

Reserved on 14.08.2018

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the ***29th*** day of ***August, 2018.***

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 330/00755/2015

Samimmuddin, aged about 38 years, Son of Late Salimuddin, Resident of Mohalla Shyamnagar, Paragna Urai, Police Station Urai, District Jalaun (U.P).

...Applicant

V E R S U S

1. Union of India through General Manager, North Central Railway, Headquarter Office, Subedarganj, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi.
3. The Senior Divisional Engineer, North Central Railway, Urai.
.... Respondents

Advocate for Applicant : Shri Pratik Chandra
Shri D. Tiwari

Advocate for the respondents : Shri Rajnish Kumar Rai

O R D E R

By way of the instant O.A. the applicant has prayed for following main reliefs: -

- “(i). To issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 23.04.2015 (Annexure A-1 to Compilation-II) passed by the answering respondents.
- (ii). To issue a writ order in the nature of mandamus commanding / directing the answering to consider the case of the applicant for compassionate appointment and appoint the applicant on appropriate post.
- (iii). To issue a writ order or direction in the nature of mandamus directing the respondents to make the payment of share to the applicant relating to the terminal benefits of his deceased father”.

2. The applicant is the son from the first wife of the deceased employee, who was in service under the respondents at the time of his death on 5.2.2013. After the death of his first wife on 10.2.1980, the deceased employee remarried and he is survived by the applicant, son of the first wife and the second wife as well as the one son and three daughters.

3. The grievance of the applicant is that the Railway authorities have not considered his application for compassionate appointment although he is a part of the family of his deceased father and have disbursed the entire retiral dues including the family pension to the second wife, i.e. the step mother of the applicant.

4. Following grounds are advanced by the applicant in the OA:-

- As per the Railway Board letter dated 23.01.1992, appointment on compassionate appointment cannot be given to second wife or her ward unless permission was granted by the administration for remarriage to the railway employee, which implies that the children of the first wife is to be considered for compassionate appointment (para 4.7 of the OA).
- The respondents on 27.02.2014 released the entire retiral dues to the step mother of the applicant, ignoring his request (para 4.4 of the OA).
- The respondents rejected the applicant's application for compassionate appointment vide order dated 23.04.2015 (Annexure A-1) arbitrarily and illegally (para 4.9 of the OA).
- The applicant has no source of income after death of his father (para 5c).

5. The respondents have filed Counter Reply without disputing the facts and that the widow (second wife of the deceased employee) has the responsibility of three daughters and one son, who were dependent on the deceased employee. No step has been taken to provide compassionate appointment to any one after the interim order of this Tribunal dated 4.06.2015 directing the respondents not to make any appointment in

respect of the deceased employee. It is stated that the second wife and her children are to be considered for compassionate appointment as per the Railway Board circular dated 6.01.2009 (para 8D of the Counter). It is also submitted that the OA suffers from the deficiency of non-joinder of the parties as the second wife and her children have not been included as parties in the OA. Denying the contentions in the OA that the application for retiral dues were not considered, the para 17 of the counter reply states that first application received by the respondents from the applicant was an application under RTI Act on 20.3.2015 and then an application dated 6.4.2015. Regarding the averments in para 4.7 of the OA, it is stated that the Railway Board circular dated 2.01.1992 (Annexure R-6 to the Counter) referred by the applicant is not applicable to this case as the deceased employee remarried after death of his first wife.

6. The applicant in the Rejoinder affidavit stated that the Railway Board circular dated 2.01.1992 is applicable in this case and since the administration has not approved the second marriage, the compassionate appointment should be given to the applicant. It is stated that the Railway board circular dated 6.01.2009 is not applicable to the present case. The applicant, being the eldest son of the deceased employee applied for the compassionate appointment.

7. Heard learned counsels for the applicant. It is argued that as per the Railway Board circular dated 2.1.1992, the applicant's case should be considered for compassionate appointment. He further submitted that the respondents are required to take a balanced view of the matter instead of acting as per the choice of the widow as stated in para 3 of the Railway Board circular dated 6.01.2009 (Annexure R-5 to the Counter).

8. Learned counsel reiterated the stand taken in the counter reply and stated that as per the circular of the Railway Board, the choice of the widow is to be considered for deciding the compassionate appointment as per the Railway Board circular date 6.01.2009.

