


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

 Registration No.OA-561 of 1996

(Date of decision 1.7.1997)

1. Surjit Sarkar S/o Late Deb Kumar Sarkar
Resident of West of Maleth Mandir, Mirzapur,
P.O.Lalbagh, P.S.Town Thana, District Darbhanga.
2. Rama Sankar W/o Late Deb Kumar Sarkar,
Resident of West of Maletch Mandir, Mirzapur,
P.O.Lalbagh, P.S. Town Thana, District Darbhanga

..... Applicants

By Advocate: Mr. G.Saha &

Mr. R.K.Sinha

Versus

1. The Union of India, through the General Manager,
Eastern Railway, Fairlie Place, Calcutta.
2. Divisional Railway Manager, Eastern Railway,
Dhanbad.
3. The Senior Divisional Personnel Officer,
Eastern Railway, Dhanbad.
4. Chief Personnel Officer, Fairlie Place,
Eastern Railway, Calcutta.

..... Respondents

By Advocate: Mr. Gautam Bose.

Coram: Hon'ble Mr. Justice V.N.Mehrotra, Vice-Chairman

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Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the respondents be directed to provide appointment to applicant No.1 on any Class III post on compassionate

grounds.

2. The facts of the case are that late Deb Kumar Sarkar, who was the father of applicant No.1 and the husband of applicant No.2, was working as Rest Giver Station Master. An occurrence took place in the night of 5/6 October, 1990 at Garhwa Railway Station, where Deb Kumar Sarkar was on duty, in which dacoits killed him while looting the station. The applicant no.2 Smt. Rama Sarkar thereafter moved an application on 10.11.90 praying that she be appointed on a Class III post on compassionate ground. The appropriate authority thereafter appointed the applicant No.2 as Clerk in the grade of Rs.950.1500 in the Head Office, Calcutta as prayed by her. The applicant No.2 however, vide letter dated 8.5.91 (Annexure-3) declined the appointment on the ground that she was ill and due to her family responsibility she will not be able to accept the job. She also mentioned that her son Surjit Sarkar was aged about 14 years and after four years he will be completing his matriculation and attaining the age of Government service; she prayed that Surjit Sarkar be appointed in her place and her appointment be kept in abeyance for her son. On 16.5.1991, the applicant No.2 moved another application in which she prayed for sanction of her pension as per CPO SL No.242/87 and 186/90. A letter dated 28.2.1991 (Annexure-8) was sent to applicant No.2 by the Railway authorities in which it was specially mentioned that under CPO CCC-S SL 242/87, the widow was entitled to family pension equal to last pay drawn by the deceased Railway servant but the dependents of the deceased Railway employees, whose family would be receiving such pensionary award under the scheme will not however, be eligible to the benefits of appointment on compassionate ground as per CPO/CCC-S Sl.No.55-85. The applicant was asked to submit declaration whether she was willing to accept appointment on compassionate ground or not.

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In reply to this letter the applicant moved her application dated 26th March, 1992, Annexure-9 in which she prayed for compassionate appointment for her son on his attaining the age of 18 years but at the same time she prayed sanction of pension according to the above mentioned CPOs. After this application was moved, an order dated 17.6.1992 (Annexure-10) was passed mentioning that the applicant No.2 has not indicated her specific option as asked for in the letter dated 28.2.1992 hence family pension in her favour was being released for appointment. She was also intimated that as per rule no compassionate appointment was permissible in her case. The applicant thereafter moved representations (Annexure-A/11, A/12 and 15) but it is claimed that these were not replied to.

3. While the above mentioned letters were being exchanged, the Railway authorities actually sanctioned pensionary award to the applicant No.2 in terms of the above mentioned CPOs, according to which the widow was entitled to receive family pension equal to the pay last drawn by the deceased Railway servant. Prior to it, as it will be apparent from the reply by the respondents, which I will later consider, family pension at the ordinary rate had been sanctioned to the applicant No.2 as matter relating to appointment on compassionate ground was pending. However, later on, revised pension award was granted when the appointment on compassionate ground was refused. The applicant has not disputed that she had actually received the pensionary award but it is alleged that the same was received by her in the year 1996.

