

2. This application has been filed by Malati Kar applicant No.1 and her son Jharu Kar, applicant No.2, who are the widow employee and the son of the deceased/respectively. In this O.A., the applicants sought for direction upon the respondents to consider the case of the applicant No.2 for appointment on compassionate ground ~~on~~ account of death of the deceased employee late Judhistir Kar, Ex-Gangman, P.W.I., Panskura, S.E. Railway. It is averred in the application that the employee, Judhistir Kar died in harness on 4.5.85 and at that time there was no scheme for giving compassionate appointment to the widow of the casual labour with temporary status who died in harness.

No.1
The applicant/made an application under section 19 of the CAT, Act, 1985 bearing O.A. No. 1124/1989 before this Tribunal praying for direction upon the respondents to release family pension and other settlement dues on account of death of her husband and that has been allowed by the order dated 8.10.91(Annexure 'B'). Thereafter, the applicant No.1 applied to the authorities to grant compassionate appointment in favour of applicant No.2 who is the son of the deceased Government employee. But the respondents did not act on that representation. Hence the applicants filed

this application .

3. Respondents filed written reply denying the claim of the applicants . It is stated by the respondents that O.A.No.1124/1989 which has been filed by the applicant No.1 has been disposed of by the Tribunal on 8.10.91 whereby the husband of the applicant No.1 was regularised from the date of his death and the widow was given the benefit of family pension. An SLP has been filed against that order in the Hon'ble Apex Court and the SLP was dismissed for delay in filing the same. Thereafter, the pensionary benefits were granted to the applicant No.1 in accordance with the order of the Tribunal. After getting the pensionary benefits, applicant No.1 approached this Tribunal for getting appointment on compassionate ground in favour of his son who is applicant No.2 in this O.A. It is stated by the respondents that the applicants approached this Tribunal for getting compassionate appointment after a lapse of 11 years after the death of the deceased employee and thereby the application is barred by limitation. It is also stated by the respondents that the employee died in the year 1985 and the scheme for compassionate appointment became operative w.e.f. 1986 and there was no provision for in favour of wards of casual labours who died in harness such appointment/on compassionate ground prior to 1986. So, the application is devoid of merit and is liable to be dismissed.

4. Mr. A. Chakraborty, ld. counsel appearing on behalf of the applicants draws my attention to one circular bearing No. R.B.E.No. 39/97 (Supplementary Circular No.21 to Master Circular No.16) and that has been issued vide notification No.E(NG) II/96/RC-I/96 dated 14.3.97. Referring to the said Circular Mr. Chakraborty submits that it was decided by the Railway Board that scheme of compassionate appointment to the wards of casual labourers who died in harness prior to 31.12.86, may also be considered. Ld. counsel for the applicant Mr. Chakraborty further submits that since the abovementioned decision was taken

in the PNM meeting with NFIR held in October, 1996 by way of partial modification of para 5 of letter No. E(NG) II/84/CL/28 dated 31.12.86, the applicants could not apply before such i.e. on 1996 modification. He also stated that the delay in filing this application has also been condoned by the Tribunal. Thereby, the application should be allowed in view of the Circular as mentioned above.

5. Mr. P. Chatterjee ld. counsel appearing on behalf of the respondents submits that the husband of applicant No. 1 died on 4.5.85 and at that time there was no provision of compassionate appointment under the existing rules. Moreover, the applicants filed this application after a lapse of 11 years from the date of death of the employee. The object of granting appointment on compassionate ground ~~is not a ^{legitimate} right~~ has been frustrated. He further submits that the applicant No. 1 has been given family pension and other settlement benefits as per the order of the Tribunal in O.A. 1124/1989 dated 8.10.91. Mr. Chatterjee ld. counsel for the respondents refers to a judgment of this bench in O.A. No. 333/1997 dated 11.8.98 and submits that the application should be dismissed in view of the said judgment in O.A. 333/97 (Jamini Bala Bera & Anr. Vs. Union of India & Ors.).

6. In view of the divergent arguments advanced by the ld. counsel for both the parties and on perusal of the Railway Board's Circular as mentioned above, I am of the view that the authority can consider the prayer for compassionate appointment even in those cases where the employee died prior to 31.12.86. At the same time it can be said that appointment on compassionate ground is not an enforceable right of the employees. The very object of the scheme for compassionate appointment is to provide immediate financial assistance to the family of the deceased employee, if the family is in distress and it is a matter of discretion of the authority. However, Clause 3 of the said Circular of the Railway Board, R.B.E. No. 39/97 (No. E(NG) II/96/RC-I/96 dated 14.3.97) stipulates that :-

"Pursuant to discussions in the PNM Meeting with NFIR held in October, 1996, it has been decided in partial modification of para 5 of letter No. E(NG) II/84/CL/28 dated 31.12.1986 (Bamri's RBO 1986 P-305) quoted above, that the above dispensation may be extended to cases where death of the Casual Labour with temporary status had occurred prior to 31.12.1986."

7. In view of the aforesaid circumstances, I am of the view that it would be appropriate on my part to direct the respondents to consider the representation of the applicants regarding compassionate appointment in favour of applicant No. 2.
8. Accordingly, the respondents are directed to consider the representation of the applicants regarding appointment of applicant No. 2 in the light of the Circular issued by the Railway Board as mentioned above and dispose of the same within two months from the date of communication of this order. With these observations, the application is disposed of awarding no costs.

1/2/99
(D. PURKAYASTHA)
MEMBER(J)

s.m.