

In the Central Administrative Tribunal
Calcutta

OA No.489 of 1997

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

Smt. Lachiya & Anr.

.... Applicants

- VS -

- 1) Union of India, service through the General Manager, S.E. Rly., Garden Reach, Calcutta.
- 2) General Manager, S.E. Rly., GRC, Calcutta.
- 3) Divisional Railway Manager, S.E. Rly., Kharagpur.

.... Respondents

For the Applicant : Mr. B.C. Sinha, Advocate

For the Respondents : Mr. S. Chowdhury, Advocate

Heard on : 17-6-99

Date of Judgement : 17-6-99

ORDER

Applicant No.1 Smt. Lachiya is wife of late Sankar and applicant No.2 Ramesh is the youngest son of late Sankar. The case of the applicant is that Sankar, working as Sanitary Cleaner, died in harness while he was in service in the year of 1988 leaving widow wife (applicant No.1) and applicant No.2 and another son Kartick who was not made a party in this case as dependent. Applicant No.1 made a representation to the authority for appointment of her son Kartick on compassionate ground. At that time Kartick was major son of the deceased employee and Ramesh was minor. Accordingly, the eldest son Kartick vide his letter dated 27.3.89 to the Divisional Railway Manager, South-Eastern Railway informed that he would look after his mother and minor brother if compassionate appointment is granted in favour of him on account of death of his father. Subsequently applicant No.1 made a representation to the authority for

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appointment of her son (applicant No.2) on compassionate ground in place of Kartick since Ramesh attained majority, and Kartick entered into a business. It is also stated by the applicant that she filed an application before this Tribunal seeking family pension which was refused by the authority vide OA No.719 of 1995 and that has been disposed of by the Tribunal on 29.11.95 by granting relief to the applicant stating that applicant would get 50% of the family pension and retirement benefits of the deceased. Grievance of the applicant is that though she applied for appointment on compassionate ground for her son (applicant No.2), respondents did not consider the representation till date and all the representations are pending before the authority for consideration. Thereby, respondents be directed to consider the representation of the applicant for the purpose of appointment on compassionate ground.

2. Respondents filed written reply denying the claim of the applicant stating, inter-alia, that the deceased employee expired on 26.8.88 and due to rival claimants payment of family pension was delayed. However, as per direction of the Tribunal family pension is paid to the applicant No.1. It is also stated by the respondents that applicant Nos.1 & 2 did not submit any application/representation to the competent authority for appointment on compassionate ground. Applicant No.1 mentioned that she submitted so many representations to the railway authorities is not correct. It is stated that without enquiry the case cannot be considered. It is also stated that compassionate appointment is not a right. Thereby, application is speculative and liable to be dismissed.

3. Id. Advocate Mr. Sinha, appearing on behalf of the applicant, strenuously argued before me that applicant made a representation to the authority and it is still pending for consideration. So, respondents be directed to consider the representation for the purpose of appointment on compassionate ground.

4. Id. Advocate Mr. Chowdhury appears on behalf of the respondents and submits that applicant No.1 did not apply for her son

(applicant No.2) for appointment on compassionate ground. So, question of pending of the representation before the authority does not arise. Mr. Chowdhury further submits that Kartick applied for compassionate appointment. But he did not approach the Tribunal for getting appropriate relief. He further submits that the application is belated one since deceased employee Sankar died in the year of 1988 and applicant filed this application in the year of 1997 after more than 9 years. So object of granting compassionate appointment is not in operative. Thereby, it is liable to be dismissed.

5. I have considered submissions of Ld. Advocates of both the parties in this case and I find that initially Kartick made a representation for appointment on compassionate ground vide letter dated 27.3.89 (Annexure A-3 to the application) where he made specific ~~assurance~~ direction that he will look after his mother and minor brother if the compassionate appointment is granted in favour of him. It is found from another representation dated 27.3.89 filed by the applicant No.1 that she also sought for appointment for Kartick on compassionate ground. Thereafter, Kartick made another representation stating that in the meantime he was engaged in a business and separated from his family and ~~he~~ did not stay with mother and minor brother. Thereby, he will have no objection if the appointment is made in favour of his brother Ramesh who has already attained majority in the meantime. But respondents denied all the representations stating that they did not receive any application from the applicants for the purpose of appointment on compassionate ground. I also do not find any evidence from the records that all the representations alleged to have been filed by the applicant No.1 and her son, ^{and deceased} ~~deceased~~ duly have been received by the office of the respondents. However, it is found that applicant approached the Tribunal for getting family pension at that time; but she did not make any attempt to file any application for getting appointment on compassionate ground for her son (applicant No.2). Ld. Advocate Mr. Sinha for the applicant submits that applicant is

getting family pension of Rs. 375/- p.m. and that has been reduced to Rs. 187/-. But in this case I am unable to issue any direction upon the respondents to consider the representation pending for adjudication since it was not admitted by the respondents that they received any representation from the applicants. In the face of the denial made by the respondents, primarily burden lies with the applicant to show that they made representations to the authority and these are pending. Besides, I find that the application is a belated one as deceased employee Sankar died in the year of 1988 and they filed application for compassionate appointment in the year of 1997 after lapse of 9 years. Also there is no explanation from the applicants how they managed to survive without any subsistence from any source during the period of 9 years. Since they did not apply to the competent authority for compassionate appointment of the applicant No.2 after the death of the deceased employee, reasonable presumption is that the applicants have been able to manage the family somehow without any financial assistance. It be normally adequate proof to show that the family had some dependable means of subsistence. Thereby I am of the view that scope of compassionate appointment is no longer operative till date. Thereby, the application is devoid of merits and liable to be dismissed. Accordingly, the application is dismissed ~~awarding~~ no costs.

1/10/97
(D. PURKAYASTHA
MEMBER(J)