

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.339 of 2016

Cuttack this the 8th day of December, 2017

CORAM:

HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

1. Gulbadan Pradhan, aged about 57 years, H/o. late Nidrabati Pradhan.
2. Jyoti Pradhan, aged about 24 years, D/o. Gulbadan Pradhan

Both are resident of Badheimunda, Jharsuguda, PS/Dist-Jharsuguda

...Applicants

By the Advocate(s)-M/s.B.S.Tripathy

M.K.Rath

J.Pati

N.Panda

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43
2. The Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division, At/PO-Chakradharpur, Dist-Singhbhum (Jharkhand)
3. The Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Railway Division, At/PO-Chakradharpur, Dist-Singhbhum (Jharkhand)

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A)

The applicant No.1 is the husband of one late Nidrabati Pradhan, a deceased railway employee who died in harness on 29.12.2008 while working as Safaiwala under the Respondent No.2 at Rourkela. The applicant No.2 is the daughter of the applicant no.1 They had earlier approached this Tribunal in O.A.No.136 of 2015 praying for grant of terminal benefits to

them and this Tribunal in its order dated 23.3.2015 had directed the respondents in that O.A. to consider their representation and pass a reasoned and speaking order within a period of 60 days from the date of receipt of the order. The respondent no.2 in compliance of the order of this Tribunal passed the impugned order dated 31.7.2015, rejecting the prayer for grant of the terminal benefits to the applicant No.2 with the following observations :

1. You have submitted representation stating inter alia that Smt.Nidrabati Pradhan was appointed as Water Weather man on daily wages on casual basis under SS/Comml./ROU. She had worked as TWM in the broken period years together and lastly regularized during the year 1992 and subsequently died on 29.12.2008 while working as Safailwala leaving behind the following dependents:
 - a) Sri Gulbadan Pradhan, Husband aged 55 years.
 - b) Smt.Urmila Pradhan, married daughter aged 30 years.
 - c) Sri Rajesh Pradhan, son aged 22 years.
 - d) Ku.Jyoti Pradhan, unmarried daughter aged 18 years.

You have also stated in your representation that the PI had filled up the settlement papers and kept under his custody and deposited employment assistance application forms in favour of Jyoti Pradhan on compassionate ground in Group D post to Sr.DPO Office, Chakradharpur, but nothing is heard till date whether your case is under process or not and why your father is not getting settlement dues pension etc. and you are not getting employment assistance.

2. The records have been called for and it is observed that as per Legal heir Certificate issued by Addl.Tahasildar, Jharsuguda vide certificate case No.345/2009 the deceased late Nidrabati Pradhan, W/o.Gulbadan pradhan has left the following family members as legal heirs:

- a) Urmila Pradhan 30 years, Daughter (Married)
- b) Rajesh Pradhan, 22 years, Son
- c) Jyoti Pradhan 18 years, (Daughter (unmarried))

3. The sectional PI has verified the subject case and submitted his report stating as under:

- i) Smt.Nidrabati Pradhan was appointed in the railways on compassionate ground on account of death of her father late Shiba Pradhan, Ex.WRB/Jharsuguda and posted as TWM as JSG.
- ii) She was unmarried at the time of her appointment on 10.04.1992.
- iii) As per pass declaration submitted by the deceased the details of her family composition as on 10.02.1996 is as under:

‘Husband, daughters 20.05.86 & 05.06.91 and Son-15.06.89’.

- iv) During spot verification although it is evident that the deceased has left family members but she has submitted false declaration at the time of appointment mentioning her marital status as ‘UNMARRIED’ and availed the benefit of appointment on Compassionate ground illegally.
- v) Due to aforesaid reasons the settlement documents and the case of employment assistance has not been processed by the sectional P.I.

Since the deceased employee late Nidrabati Pradhan, D/o. late Shiva Pradhan, Ex.WRB/Jharsuguda has entered in the Railway service giving false/fake declaration as such keeping in view of the foregoing facts and circumstances of the case, your claim for considering employment assistance on compassionate ground and payment of settlement dues cannot be considered”.

Aggrieved by the above mentioned order, the applicants have filed the present O.A. praying for the following reliefs:

- i) To pass appropriate orders quashing the impugned order dtd. 31.7.15 in annexure-A/5 and further directing the Respondents-authorities to release the death benefits/settlement dues in favour of the applicants; and
- ii) To pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost.

2. The applicants have based their prayer on the following grounds.

- i) The deceased railway employee had never given any false/fake declaration because at the time of her appointment on compassionate ground during the year 1983 she had not married. She had accordingly mentioned her marital status as unmarried, but subsequently, when her services were regularized during the year 1992, she was married. She had declared her marital status in the pass declaration submitted before the authorities.
- ii) Although the deceased railway employee had submitted the declaration since 1996 disclosing her marital status as “married”, the authorities never objected to her continuance in service obtained through compassionate appointment and allowed her to continue till her death in the year 2008. Therefore, their action in rejecting the claim of the applicants on the ground of false/fake declaration is not sustainable in the eyes of law.
- iii) The railway authorities had not taken any action on the prayer of the 2nd applicant for release of the settlement dues and taken action only after the orders of this Tribunal.