9. The submissions and pleadings of both the parties have been considered by me. The applicant has relied on the Railway Board circular dated 2.1.1992, copy of which has been enclosed at Annexure R-6 of the counter reply. It states that unless the second marriage has been approved by the administration keeping in view of the personal laws of the employee and special circumstances of the case, the compassionate appointment for the children from the second marriage should not be considered. Admittedly, the first wife of the deceased employee died on 10.2.1980 and then the deceased employee remarried and the details of the second wife and children were available with the administration, since the retiral dues were released to them. Hence, the administration has accepted the fact of second marriage of the deceased employee.

10. In addition, there is nothing in the pleadings to claim that the second marriage of the deceased employee was illegal or not as per his personal law. Since, the marriage of the deceased employee with the second wife has not been claimed to be illegal and the Railway administration had accepted remarriage of the deceased employee and it was reflected in his service record, the widow and her children would be eligible for compassionate appointment as per the definition of the dependent family as stated above. The applicant will also be included as a dependent family member of the deceased employee, if he was dependent on the deceased employee at the time of his death. Hence, the circular dated 2.01.1992 of

the Railway Board will not be applicable in this case, as the issue of legality of the second marriage has not been raised in this case and the objections of the applicant in this regard will have no force.

11. The Railway Board circular dated 6.01.2009 (Annexure R-5 to the counter reply) which has been relied upon by the respondents, states as under in para 2 and 3 of the said circular:-

“2. Board have further decided to delegate powers to DRMs/CWMs/HODs for considering cases of appointment on compassionate grounds of wards / widows of missing railway employees which hitherto rest with General managers [Para 3 (v) of Board’s letter No. E(NG)II/97/RC-1/210 dated 26.07.98 refers]

3. It is reiterated that at the time of considering such requests for compassionate appointments, the Competent Authority should satisfy himself / herself on the basis of a balanced and objective assessment of the financial condition of the family that the grounds for compassionate appointment in each such case is justified, having regard to the number of dependants, assets and liabilities left by the Railway employee, income of any member of the family, as also his liability, including the aspect of whether the earning member is residing with the family of the deceased employee and whether he provides any support to other members of the family. Other provisions contain in Board’s letter No. E (NG)-II/98-RC-1/64 dated 28.07.2000 may continue to be followed.”

12. It is clear from above that the respondents have to consider a number of issues as stated in para 3 of the circular before deciding the application for compassionate appointment. The averment of the respondents that the choice of the widow for her ward for compassionate appointment has to be accepted, is not borne out of the said circular, although that will be one of the many factors to be considered. Most importantly, the financial condition of the family and deprivation caused on account of death of the employee are to be considered as per the guidelines. Regarding the responsibility of the beneficiary of the compassionate appointment to support the dependent members of the family of the deceased employee, the FAQ on the subject circulated by the DOPT states the following:-

“Question

51. Whether maintenance of the family of the deceased employee is responsibility of person appointed on compassionate ground?

Answer

Yes. A person appointed on compassionate grounds under the scheme has to give an undertaking in writing that he/she will maintain properly the other family members who were dependent on the Government servant/member of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith.”

Further, in the case of Local Administration Department ... vs. M. Selvanayagam @ Kumaravelu – (2011) 13 SCC 42, Hon’ble Apex Court has held the following:-

“11.....An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.”

13. In view of the circumstances as discussed above, the reason mentioned in the impugned order dated 23.04.2015 (Annexure A-1) that his application has been rejected since the widow of the deceased employee has chosen her son for compassionate appointment is not as per the scheme of compassionate appointment. As stated in the Railway Board circular dated 6.01.2009, the authorities are required to consider the request taking into account a number of factors including choice of the widow’s ward for compassionate appointment as per the guidelines. Whether the applicant can be considered to be a dependent of the deceased employee for the purpose of compassionate appointment and his eligibility for support as a dependent in case he is not given the appointment on compassionate ground, should also be considered by the competent authority. .

14. Hence, the impugned order dated 23.04.2015 is set aside and the matter is remitted to the respondents/competent authority to consider the application for compassionate appointment of both the applicant and of the son of the second wife of the deceased employee, nominated by the widow for compassionate appointment, considering all the factors mentioned in the Railway Board circular dated 06.01.2009 as well as the circular dated 28.7.2000 (referred in para 3 of the circular dated 06.01.2009) and to take a decision in the matter keeping in view the observation in paragraph 13 above and the overall objective of the scheme for compassionate appointment. The competent authority after necessary consideration as stated above, shall pass a speaking order giving the reasons for such decision, which shall be communicated to the applicant as well as to the son of the second wife within a period of three months on receipt of certified copy of this order.

15. The OA is allowed in part as above. No costs.

**(GOKUL CHANDRA PATI)
MEMBER-A**

Anand...