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Central Administrative Tribunal, Allahabad Bench, Allahabad

Original Application No. 330/01381/2011

This the 7th day of March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Ambresh Kumar @ Bholason of Sri Sri Ram r/o village Vichhiya Jangal Tulsi ram Post Vichhiya Camp. Gorakhpur.

Applicant

By Advocate: Sri Ashish Srivastava

Versus

1. Union of India through General Manager, N.E. Railways, Gorakhpur.
2. Chief Engineer, N.E. Railways, Gorakhpur Region, Gorakhpur.
3. Deputy Chief Engineer, N.E. Railways, Gorakhpur Region, Gorakhpur.

Respondents

By Advocate: Sri Avnish Tripathi

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under Section 19 of the AT Act with the following reliefs: -

- i) This Hon'ble Tribunal may be pleased to quash the impugned order dated 18.8.2011 (Annexure A-1 to the O.A.) passed by the respondent No. 3.
- ii) This Hon'ble Tribunal may be pleased to direct the respondents to appoint the applicant under compassionate appointment scheme in terms of his educational qualification.
- iii) Any other relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.
- iv) Award the costs of the original application in favour of the applicant.
2. The brief facts emerging from the O.A. are that late Ram Harakh who was employed in the office of respondent No. 3 died on 9.1.1990.
- 2.1 The applicant being adopted son, moved an application on 20.1.1990 claiming entire retiral dues and other monetary benefits of late Ram Harakh on the basis of nomination made in the service book by deceased employee.
- 2.2 That on the basis of succession certificate, the applicant moved an application on 14.9.2002 requesting the competent authority to release the entire retiral dues to him.
- 2.3 In the month of May 2003, the respondents have released terminal benefits in favour of the applicant on the basis of succession certificate.
- 2.4 Late Ram Harakh and his wife were living an issueless life and as such they have adopted the applicant from his childhood.
- 2.5 Wife of Ram Harakh died in the life time of Ram Harakh so he executed a will in favour of applicant and made nomination in the service record holding the applicant entitled for all legitimate claims.
- 2.6 Applicant also requested for compassionate appointment on 6.5.2004 but the respondents have not given appointment to the applicant neither any decision has been taken upon the representation of the applicant.
- 2.7 Applicant filed O.A. No. 414/2006. The applicant also submitted that despite the documentary evidence that the applicant is adopted son of deceased from his childhood, as such under rules, the applicant could have been considered for compassionate appointment in accordance with master circular of Railway Department.
- 2.8 The Master Circular confers the power to the General Manager to consider claim for compassionate ground even after delay of 20 years.
- 2.9 The matter has been further considered by the Board and it has been decided that the General Manager may also be authorized to consider the request of compassionate appointment in respect of cases upto 20 years old in the following types of cases subject to the condition that these powers will be executed by him personally and not to be delegated further: -
  - i) Compassionate appointment of 1st son/1st daughter where request has been made after a period of five years from the date of medical invalidation.

ii) Compassionate appointment of other than 1st son/1st daughter, where request have been made after a period of 5 years from the date of death.

iii) Consideration of application submitted more than 2 years after the candidate became major.

2.10 O.A. No. 414/2006 was allowed on 27.5.2011 observing that Railways Board has its own scheme for considering the claim of compassionate ground after 20 years and the applicant deserves protection as such the respondents were directed to consider the case of the applicant in terms of the aforesaid Master Circular and pass a speaking order within a period of three months.

2.11 In terms of judgment, since the matter was old and was falling within the jurisdiction of the General Manager, and as such the authorities could have remitted the matter before the General Manager to take appropriate decision thereupon.

2.12 Surprisingly vide order dated 18.8.2011, the respondent No. 3 rejected the claim of the applicant on a new ground that as per master circular the compassionate appointment is considerable only with reference to the son/daughter /widow/widower and since the applicant was not an adopted son, as such he does not fall in the category of eligible claimant for compassionate appointment.

2.13 Primarily, the impugned order passed by the respondent No. 3 is beyond jurisdiction as in terms of the observations made by the Tribunal, the General Manager was the authority to take appropriate decision upon the claim of the applicant.

2.14 The applicant has produced sufficient documentary record to establish his claim for compassionate appointment. The applicant's matter was never forwarded to the General Manager for consideration of his claim.

2.15 The respondents have failed to appreciate the rule position which categorically provides for consideration of claim of applicant on compassionate ground.

