

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

Original Application No. 350/00718/2016

Present : Hon'ble Ms Urmita Dutta (Sen), Judicial Member

Pravin Babu.

.....Applicant

-Vs -

Union of India & Ors. (S.E.Railway)

.....Respondents

For the petitioner : Mr Sk. S. Rahaman, Counsel

For the respondents : Mr B.L. Gangopadhyay, Counsel

Date of Hearing : 07.08.2016

Date of Order : 12.08.2016 ¹⁸ ul .

ORDER

MS URMITA DUTTA SEN, JM:

The instant application has been filed praying for the following reliefs :

- a) A direction to the respondents concerned for setting aside and/or quashing the impugned order dated 08.04.2016 which was passed by the respondents concerned being Annexure A-9 to this application as the application for appointment on compassionate ground was filed by applicant before attaining the age of 18 years i.e. at the time of filing the said application on 05.08.2005, the applicant was minor and the applicant is entitled to be appointed on compassionate ground on the death of his adopted mother Late Satyavathi who died in harness per direction of the Hon'ble Tribunal dated 12.09.2013 and the said appointment be made forthwith.
- b) An order directing the respondents concerned to give appointment to the applicant on compassionate ground by not giving effect to the impugned order dated 08.04.2016 immediately.
- c) An order to grant other benefits in accordance with law by disposing of the representations.

2. According to the applicant the mother of the applicant, who was Ex-Khalashi died in harness on 28.07.1997 leaving behind the applicant as the only legal heir and adopted son, when the applicant was only 10 years of age. Furthermore, the father of

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the applicant died before death of his mother. Thereafter, the applicant was brought up by one Shri A. Anand Rao, being legal guardian appointed by the competent court of law. However, the said legal guardian i.e. A Ananda Rao also died and the son in law of said Rao forced the applicant to file application before the Railway authority for appointment on compassionate ground on 05.08.2005, which was turned down by the Asstt. Personnel Officer (Stores) vide his order dated 05.08.2007 (Annexure A-3) on the ground of submitting fake school transfer certificate. Thereafter, the applicant made an application On 01.12.2008 with a prayer for appointment on compassionate ground mentioning that in the meantime the applicant had passed the 'Prathama Pariksha', which is equivalent to Madhyamik examination followed by another application dated 02.07.2010 (Annexure A-5). Since no action has been taken by the authority, he filed O.A.89/2011, which was disposed of on 12.09.2013 with a direction to General Manager, South Eastern Railway (respondent No.1), to re-consider the case of the applicant taking into consideration his representation made after attainment of majority and to pass a reasoned and speaking order (Annexure A-6). However, the Chief Works Manager, South Eastern Railway, Kharagpur without going into the merits of the case rejected the claim of the applicant vide order dated 12/13.12.2013 (Annexure A-7). The applicant again challenged the said order in O.A.258/2014, which was disposed of by this Tribunal vide order dated 27.11.2015 by quashing the impugned order dated 12/13.12.2013 and remanded the same to the General Manager for passing appropriate order in accordance with law in terms of the earlier direction given in O.A.89/2011 (Annexure A-6). However, even the respondents have rejected the claim of the applicant vide order dated 08.04.2016 (Annexure A-9). Being aggrieved with the same the applicant has filed the instant O.A.

3. The respondents have filed their written statement wherein it has been stated that the applicant applied for compassionate appointment. Along with the application

he has filed one forged and fabricated certificate, as on verification by the P.I, the Headmaster of the School vide letter dated 17.04.2003 has clearly stated that the certificate was not genuine one and also not issued by the appropriate competent authority and the applicant was accordingly informed on 05.08.2007. However, again the applicant after long 1 year 4 months made representation on the same ground and ultimately after repeated litigation the respondents have also after going through the merit of the claim of the applicant rejected the representation as per Railway rules. According to the respondents in terms of the CPO's circular dated 19.04.2010, it was decided that the stringent action be taken against the person, who were adopted fraudulent means and since the applicant earlier himself applied along with a forged certificate, his case cannot be considered again. Moreover, since the compassionate appointment is not a matter of right, it has to be granted with an object to relieve the family from immediately financial crisis and as per the Railway Board circular dated 06.01.2009 the competent authority who satisfied on the basis of financial condition of the family, number of dependents, assets and liabilities and income of the family. Since in the instant case, the applicant is the only leaving member, therefore on merit the respondents do not find any reason to grant him compassionate appointment after a long lapse of time.

3. The applicant has filed his rejoinder, where it is stated that as per Railway Board circular he can be considered at a belated stage also i.e. after 5 years when he became eligible and can be appointed on compassionate ground.

4. I have heard the parties and perused the record. It is noted that the mother of the applicant died on 18.07.1997. However, according to the applicant he was forced to apply for compassionate appointment. Moreover, it is an admitted fact that the applicant filed a forged certificate, which he never denied that the documents were not forged. Though he came before this Tribunal twice but the Tribunal never opined

anything on the merit of the case but it only asked the respondents to re-consider the case in view of the representation made after the attainment of majority on the basis of the educational qualification and to pass appropriate order. The Tribunal had considered the rejection order of the respondents on the ground of delay. However, the matter was remanded back to the General Manager to pass appropriate order in accordance with law and in terms of earlier order. Thereafter, the respondents have considered the case in terms of their own rules and merit of the case and passed the impugned speaking order. From the perusal of the impugned speaking order, it transpires that the respondents have rejected the claim of the applicant on the ground that the applicant has admittedly filed a forged certificate in his previous application for compassionate appointment. He further file another certificate however even if the second certificate is genuine, it cannot supersede his earlier action, which is not befitting for an employee. Compassionate appointment is not a matter of right.

5. The Hon'ble Apex Court reminded us of the decision in **Umesh Kumar Nagpal vs. State of Haryana (1994) 4 SCC 138** propounding the following:

"20.while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) *Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.*

(ii) *An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.*

(iii) *An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.*

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(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

The main purpose of compassionate appointment is to tide over the sudden financial crisis due to sudden death of the bread earner of the family. In this case the applicant is the only survivor member having no liability and considering his entire financial and dependency condition, the authority do not find any merit in his case. Moreover, I am fully agreeable with the contention of the respondents that when a candidate has tried to cheat the respondents by way of submitting forged certificate, even ^{if subsequently} after he filed original certificate, the respondents have the full authority to consider such cases, whether such fraud person can be considered for compassionate appointment or not ? Therefore, I do not find any reason to interfere in the decision of the respondents.

Accordingly the O.A is dismissed being devoid of merit. There will be no order as to costs.

(Urmita Dutta Sen)
Judicial Member

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