

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

M.A. 119/97

O.A. 345/97

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

Sri Pradip Kumar Das, son of Late Kalipada Das alias "Kaloo Das", village and P.O. - Nalikul, P.S. - Haripal, District-Hooghly is an un-employed youth.

...Applicant.

-v e r s u s -

1. The Union of India, through the General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta.
2. The Divisional Railway Manager, Howrah Division, Eastern Railway, P.O. and District-Howrah.
3. The Superintendent, Maintenance Branch Office of the Divisional Railway Manager, Howrah Division, P.O. and District-Howrah.

...Respondents.

For the applicant : Mr. M.K. Bandyopadhyay, counsel.

For the respondents : Mr. C. Samaddar, counsel.

Heard on 23.6.98

Order on 20.7.1998

O R D E R

D. Purkayastha, JM

Feeling aggrieved by and dissatisfied with the order dated 29.9.95 (Annexure-E to the application) issued by Mr. B.D Ray, for Divisional Railway Manager, Howrah regarding refusal of consideration of the appointment of the applicant on compassionate ground as per direction of the Tribunal dated 18.5.95 in O.A. 645/94 filed by the applicant, who approached this Tribunal ~~challenging the validity of the impugned order dated 29.9.95~~ on the ground that the said order was not passed in accordance with the terms of direction contained in the order dated 18.5.95 passed by the Tribunal (Annexure-D to the application). It is also alleged that the said impugned order is arbitrary, illegal and liable to be quashed with a direction upon the respondents to consider the case of the applicant for consideration as per terms and direction contained in the judgment dated 18.5.95 in O.A. 645/94. According to the applicant, the Hon'ble Tribunal in the judgment dated 18.5.95 came to the conclusion that deceased father of the applicant was a railway employee and the

applicant was also an orphan. After drawing such conclusion the Hon'ble Tribunal directed the General Manager to consider the case of the applicant for grant of appointment on compassionate ground according to the rules. The respondent No.2 the Divisional Railway Manager, Howrah Division, Eastern Railway had overlooked the said findings of the Tribunal and disposed of the representation holding that the applicant Sri Pradip Das is not entitled to get employment on compassionate ground since the applicant failed to prove that the deceased father of the applicant was in a regular railway service under Signal and Telecommunication Department of Howrah Division at least from 1975 onwards. It is also alleged that the order dated 29th September 95 (Annexure-E to the application) was issued by the authority mechanically and arbitrarily without considering the material facts and decision and observation made by the Tribunal. ^{the} ~~in~~ its order of refusal ^{of} ~~by~~ so-called speaking order dated 29.9.95 is liable to be quashed.

2. The case of the applicant is resisted by the respondents by filing a written reply stating inter-alia that the application is not maintainable in present form and it is barred by principles of res-judicata and also for barred by limitation. It is also stated in the reply that the dispute under adjudication in this original application was about grant of compassionate appointment to the applicant. The applicant contended that he is the only son of his father Late Sri Kalipada Das, alias Kaloo Das who was a railway employee working under Signal and Telecommunication Department, Howrah Division, E.R. Railway. The applicant also contended that his father died in harness on 2.1.86 when he was only 12 years old and his mother pre-deceased his father; the applicant was brought up by married elder sister. So the respondents were directed by the Tribunal to consider the case of the applicant and to pass a speaking order. ^{it has been observed by the} ~~in his order of 29.9.95 (A/m E) that~~ General Manager, ~~it is absolutely unclear that the applicant had failed to~~ ^{in his order of 29.9.95 (A/m E) that} ~~prove the identity of the son of the railway employee failed to prove~~ ~~that the said railway employee died in harness.~~ It is also stated that on the basis of the given A/c number by the applicant, the Railway Administration searched out its records since 1975 but could not trace out the existence of the said late Kalipada Das alias Kaloo. Moreover

it appears from the statements made out by the applicant in the said application that Late Kalipada Das has not left any family. However, it is stated that compassionate appointment is not a matter of right and it depends upon the consideration of the competent authority. In this case, the competent authority i.e. the General Manager, Eastern Railway considered the pros and cons of the matter and ultimately, he did not find it fit case for allowing appointment on compassionate ground. It is also stated that as per direction of the Tribunal, the General Manager, E.Railway complied with the same after considering the records of DRM, Howrah since 1975. But Administration failed to find out the case of the said Kalipada Das. Moreover, the papers of 1963 which were produced by the applicant, were not relevant for compassionate appointment. So the application is devoid of merit and liable to be dismissed.

