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**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No: 412/2008

Order Reserved on 10.1.2014

Order Pronounced on 31-01-2014

HON'BLE SHRI NAVNEET KUMAR, MEMBER(J)

1. Nihal Beg, aged about 17 years, Son of Late Jamal Beg.
2. Kumari Khushnu, aged about 15 years, son of Late Jamal Beg.
Both the applicants minor through their mother Smt. Firdaus Jahan, the natural and duly appointed guardian/O Qt. No. 61, Servant Quarter, High Court Campus, Post Hazratganj, Lucknow.

Applicant

By Advocate Sri B. N. Shukla.

Versus

1. Union of India through General Manager, Northern Railway, Head Quarter Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow Division, Hazratganj, Lucknow.

Respondents

By Advocate Sri S. Verma.

ORDER

By Hon'ble Sri Navneet Kumar Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985. Subsequently, he has moved an amendment application and after amendment is allowed, the prayer sought of in the O.A. as follows:-

“(i) To direct the opposite parties not to appoint the opposite party No. 4 on compassionate ground on account of death of Late Jamal Beg.

(ii) To issue appropriate order or direction directing the opposite parties to keep the matter of compassionate appointment under dying-in-harness rules on account of death of Late Jamal Beg till the applicant No. 1 attains the age of majority and thereafter, to appoint him on compassionate ground.

(iii) To issue appropriate order or direction directing the opposite parties to make the payment of retiral dues including pension etc. along with arrears thereof to the applicants.

(iii) B. To set aside, the appointment of the opposite party No. 4 on compassionate ground which she has been provided vide letter dated 30. 2.2009 as contained in Annexure No. 11 to the O.A.

(iv) To pass any other order or direction which may be deemed just and proper in circumstance of the case,

(vi) To allow the Original Application with cost."

2. The brief facts of the case are that the applicants are the son and the daughter of the deceased employee. They were born from the wedlock of the first wife of the ex-employee. Subsequently, the ex-employee married Smt. Yasmeen, who is the opposite party No. 4 in the present O.A. The father of the applicants died and the respondent No. 3 issued a letter dated 16.11.2006 requiring the mother of the applicant Smt. Firdaus Jahan to file a guardianship certificate for disbursement of the retiral dues and the after obtaining the guardianship certificate, the same was submitted. In the meantime, the respondents have paid the retiral dues to opposite party No. 4 towards her share and has also granted family pension vide P.P.O. dated 22.12.2006. In the meantime, the respondent No. 4 also made an application before the opposite parties for her appointment under dying-in-harness rules. The learned counsel for the applicant has also pointed out that the opposite party No. 4 suppressed the existence of the applicants and she was given appointment on compassionate ground vide order dated 30th January, 2009. As such, by means of the present O.A., the applicants praying for setting aside the appointment of the opposite party No. 4 as granted to her and has also prayed for issuing a direction to the respondents to make the payment of retiral dues to the applicants as well.

3. The learned counsel appearing on behalf of the official respondents filed their preliminary objections as well as the detailed reply. Through counter reply, it is pointed out by the official respondents that the ex-employee Jamal Beg was working in the respondents organization and expired on 25.6.2006 on account of natural death during his service period. As per the family record of the deceased employee, the name of

the wife is shown as Smt. Yasmeen and the name of the son is shown as Master Shakib Beg. It is also pointed out by the respondents that Smt. Firdaus Jahan, the 1st wife of Late Jamal Beg had taken divorce on 11.8.2000 and son and the daughter, who are the applicant in the present O.A. are living with Smt. Firdaus Jahan and as Smt. Yasmeen being the rightful claimant has been considered for appointment on compassionate ground and posted as Khalasi in Signal Department on LKO Division. The learned counsel for the respondents has also pointed out that since the opposite party No. 4 was shown as rightful claimant, as such, retiral dues and the family dues was also paid to her.

