



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/00715/2016

Date of order : 9/03/17

Present : Hon'ble Mr. A.K. Patnaik, Judicial Member

Jasodha Devi,
Wife of Late Debi Das,
Ex-Safaiwala/Traffic,
Metro Railway, Kolkata,
Residing at 5, Bhu Kailash Road,
CPT, Garikhana,
Kolkata – 700 023.

..... Applicant

- VERSUS -

1. The Union of India,
Service through the General Manager, ms
Metro Railway, 33/1,
Jawaharlal Nehru Road,
Kolkata – 700 071.
2. The Chief Personnel Officer, ms
Metro Railway, 33/1,
Jawaharlal Nehru Road,
Kolkata – 700 071.
3. The Deputy Chief Personnel Officer, ms
Metro Railway, 33/1,
Jawaharlal Nehru Road,
Kolkata – 700 071.
4. The Assistant Personnel Officer, ms
Metro Railway, 33/1,
Jawaharlal Nehru Road,
Kolkata – 700 071.

.. Respondents

For the Applicant : Mr. B. Bhushan, Counsel

For the Respondents : Mr. M.K. Bandyopadhyay, Counsel

ORDER (Oral)

This O.A. has been filed under Section 19 of the Administrative Tribunal Act, 1985 challenging impugned order bearing No. MRTS/E.345/0/CGA/Jasoda Devi dated 5th April, 2016 passed by the

Assistant Personnel Officer, for Chief Personnel Officer, in connection with the appeal dated 2nd June, 2014 for compassionate appointment whereby the appointment under compassionate ground has not been agreed by the appropriate authority seeking the following reliefs:-

"(a) Do issue mandate upon the respondent and their men and agents and each of them to forthwith, rescind, recall and/or withdraw the purported letter dated 5th April, 2016 and not to give any further effect to the same;

(b) To issue direction upon the respondents to give appointment on compassionate ground to the applicant upon considering the principle of dying in harness.

(c) To issue direction upon the respondents, their men, agents to make the payment to rest of the sums which the applicant is entitled being a legal heir of her husband;

(d) Issue direction upon the respondents and each of them to forthwith certify and transmit all the papers and documents in connection with instant application before this Hon'ble Tribunal for kind perusal and on such perusal do conscionable justice to the applicant;

(e) Cost and incidental thereto;

(f) To pass such other or further order or orders as to this learned Tribunal may deem fit and proper;

2. The facts in a nut shell are that the husband of the applicant Sri Debi Das got the provisional offer of appointment for the post of Group – 'D' in Metro Railway and the applicant's husband joined the same. On 28.2.2014 the applicant's husband left his house for the evening duty shift from 2:10 p.m. and on that day about 8:30 p.m. met with accident with Tram under Maidan Police Station. The applicant's husband died in hospital on 2.3.2014. The respondents endorsed the death of applicant's husband and terminated the service on 19.3.2014. The applicant herein applied for compassionate appointment along with requisite documents on 16.7.2014. Thereafter the applicant gave a demand justice notice to the respondents on 15.2.2016. Subsequently on 5.4.2016 the respondent authorities communicated to the applicant that his request for appointment on

W/O

compassionate ground has not been agreed to by the appropriate authorities.

3. On perusal of the documents we find that Annexure "A-10" has been challenged, which reads as follows:-

"No. MRTS/E.345/0/CGA Jasoda Devi

Dated: 5.4.2016

Smt. Jasoda Devi,
W/o Late Debi Das,
Ex- Safaiwala/Traffic,
M. Rly., Kolkata.
5, Bhukailash Road,
CPT Gari Khana,
Kolkata - 700 023.

Ref.: Your appeal dated 2nd June 2014 for Compassionate Appointment.

Your request for appointment under compassionate ground has not been agreed to by the appropriate authority. This is for your consideration.

Asstt.. Personnel Officer
For Chief Personnel Officer"

4. This has been passed in response to a notice issued by an Advocate on 15.2.2016 under Annexure "A-9".

5. In my considered view this is nothing but a cryptic order. "Duty to act fairly" is part of the fair procedure envisaged under Articles 14 and 21 of the Constitution of India. It is the settled proposition of law that even in administrative matters; the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In the case of *S.N. Mukherjee v. Union of India*, AIR 1990 SC 1984 the Hon'ble Apex Court unequivocally held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases

bde

where the requirement to record reasons is expressly or by necessary implication has been dispensed with, the authority must record the reasons for its decision. We notice that in the instant case, the Respondents in letter dated 5.4.2016 has intimated the applicant that,

"Your request for appointment under compassionate ground has not been agreed to by the appropriate authority. This is for your consideration."

This to ^{my}~~our~~ mind does not meet the requirement of law as enumerated above. The Respondents should have given detailed reasons as to why the CRC did not favour providing of appointment on compassionate ground.

It is trite law that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant for public effect and are intended to effect the action and conduct of those to whom they are addressed to and must be construed objectively with reference to a language used in the order itself -

Commissioner of Police Bombay Vs Gordhan Das Bhanji, AIR (39) 1952 SC 16.

When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. Otherwise an order ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds - **Mohinder Singh Gill Chief Election Commissioner**, AIR 1078 SC 851=(1978) 1 SCC 405.

When the order of rejection is not capable of passing the test of reasonableness as enshrined in Articles 14 and 16 of the Constitution of India and as per the law, reasons are to be provided in support of the



rejection cannot re-validate the order of rejection, admitting this OA in our considered view will be only delay the rights of the applicants for proper consideration of his case.

6. Accordingly, the Annexure "A-10" is hereby quashed and the matter is remanded back to respondent No. 2 to give proper consideration to the case of the applicant as raised in the representation dated 2.6.2014 and communicate the reason thereof by a well reasoned order within a period of three months from the date of receipt of a copy of this order.

7. With the aforesaid order, the O.A. is disposed of.

(A.K. Patnaik)
Judicial Member

SP