3. Mr. Bandyopadhyay, Id. counsel appearing on behalf of the applicant submits that whether the father of the applicant Late Kalipada Das, alias Kaloo was a railway servant or not, was decided by the Tribunal after considering of the material facts and submissions for both the parties *The Hon'ble Tribunal Passed* and ~~permitted~~ ^{on} an order dated 18.5.95 (Annexure-D to the application) holding that the father of the applicant was a railway employee and the said question ~~cannot~~ ^{not} ~~be~~ reopened in the order dated 29.9.95 (Annexure-E). Since the decision of the Tribunal is binding upon the Divisional Railway Manager, Howrah who passed the impugned order (Annexure-E), ~~the~~ scope of consideration ~~by~~ ^{of} the respondents as per direction in the judgment of the Tribunal is rather circumscribed. The scope of consideration is whether the applicant being a son of the Railway employee who died in harness was eligible to be considered for appointment on compassionate ground as per scheme framed by the Railway authority. So the order dated 29.9.95 (Annexure-E) is contrary to the direction of the Tribunal. In other words, he submits that the respondents had interfered with the findings of the Tribunal arrived at in the earlier judgment dated 18.5.95 (Annexure-D to the application). So the decision contained in the order dated 29.9.95 (Annexure-E) is highly arbitrary, illegal and mechanical one and thereby the order is liable to be quashed.

4. Mr. Samaddar, Id. counsel for the respondents submits that the application is ~~now~~ time-barred and belated one. According to the

~~old~~ and his mother pre-deceased his father. Applicant submitted his representations on different dates. But in the instant case, the applicant filed this present application after lapse of ten years from the date of the deceased Kalipada Das. So the purpose of appointment on compassionate ground is not operative in the instant case at present.

Mr. Samaddar further submits that-

5. The respondents are directed by the Tribunal by an order dated 18.5.95 (Annexure-D) to consider this application as a fresh petition for grant of compassionate appointment and the General Manager, Eastern Railway ~~shall~~ ^{was directed to} consider his case within a period of 4 months from the date of communication of this order and, thereafter, to pass a speaking order thereon intimating it to the applicant within one month. Referring to the said observation made by the Tribunal in para 5 of the said judgment dated 18.5.95 (Annexure-D). Mr. Samaddar, Id. counsel for the respondents submits that the respondent General Manager considered the case of the applicant and ultimately rejected the case of the applicant with reasons. So in view of the said reasoned order in terms of the judgment of the Tribunal, the present application is ^{not} sustainable. So the application should be dismissed.

6. In view of the divergent arguments advanced by the Id. counsel for both the parties, I have gone through the impugned order dated 29.9.95 Annexure-E to the application and to the order dated 18.5.95 (Annexure-D) passed by the Tribunal and also perused other documents available with the file. On a careful perusal of the order dated 29.9.95 (Annexure-E), it is found that the order of the G.M. passed in the file has been communicated to the applicant by a letter dated 29.9.95 issued by Sri B.D. Ray on behalf of the Divisional Railway Manager, Howrah. It is found from the judgment of the Tribunal dated 18.5.95, the applicant claims to be the son of late Kalipada Das alias Kaloo and he also claimed that his father was a railway employee belonging to Signal and Telecommunication Department as L/Man and his Token No.252 was MI(B) Howrah under E.R. Division. It was also contended that his father had a Provident Fund No. 122383 and he was also a member of the E. Rly. Employees' Co-operative Credit Society Ltd. and his share Register Number was B-10329. He further contended that his father was also

