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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 284/2011

Jodhpur this the 13th day of February, 2012.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Vijay Pal S/o Shri Bhanwar Lal
R/o Ramanseth-ki-Haveli, Natthusar Bas,
Maliyon-ka-Mohalla,
Bikaner

.....Applicant

(Through Advocate Mr. Rakesh Arora)

Versus

1. Union of India through the General Manager
North-Western Railway, Malviya Nager
Jaipur
2. The Divisional Railway Manager
North-Western-Railway
Bikaner
3. The Divisional Railway Manager (P)
North-Western Railway
Bikaner

.....Respondents

(Through Advocate Mr Vinay Jain)

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

Applicant Shri Vijay Pal by way of this application has prayed for the following relief(s):

“application may kindly be allowed and the impugned orders dated 20.10.2010, 7.4.2011 and 17.6.2011 (Annexs. A/1 to A/3) may quashed and set aside and the respondents may be directed to give appointment to the applicant on a suitable post on compassionate ground from the date he submitted the application with all consequential benefits.”

2. The brief facts of the case are that the father of the applicant Late Shri Bhanwar Lal was working under North-Western-Railway (NWR), Bikaner and he died on 29.8.2007. Shri Bhanwar Lal was married with Smt. Sulochana

*g/s
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Devi and the applicant is the son of Smt. Sulochana Devi and deceased employee Bhanwar Lal. Smt. Sulochana died on 6.6.1992 thereafter late Shri Bhanwar Lal entered into second marriage with Smt. Sushila Devi, but that marriage could not subsist and divorce took place in the year 1998 between them. Late Shri Bhanwar Lal survived by his legal heirs Mr Niranjan Bhati, Mr Vijay Pal (applicant), Ms Meena (Children of late Smt. Sulochana); Ms Pinky, Mr Rohit (Children of Smt. Sushila) and Smt Jani Devi (Mother of late Shri Bhanwar Lal).

After death of late Shri Bhanwar Lal, the applicant had applied for the appointment on compassionate grounds to the respondent department and department asked for the succession certificate. All the legal heirs had applied for the succession certificate in District Court, Bikaner and competent court granted the succession certificate in favour of the applicant. Applicant's school certificate had also been verified. The Divisional Railway Manager (DRM) had sought clarification from the General Manager (P) regarding competence to consider the case of compassionate appointment and it was referred back to the DRM to consider it on the divisional level. By way of Annex. A/1 the appointment to the applicant was denied on the ground that late Shri Bhanwar Lal was having three wives as he had obtained benefit of railway traveling pass of third wife for the period from 2001 to 2004 and this fact has been concealed by his family and as such applicant's case for grant of compassionate appointment could not be considered. Therefore, by way of this application applicant has sought the relief (s) mentioned hereinabove.

3. In their reply, the respondents while admitted the fact of the submission of application for appointment on compassionate ground by the applicant, had sent concerned Sectional Welfare Inspector who after inquiry had submitted a

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report on 15.4.2010 that late Shri Bhanwar Lal had drawn Railway Privileges passes for self and wife for the journey from Bikaner to Purna in the year 2001 and 2004. On the basis of availing privilege passes facilities for wife by late Shri Bhanwar Lal in the year 2001 to 2004 and non-submission of correct information in this regard by the deceased family, the case of the applicant was not considered for appointment on compassionate ground and applicant was informed to this effect vide order dated 20.10.2011. With reference to the applicants' application addressed to the General Manager, a fresh enquiry had been ordered but meanwhile when the case was processed by which the time limit 31.3.2011 for consideration of the applicant's case for appointment on compassionate grounds on the 8th Pass qualification was over, and as such applicant's appointment on compassionate ground could not be considered.

4. By way of rejoinder the applicant repeated the averments made in the application.

5. We have heard counsels for both the parties and considered the rival contentions raised by both the parties and also perused the relevant records. Counsel for the applicant contended that Annex. A/3 is the letter addressed to the Vijay Pal by the DRM (P), NWR, Bikaner informing that late Bhanwar Lal was not having legal 3rd wife but he used the facility of privilege pass during the period 2001 to 2004 in the name of 3rd wife and this fact was not informed to the administration by the family of deceased, therefore, applicant's case could not be considered. Thus, this is a clear cut contradictory report and right of the application for consideration for the appointment on compassionate ground was denied and if these pass facility had been availed by the deceased this can be no ground for denying the consideration of applicant for

appointment on compassionate ground. Counsel for the respondents fairly contended that this was the only ground of refusal for consideration and subsequently after 2011 a new ground arose regarding the qualification of the applicant.

6. We have pondered both the arguments and in our considered view when the Railway authorities came to the conclusion that late shri Bhanwar Lal was not having any 3rd wife, merely using privilege pass facilities for 3 years for wife, cannot be a ground to deny the consideration of the application of the applicant for appointment on compassionate ground. In our considered view the Annex. A/1 suffers from illegality, and is therefore, liable to be quashed.

7. Counsel for the applicant further contended that if the case is remanded back to the concerned authority for consideration, Annex. A/2 containing direction of Railway Board vide letter No. E(NG)II/2009/RRI/10/Pt. dated 05.01.2011 will come in way for the consideration of the applicant. The applicant had applied in the year 2007 and therefore, respondents should consider applicants case for the appointment on compassionate ground ignoring the Railway Board's letter dated 5.1.2011.

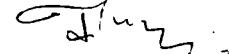
8. Counsel for the respondents opposed this contention.

9. The contention raised by the applicant appears to be genuine because Railway Board's letter dated 5.1.2011 cannot be allowed to come in the way while considering the application for the appointment on compassionate ground of the applicant.

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In view of the discussions made hereinabove, the Original Application of the applicant is allowed and the respondent No. 2 & 3 are directed to consider the application of the applicant for appointment on compassionate ground while ignoring the Railway Board's letter No. E(NG)II/2009/RRI/10/Pt. dated 05.01.2011 i.e. it will not come in way for consideration of applicant if otherwise he is found fit for appointment on compassionate ground. The respondents are further directed to complete this exercise within 2 months' time from the date of receipt of this order.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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