3. The Respondents have filed their reply on 10.3.2017 and have contested the claim of the applicants. It is their contention that Smt.Nidrabati Pradhan, the deceased railway employee had got appointment on compassionate ground on account of the death of her father late Shiva Pradhan, Ex-WRB, Jharsuguda. She continued as Waterman on daily wage on casual basis and got regularized as Safaiwalla during 1992. Late Nidrabati Pradhan had declared herself as unmarried at the time of

obtaining compassionate appointment, but in the year 1996 she had declared the actual position of her family while availing the other benefits such as railway pass and medical facilities etc. While giving declaration in 1996, she had indicated the date of birth of her children as 20.5.1986, 15.6.1989 and 5.6.1991, respectively. From this disclosure, it was clear that she had availed the benefit of compassionate appointment giving false declaration as an unmarried person and as a dependent on her father late Shiba Pradhan. In view of this error committed by late Nidrabati Pradhan, the terminal benefits have been denied to her legal heirs vide the impugned letter dated 31.7.2015. The respondents claim that no benefits can be granted to the legal heirs by legalizing the illegality of the fraudulent procurement of job. The respondents have cited the judgment of the Hon'ble Supreme Court in State of Chhatisgarh vs. Dhirjo Kumar Sengar [(2010) 1 SCC (L&S) 281] wherein it was held that where commission of fraud is apparent and proved, even principles of natural justice need not be followed. The respondents have also objected to the omission of the names of other legal heirs who have not been made parties to the O.A.

4. The applicants filed a rejoinder on 4.9.2017 in which they claim that Smt.Nidrabati Pradhan, the deceased railway employee had obtained compassionate appointment during the year 1983 at which point of time she was unmarried. She was given only casual labourer work on daily wage basis till 1992

when she was regularized as a Safaiwalla by which time she had already got married to the applicant no.1. She has not adopted any fraudulent means to obtain compassionate appointment in 1983 when she was unmarried and dependent on her father. She had also declared the names of her children in railway pass and medical card and had not suppressed the fact that she was not married by the year 1986. The railway authorities did not take any action for terminating her services after knowing her marital status during the year 1986 and allowed her all the benefits of a regular employee till her death in 2008. Therefore, the applicants are entitled to the terminal benefits of Smt.Nidrabati Pradhan, the deceased railway employee.

5. I have heard the learned counsels from both the sides and perused the documents submitted by them. The applicants have enclosed a legal heir certificate issued by the Tahasildar, Jharsuguda (A/2) which mentions that Urmila Pradhan is the daughter of late Nidrabadi Pradhan, whose age is 30 years, (married), Rajesh Pradhan 22 years, son and Jyoti Pradhan, daughter 18 years (unmarried) at the time of issue of the legal heir certificate on 22.10.2009. As per this certificate the eldest daughter would have been born in 1979. The impugned order dated 31.7.2015 has mentioned that as per the pass declaration submitted by the deceased railway employee her eldest daughter was born on 26.5.1986. The applicants have claimed

in the rejoinder that the deceased railway employee got compassionate appointment in the year 1983(para-3 of the rejoinder). The applicants have not submitted any document to show that the deceased railway employee was unmarried at the time of obtaining the compassionate appointment. There is also a letter at A/3 submitted by Jyoti Pradhan, applicant no.2 where she mentions that her mother had obtained the compassionate appointment in the year 1985 as Waterman/Weatherman on daily wage on casual basis. Where there is discrepancy in the letter submitted by the applicant no.2 to the DRM, S.E.Railway, Chakdradharpur at A/3 and the rejoinder in which the year of compassionate appointment is mentioned as 1983, a distinct conclusion can be drawn that there is a discrepancy about the date of obtaining of appointment by the deceased railway employee. The ground of rejection for payment of retirement benefits to the applicants is due to the suppression of fact of marriage. Two different sets of date of appointment of late Nidrabati Prahadhan have been mentioned by the applicants. In case late Nidrabati Pradhan had got her appointment on compassionate ground when she was unmarried, the applicants are entitled to the terminal benefits as prayed for by them. Therefore, it will be in the interest of justice if the railways or the respondents should ascertain the correct date of birth of the eldest daughter of the deceased employee and come to a definite conclusion about the marital status of the deceased

railway employee late Nitrabati Pradhan at the time of obtaining compassionate appointment. If a certificate of birth of the eldest daughter or the marriage certificate of Nidrabati Pradhan shows that she was unmarried at the time of her obtaining compassionate appointment, which as per rules can be given only to an unmarried daughter dependent on her father, then the applicants should be entitled to the terminal benefits. However, if the date of birth or the date of marriage of the applicant no.1 to late Nidrabati Pradhan is prior to her getting the compassionate appointment, they will not be entitled to any retirement benefits. The respondents are accordingly directed to obtain the necessary documents from the applicants and ascertain the correct marital status of late Nirdabati Pradhan at the time of her obtaining compassionate appointment. However, it is made clear that the burden of proof of her correct date of marriage lies on the applicants. The respondents may take necessary action in this regard by conducting a formal inquiry within a period of eight weeks from the date of receipt of this order.

6. The O.A. is disposed of as above. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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