a Member of Kamar Kundu Tank Angling Club at Kamar Kundu Railway Station. The applicant also contended that his father had died in harness on 2.1.86 when he was only 12 years old and his mother had predeceased his father. It is also found from the said judgment dated 18.5.95 (Annexure-D) of the said O.A. 645/94, the respondents did not file any reply to controvert the statement in the application though Mr. Mullick, Id. counsel appeared on behalf of the respondent Railway, ^{to} opposed the application. It is also found that the respondents took the plea at the time of hearing in the earlier O.A. that there was no such staff working in the Signal and Telecommunication Deptt., who died on 2.1.86. But Tribunal after considering the submission of the Id. counsel for both the parties, came to the conclusion that the deceased father of the applicant was a railway employee and applicant was also an orphan and, therefore, ^{thought} ~~was~~ Tribunal thinks that it ^{is} a fit case in which the General Manager should be asked to consider the case of the applicant for grant of compassionate appointment according to rules. On my query, the Id. counsel, Mr. Samaddar submits that they did not prefer any appeal against the order dated 18.5.95 (Annexure-D) passed by the Tribunal before the Appellate Authority, so order dated 18.5.95 (Annexure-D) is operative & binding to the respondents and applicants. It is seen from the judgment that issue as to whether the father of the applicant was a railway employee or not for which the applicant claims appointment on compassionate ground was heard and finally decided by the Tribunal holding that father of the applicant was ^{an} railway employee. After holding such conclusion the respondents were directed to pass the speaking order regarding appointment of the applicant on compassionate ground after considering the representations filed by the applicant. But it is curious to note that taking advantage of that direction in para 5 of the judgment to pass a speaking order, the respondents had again reopened the matter as to whether the father of the applicant was a railway employee or not without considering the papers or documents submitted by the applicant ^{stating that the said} 1963 documents are not relevant for compassionate appointment. On a careful scrutiny of the said order dated (Annexure-E) it is found that General Manager had overstepped into the matter in issue which has been finally decided by the Tribunal.

On the face of the direction of the Tribunal the respondent i.e. General Manager ought to have considered the applicant's case treating his father as Railway employee. So, finding of the General Manager, Eastern Railway in this regard is not sustainable since he acted with patent illegality.

7. The main object of providing employment to a dependent of a Govt. servant who died in harness is to mitigate the hardship caused to the family on account of unexpected death of the bread-earner in family. It is also well-settled principle of law as decided in Sushma Gosain's case reported in 1989 SCC (L&S) 662 that in all claims of appointment on compassionate ground, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. In Auditor General of India's case 1994 SCC (L&S) 500, the Supreme Court has upheld the Govt. of India O.M. dated 25.11.78 to the extent it provides for compassionate appointment to the son, daughter or widow of Govt. servant who died in harness and held that such appointment in exceptional circumstances is justified. So as per direction of the Tribunal, scope of consideration of G.M. was only to consider the contingencies for which the applicant applied for, ^{Argt} ~~the appointed~~ on compassionate ground in the light of the discussion made by the Hon'ble Apex Court were justified ~~or not~~. On the face of the judgment of the Hon'ble Tribunal (Annexure-D) and on the face of the order dated 29.9.95 (Annexure-E), it is crystal clear that the G.M. of the Eastern Railway has indulged in patent illegality and denied the relief sought for by the applicant. It can be said here that when the matter in issue which has been decided by the Court or Tribunal finally, cannot be interfered with or varied by an order of Executive Authority and such interference with order of Court/Tribunal ^{& subsequently} ~~is hereby~~ amounts to contemptuous action. So, I am of the view that the order dated 29.9.95 is not sustainable and liable to quashed. This case appears to be one of the hard cases in which the Tribunal should interfere.

9. Under the circumstances, application is allowed and impugned order dated 29.9.95 (Annexure-E) is hereby quashed. The respondents are also directed to re-consider the case of the applicant for appointment on compassionate ground treating that the applicant is a son of deceased employee Kalipada Das, alias Kaloo who died in harness on 2.1.86 within six months from the date of communication of this order. Accordingly application is disposed of awarding no costs. *M A is disposed of accordingly*

10/10/98
(D. Purkayastha)
Judicial Member