4. On behalf of the respondents it has been contended that after the tragic death of ^{the W} ~~husband of~~ applicant no.2, she was offered appointment on compassionate ground at Calcutta according to her wishes but she declined the appointment. It is further alleged that according to the

above mentioned CPOs along with CPO/CCC-S Sl.No.55/85, compassionate appointment cannot be given to the dependants of the deceased employee if pensionary award is given to the widow in terms of the above mentioned CPOs. It is further contended that the applicant did not give a clear indication that she wanted appointment of her son on compassionate ground and did not want the enhanced pensionary award. In the circumstances, pensionary award was granted to the applicant No.2 which she was receiving even at present. It is contended that in view of these facts, the applicants are not entitled to get the relief claimed by them.

4. I have heard the learned counsel for the parties and have perused the material on record. The facts of the case are more or less admitted. As mentioned earlier, the applicant No.2 was appointed as clerk at Calcutta on compassionate ground but she refused the offer of appointment on the ground that she was ill and had to look after her family. Under the CPOs which have been referred to above, scheme for grant of liberalised pensionary awards has been framed in the case of death/disability as a result of attack by or during action against extremists, anti-social elements etc. in which cases the widow of the deceased employee would be entitled to get pensionary award to the extent of the last pay drawn by her husband. This amount would be payable to her throughout her life or till she re-married. A provision was made in CPO/CCC-S Sl.No.55/85 according to which dependants of the deceased employee would not be entitled for appointment on compassionate ground in case the pensionary award under this circular was received. Obviously, this provision was quite sensible and proper as compassionate appointment can be made only if the condition of the family of the deceased employee was indigent and the

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family was unable to maintain itself unless such an appointment was made. So if the widow of the deceased received pensionary award to the extent of last pay drawn by her husband then it cannot be said that family would be in such difficult condition so that it cannot maintain itself unless compassionate appointment is made. The learned counsel for the applicant has argued that in the subsequent circulars of 1987 and 1990, this fact has not been reiterated. It is true that in these circulars, this fact has not been clearly stated but both these circulars do not over-ride the circular of 1985 but merely modify or consolidate the earlier circulars. Further, even if the above mentioned provision had not been made in the circular of 1985, even then appointment on compassionate grounds would be made only if the condition of the family was indigent and the same would not have been able to maintain itself unless compassionate appointment was made. Reference may be made to the decision in the case decided by Hon'ble Supreme Court, Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC (L&S) 930 and Auditor General of India vs. G. Ananta Rajeshwar Rao AIR 1994 SC 1521.

5. There is another aspect of the matter due to which compassionate appointment cannot be granted to the applicant No.1. In the letter dated 8.5.1991 (Annexure-3) the applicant No.2 has mentioned that her son Surjit

Sarkar was aged about 14 years at that time and in Annexure-12 his date of birth has been mentioned as 1.11.1977. However, in the first letter which is dated 8th October, 1990, Annexure-R/1, the applicant No.2 has specifically mentioned that her son was aged about 12 years at that time and his date of birth was 15.2.1979. So according to this letter, the age of applicant No.1

was not even 12 years when the applicant No.2 moved for his appointment on compassionate ground. In order to appoint the applicant No.1, the railway would have ~~waited~~ for more than six years. Even if the date of birth given in the subsequent letter is believed, then the railway would have to wait for about 5 years so as to be in a position to offer appointment to applicant No.1. Obviously, the purpose of appointing the dependant on compassionate ground is to enable the family to tide over the sudden crisis caused by the untimely death of the bread-winner and not to keep waiting till a dependant, who was a miner at the time, becomes major so as to be in a position to accept the appointment.

6. In view of the above facts it cannot be said that the order by the Railway authorities refusing appointment of applicant No.1 on compassionate grounds was in any way illegal or improper. This OA is accordingly dismissed. No order as to costs.

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V.N. Mehrotra
01.7.1997
(V.N. MEHROTRA)
VICE-CHAIRMAN