

Central Administrative Tribunal
Calcutta Bench

✓ OA No. 907 of 1997

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

Smt. Madhuri Bala Dey & Anr.

Vs.

Eastern Railway

For the Applicant : Mr. B. Mukherjee, Id. Advocate

For the Respondents: Mr. P.K. Arora, Id. Advocate

Heard on : 20-5-1998

Date of Judgement : 20-5-98

ORDER

When the case was taken up for admission, Id. Advocate Mr. Mukherjee, appearing on behalf of the applicant, prayed for submission of rejoinder in this case; but prayer is rejected on that score in view of the facts that the respondents had filed reply in this case long back. It is found that the applicant No.1 sought for compassionate appointment by application dated 24-5-73 on account of death of her husband in the year 1972. But no action has been taken by the respondents on the representation made by applicant No.1 and thereby applicant No.1 made another representation on 18th July, 1985 (Annexure A-2 to the application) stating that she had applied for appointment on compassionate ground for his son since she is disabled and physically handicapped having both legs amputated due to train accident. So, her prayer may be considered accordingly. But respondents considered the case of the applicant but ultimately rejected the prayer by an order dated 1-10-92 (Annexure R-8 to the application) and it is mentioned in that order that his father died in 1972 about 20 years back and he was a minor at the time of death

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of his father. He was the second son and the first son was employed in the railway and working as Hospital Attendant from 5-3-1973. As appointment to the sons other than the first one in case of minor is not permissible as per rules, this does not come under purview of the compassionate appointment. I have considered the submissions of Ld. Advocates of both the parties on the basis of the application and reply submitted by the parties and it is found that as per provision of the scheme, when appointment on compassionate ground is offered to a widow, son or daughter, it need not be checked up whether another son or daughter is already working. But there should, in no case, be more than one appointment against one death/medical incapacitation i.e. it should not be permitted that after one appointment is made, later the family wants that another son or daughter be employed in lieu or in addition too. When the Department framed the specific scheme providing condition for appointment on compassionate ground, then, they are to act in accordance with the scheme framed by the Department and they cannot disown the scheme, as it is framed for public interest.

2. In view of the clause 5 of the said scheme (Annexure R to the application) I think that the reason assigned by the applicant that one son of the applicant No.1 was employed in the railway department cannot be the good ground for refusal of the prayer of the applicant. I find that the applicant i.e. widow is a disabled person and she has stated that she is physically handicapped and both her legs are amputated due to train accident and that fact has not been considered by the railway department at the time of disposal of her application by order dated 1-10-92. Ld. Advocate Mr. Arora, appearing on behalf of the respondents, relies on a decision reported in a case of Supreme Court - Jagdish Prasad Vs. State of Bihar 96 SCC (1&S) 303 where Hon'ble Appex Court held that applicant's son was fourteen years old, it cannot be said he is entitled to get benefit of appointment on compassionate ground. Only the question for decision in this case is whether the application can be said to be a time-barred and

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whether the applicant is entitled to get the benefit of appointment on compassionate ground on the basis of the judgement of the Hon'ble Appex Court as referred to above. It is found that the applicant Madhuri Bala Dey applied for compassionate appointment on 24-5-73 but respondents did not act upon. Thereby she made another application on 18-7-85 and on that representation they acted upon and matter was forwarded to the Secretary, Ministry of Railway, New Delhi for consideration for appointment of the applicant No.2 and that has been rejected by the respondents vide letter dated 1-10-1992 (Annexure R-8 to the application. Ld. Advocate Mr. Mukherjee submits that the letter dated 1-10-1992 has not been furnished to the applicant. Thereby the applicant has no scope to challenge the order dated 1-10-1992. It is found that the applicant's representation is yet to be rejected by the authority though decision was taken by the authority vide letter dated 1-10-1992. The said letter dated 1-10-92 was written by the General Manager to the Secretary, Railway Board, Ministry of Railway, disclosing the reason for refusal of appointment of the applicant on compassionate ground and letter dated 1-10-1992 does not show any decision was taken by the Secretary, Railway Ministry on the basis of the letter written by the General Manager as per Annexure 8 to the application. It is true that the husband of the applicant No.1 died in the year 1972; but it is fact that the lady being handicapped and disabled, she applied for appointment on compassionate ground in the year 1973 and ultimately she approached the authority vide letter dated 18-7-85 for appointment on compassionate ground in favour of her son in lieu of the applicant No.1.

3. After having considered the facts and circumstances of the case and ~~perused~~ the action of the respondents from the records, I am of the view that the respondents did not apply their mind to the facts and circumstances of the case and even to the scheme itself for the purpose of consideration of the case of the applicant as special case that applicant herself i.e. widow ^{wife} ~~lady~~ of the deceased

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employee was disabled and physically handicapped. But the respondents did not dispose of the application for appointment till date.

4. In view of the aforesaid circumstances, actions of the respondents are not sustainable. So, I direct the General Manager (Respondent No.1) to consider the case of the applicant in the light of the scheme framed by the Department for the said purpose of appointment on compassionate ground if vacancy is available in the department within four months from the date of communication of this order. Accordingly, application is disposed of. *Without any cost*


(D. Purkayastha)
Member (J)