4. The learned counsel for the opposite party No. 4 has also filed his reply and pointed out that at the time of the death of Jamal Beg, he was working as Khallasi under the Divisional Signal and Communication Engineer, and after the divorced with the first wife, the husband of the opposite party No. 4 informed the department that since he has taken divorced with his first wife hence her name from the service book be removed. After the divorce given to the 1st wife, he married with the opposite party No. 4 and the opposite party No. 4 is the only legally wedded wife of Late Shri Jamal Beg. It is also pointed out by the learned counsel for respondent No. 4 that after the death of the sole bread earner, the opposite party No. 4 applied for grant of compassionate appointment and after due process, she was offered appointment on compassionate ground on the post of Signal Khallasi which was accepted by the opposite party No. 4 and she has joined on 30th January, 2009.

5. The learned counsel appearing on behalf of the applicant filed rejoinder to the reply filed by the official respondents as well as rejoinder to the reply filed by the opposite party No. 4. Through rejoinder, the averments made in the O.A. are reiterated. However, the learned counsel for the applicant has also relied upon the Railway Board Circular dated 22.8.2000 and has also relied upon the decision of this Tribunal passed in O.A. No. 310/2001.

6. Heard the learned counsel for the parties and perused the record.

7. As submitted by the applicant, the employee died while he was in service. It is also to be pointed out that prior to his death, the ex-employee has given, divorce to his first wife in august, 2000 and subsequently, married with opposite party No. 4. But the applicants remain the son and the daughter of the deceased employee. The Railway Board has issued a circular regarding appointment on compassionate ground/termination of service. The said Railway Board letter dated 22.8.2000 provides as under :-

“It is, therefore, incumbent on the part of a person appointed on compassionate grounds to look after the family members who are wholly dependent on the ex-employee for their sustenance.

Cases have come to the notice of the Board where a ward of a Ex-Railway employee, appointed on compassionate ground, had discontinued looking after the widowed mother and the other dependent brothers/sisters. It has, therefore, been decided that any person being considered for appointment on compassionate ground, should give an under taking in writing that he/she will maintain properly the other family members who have been dependent on the Railway employee and in case it is proved subsequently that the family members are being neglected or are not being properly maintained by him/her, his/her appointment may be terminated forthwith. For this purpose, the details of the dependent, family members may be obtained and kept on record at the time the request for compassionate appointment is made.”

8. The learned counsel who is relied upon a decision passed in O.A. No. 310 2001 is also cannot be disputed to this effect and as per the Railway Board circular dated 22.8.2000 that in case the family members are being neglected or are not being properly maintained by him/her, his/her appointment may be terminated forthwith. For this purpose, the details of the dependent, family members may be obtained and kept on record at the time the request for compassionate appointment is made.

9. The Tribunal while deciding the aforesaid O.A. relied upon the decision of the Apex Court in the case of **U.P. State Electricity Board Vs. U.P. Bimari Karmchari Sangh and another (1998 SCC (L&S), 157)**. Not only this, while deciding the O.A., the Tribunal has also taken a reference of another O.A. No. 582/95 in Rohit Sahai (Minor) Vs Union

of India and others in which, the Tribunal while granting relief, directed 1/3rd of the mother's salary to be deposited towards maintenance of Rohit Sahai who was minor son. I have no occasion to differ with the opinion expressed in the earlier decision of the Tribunal.

10. In the above circumstances, the O.A. is allowed. The respondent No. 4 is directed to deposit 1/4th of his salary every month in the bank account of the applicants w.e.f. the date of this order until the applicant's attains majority and in case of failure, the respondent No. 1 to 3 are directed to deduct the aforesaid amount from the salary of the opposite party No. 4 and deposit the same in the Bank Account of the applicants.

11. With the above observations, as per para 10, the O.A. succeeds and is decided accordingly. No order as to costs.

Mr. Arora
(**Navneet Kumar**)
Member (J)

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