2.16 As per the judgment of this Tribunal, the applicant deserves for consideration of his claim in terms of the master circular which lays down the provisions for compassionate appointment.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant is not the adopted son of deceased employee which is itself proved from the facts of the O.A. in which the name of father of the applicant is Shri Ram. So far as payment of settlement dues of the deceased employee is concerned, it is stated that any employee can nominate any person as his nominee during his service period who shall be paid the settlement dues after his death. It is further submitted that there were two claimants for settlement dues and on the basis of succession certificate, the settlement has been paid to the applicant. The respondents further submitted that applicant is not the son/adopted son of deceased employee. It is further submitted that in compliance of Tribunal's order, the respondents have passed a reasoned and speaking order which has not been challenged by the applicant by way of this O.A. It is further submitted that since the applicant was not the adopted son of deceased as such as per para 3(b) of Master Circular No. 16 of the Railways Board, the appointment cannot be given to the applicant.

4. Rejoinder reply has been filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of counter reply.

5. Heard the learned counsel for applicant Sri Ashish Srivastava and learned counsel for respondents Sri Avnish Tripathi.

6. The counsel for applicant submitted that applicant has already been given all the retiral dues and pensionary benefits of deceased employee, as such he is also entitled for compassionate appointment. Counsel further submitted that applicant is the adopted son of deceased employee and as per rule, he is entitled for compassionate appointment. It is further submitted that as per Master Circular, the applicant's case should be considered by the General Manager however, a person who was not competent, has passed the impugned order and rejected the claim of applicant for compassionate appointment.

7. Counsel for respondents submitted that since the applicant has failed to demonstrate that he is the adopted son of deceased employee, as such there is no question for considering his case for grant of compassionate appointment and respondents in compliance of order passed by this Tribunal have passed a reasoned

and speaking order.

8. From the pleadings and arguments of both the parties, the main issue emerges whether the applicant is the adopted son of the deceased employee or not. Undisputedly, the applicant has not filed any registered deed which is most essential part of a valid adoption after 1977. An amendment was made in Registration Act where the adoption deed was mandatory to be registered and subsequently as per Section 16 of the Hindu Adoption and Maintenance Act, adoption evidence, a registered deed shall be presumed to be a valid adoption. In the present case, as per applicant's contention, he was taken into adoption after 1977. There was no registered adoption deed in favour of the applicant executed by the adopted father or natural guardian and as such in absence of registered deed, adoption cannot be sustained and applicant cannot be said to be adopted son of deceased. Merely on the basis of payment of retiral dues on the basis of nomination will not give any benefit to the applicant. Respondents have rightly paid retiral dues to the applicant on the basis of nomination made by the deceased in service record. Those payments were restricted on the basis of nomination and succession certificate. For appointment on compassionate ground, the applicant should come under the definition of family member of deceased where the natural son/daughter/widow/adopted son are considered. The applicant cannot be said to be a legal adopted son of deceased as no valid/registered adoption deed is available. Master circular No. 16 is very strict about adopted son/daughter. The master circular provides that there should be satisfactory proof of adoption legally; the adoption is legally recognized under the personal law governing the railway servant; the legal adoption process has been completed and has become valid before the date of death/medical decategorisation/medical incapacitations (as the case may be) of the ex-employee.

9. This circular clearly provides that only a person who is legally and validly adopted by Railway employee can only be treated as member of the family and can be considered for compassionate appointment. Since, the applicant has failed to demonstrate that he is legally adopted son of deceased employee, he does not come within the definition of family member of deceased as such he is not entitled for compassionate appointment.

10. So far as merit of the case is concerned, the deceased employee expired in 1990 and applicant moved application for compassionate appointment for the first time in the year 2004 and thereafter filed O.A. in 2006 and when the respondents rejected his representation, he filed the present O.A. From the date of death of his father, much water has flown and applicant has moved this O.A. after more than 18 years and applicant has utterly failed to demonstrate that family is in penurious and indigent condition. Appointment on Compassionate ground is not a vested right of the applicant. The compassionate appointment can only be considered at late stage in case the applicant demonstrates before the court that family is still in indigent condition and there are financial crises in the family. In the present case, applicant has failed to demonstrate before this Tribunal about any such condition. Accordingly, Court is of the view that applicant is not entitled for compassionate appointment after a lapse of more than 18 years of death of his so called father.

11. In view of the above, O.A. is dismissed. No order as to costs.

(Justice Dinesh Gupta)

Member (J)

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