

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A.No. 616 of 2005

3.2.11.
Patna, This the ~~day~~ of January 2011
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CORAM

The Hon'ble Mrs. Justice Rekha Kumari, Member (J)

1. Mangali Devi, wife of late Chamaroo, resident of Village-Hario, Akbar Nagar, District-Bhagalpur.
2. Mahendra Mandal, son of late Chamaroo, resident of Village-Hario, Akbar Nagar, District Bhagalpur.

Applicants

By Advocate : Mr. R.K. Bariar

versus

1. Union of India through Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. The General Manager, Eastern Railway, Fairly Place, 17 Netaji Subhas Road, Kolkatta.
3. The Divisional Railway Manager, Eastern Railway, Mada.

Respondents

By Advocate : Mr. N.K. Sinha

ORDER

JUSTICE REKHA KUMARI, M (J):- This O.A. has been filed by the applicants for directing the respondents to appoint applicant No.2 on compassionate ground in a Group 'D' post. Further prayer of the applicants is to quash letter dated 11.04.2005 (Annexure-A/9).

2. The case of applicant No.1 is that her husband late Chamaroo was a Gateman under P.W.I. at Jamalpur, Bihar, and died in harness on 31.08.1973. The applicant No.1, immediately after death of her husband, applied for compassionate appointment but it was told to her that there was no post available for lady. Thereafter, she applied for compassionate appointment of her elder son (applicant No.2) after he attained majority.

The applicant No. 2 was told by the respondents vide letter dated 22.06.1989 (Annexure-A/4) that his case for compassionate appointment was under

consideration, and he would be apprised of the position in due course. Applicant learnt that many persons were appointed by the Railway authority on compassionate ground in Malda Division, whose cases were filed after the filing of application by the applicant, but the case of the applicant was not considered by the Railway authority. The applicants continued filing petitions before the authorities like M.P. and Minister of Labour and ran from pillar to post for redressal of their grievances. Ultimately, the applicants filed O.A. No.706 of 2003, which was allowed by this Tribunal vide order dated 31st December, 2004 directing respondent Nos.2 and 3 of the said OA to consider the case of the applicant No.2 for compassionate appointment against Group 'D' post within three months. The Railway respondents, in pursuance of the order passed in OA, rejected the application of the applicant for compassionate appointment vide order dated 11.04.2005. Being aggrieved by the said order, the present OA has been filed.

3. The respondents by filing a written statement have contested the case of the applicants. Their case, inter alia, is that the first application of the widow was received in the Railway Department on 10.07.1987 for appointment of her son on compassionate ground after 16 years of death of the ex-employee as also after 5 and ½ years of attaining majority by applicant No.2. As per Railway Board's instructions, a case of compassionate appointment could be kept open only for 10 years which period can be extended to 5 years more by way of relaxation, on justified grounds. As the claim of the applicant for compassionate appointment was against the Railway Board's circular, hence, it was not considered.

4. The contention of the applicant no.1 is that she is a rustic lady and not aware of rules and provisions of law. The rejection of the claim of the applicant is only on the ground that the application was delayed one

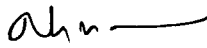
but the same ground was taken by the respondents in their written statement as well in the earlier OA, but the Tribunal in OA 706 of 03 had considered the fact, and that in view of the decision of the Hon'ble Patna High Court passed in CWJC No. 11347 of 04 and the decision of this Tribunal in OA 301 of 04 did not accept the plea of the respondents, and directed the respondents to consider the case of the applicant. Hence, the respondents should have considered the case of the applicant only on merit and should not have rejected the case on the ground of limitation.

5. Counsel for the respondents, on the other hand, reiterated the grounds mentioned in the written statement and also submitted that the above-mentioned ruling of Patna High Court is not applicable in the present case. The facts of the said case are different from the facts of the present case. The application for compassionate appointment was filed after 5 and ½ years after attaining majority, and no good ground was shown by the applicants for such inordinate delay in filing the application.

6. It appears from the impugned order dated 11.04.2005 [Annexure A/9] that the same was passed in compliance with the order dated 31.12.2004 passed by this Tribunal in OA 706 of 03 [Annexure A/8]. The impugned order shows that the same has been rejected only on the ground that the application of the applicant for appointment on compassionate ground was belated. But the order passed by this Tribunal in OA 706 of 2003 shows that the respondents therein had also taken plea of delay [limitation], and the plea was not accepted by the Tribunal, and the respondents did not move the higher court against that order. That order, thus, has attained finality. So, the respondents cannot reject the case of the applicant only on the ground of delay.

7. Accordingly, the OA is allowed. The respondents are directed to consider the case of the applicant for compassionate appointment on merit,

taking into account his pecuniary condition and other relevant criteria and pass a fresh reasoned order relaxing the age if needed, within three months from the date of receipt / production of copy of this order. No order as to costs.


[Rekha Kumari] M [J]

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