

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/00868/2016

Date of Order:

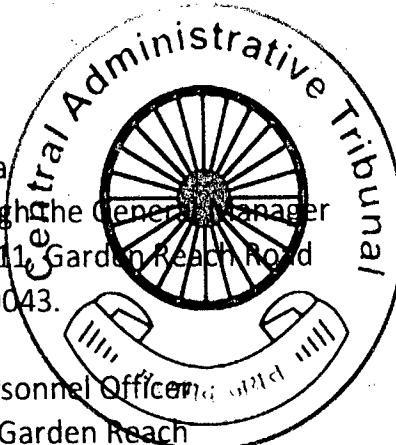
15.06.2018

Present: Hon'ble Mrs. Manjula Das, Judicial Member

Smt. Uma Devi
Widow of Late Ashok Prasad
Aged about 50 years
Residing at Block No. 4L/10 Unit:-2
S.E. Railway Colony, Garden Reach
Kolkata – 700043.

.....Applicant.

-vs-



1. Union of India
Service through the General Manager
S.E. Railway, 11, Garden Reach Road
Kolkata – 700043.
2. The Chief Personnel Officer
S.E. Railway, Garden Reach
Kolkata – 700043.
3. The Divl. Railway Manager
Kharagpur Divn. S.E. Railway
Kharagpur – 721301.
4. The Sr. Divl. Personnel Officer
Kharagpur Divn.; S.E. Railway
Kharagpur – 721301.

.....Respondents.

For the Applicant : Mr. D.K. Mukhopadhyay

For the Respondents : Mr. A.K. Banerjee

ORDER

Per Mrs. Manjula Das, Judicial Member:

Being aggrieved with the order dated 05.02.2016, whereby the Respondent No. 4 rejected the case of the applicant, the applicant approached this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 with the following reliefs:-

"8.(a) An appropriate order be passed directing the respondent authorities to cancel or quash impugned order dated 05.02.2016 issued by the Sr. Divl. Personnel Officer, S.E. Railway, Kharagpur (Respondent No. 4) forthwith.

(b) An appropriate order be passed directing the respondent authorities to consider appointment in favour of the applicant under Employment Assistance compassionate grounds forthwith without being influenced by the earlier orders 05.02.2016 and 08.12.2014.

(c) An appropriate order be passed directing the respondent authorities to consider the prayer of the applicants for grant of compassionate appointment in favour of the applicant afresh.

(d) Any further Order or Orders as to your Lordships may deem fit and proper."

2. The facts in a nut shell as per the learned counsel for the applicant are that the husband of the applicant expired on 01.12.2003 while working on S.E. Railway leaving behind the applicant and two unmarried daughters. She applied for Employment Assistance on compassionate grounds for her daughter but the same was rejected on account of a fake school certificate submitted by her daughter. Repeated representations have been filed. Thereafter, she filed O.A. No. 350/00010/2014 before this Tribunal. This Tribunal after hearing and relying on judgment in WPCT 243 of 2013, allowed the O.A. with direction to the respondents to consider the matter afresh in terms of the earlier decision in



regard to the claim of the widow. It was also specified in the said direction that the certificate furnished by the daughter should not stand in the way of her consideration. The consideration be made untrammelled by the earlier rejection.

3. It was submitted by the learned counsel for the applicant that to get an employment assistance on Compassionate Grounds by one member of the family of deceased employee is a defined policy of the respondent authority which cannot be denied arbitrarily. The Policy framed by the respondent authorities for dealing with the fake certificate does not speak that the other member of the family would not be considered. According to the learned counsel, the Speaking Order rejecting the claim of the applicant being influenced by the earlier decision which has been barred by the Hon'ble High Court, Calcutta in WPCT No. 249 of 2013 as also in the direction of this Tribunal dated 05.12.2015.

4. The learned counsel further submits that the respondent authorities have committed an act of arbitrariness by deriving the direction of the Hon'ble High Court as well as this Tribunal by rejecting the claim of the applicant being influenced with the earlier order. Accordingly, learned counsel prays for interference of this Tribunal by considering the case of the applicant for compassionate appointment.

5. On the other hand, the learned counsel for the respondents by filing their reply on 14.06.2017 submits that applicant's husband Late Ashok Prasad, while working as Upgraded Sanitary Cleaner under JE (Works)/Central/Garden Reach, expired on 01.12.2003. Present applicant Smt. Uma Devi, widow of the deceased Ashok Prasad submitted an application dated 07.02.2007, that is, more than 3 years after death of the ex-employee for compassionate appointment to her 2nd daughter, Kumari Maya Kumari duly enclosing Class – VIII Pass Certificate issued by the Head Master, Sambhuvidyalaya Junior High School along with supporting documents duly forwarded by ADEN/Garden Reach vide letter dated 26.02.2007. According to the learned counsel, the Transfer Certificate was found



as not genuine as informed by the Head Master of the same school vide his letter dated 27.04.2007 and was regretted vide office letter dated 21.08.2007.

6. It was further submitted that the widow, that is the applicant, made another appeal on 28.01.2008 praying for compassionate appointment in her favour declaring date of birth as 12.06.1964 though in her earlier letter dated 07.02.2007, she expressed her inability to accept the job because of her ill health. Simultaneously, the widow submitted another representation dated 23.09.2008 before the CPO/GRC, who after consideration of her request advised the Division to process the matter in the light of Estt. Sr. No. 198/99. In the meantime, policy was adopted in the Personnel Management Meeting held on 10.12.2008 that consideration of cases where fraudulent measure was adopted to secure job on the basis of a fake certificate.

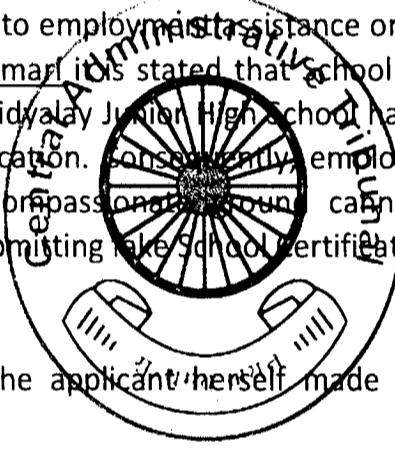
7. Learned counsel for the respondents further submits that appointment in Govt. Service requires objective satisfaction of the appointing authority after due verification of character and antecedents of a candidate whether fit and suitable for appointment in Govt. Service. The deceptive means, the family had resorted to in order to secure appointment on compassionate ground, by producing false school certificate, did not speak in favour of the applicant and family. As such, there is no further merit found to consider appointment on compassionate ground. According to the learned counsel, appointment on compassionate ground is not another source of recruitment, but merely on exception. In such cases object is to enable the family to get over sudden financial crisis, due to untimely death of the ex-employee. But such appointments have to be made in accordance with rules, regulation or administrative instructions. As such, there is no further merit found to consider appointment on compassionate ground.

8. I have heard Mr. D.K. Mukhopadhyay, learned counsel for the applicant and Mr. A.K. Banerjee, learned counsel for the respondents. Perused the pleadings, materials and decisions relied upon.



9. Present applicant Smt. Uma Devi is the widow of Late Ashok Prasad, Ex Upgraded Cleaner under Railways who expired on 01.12.2003. Family pension was sanctioned to the applicant vide Pension Payment Order dated 04.05.2005. The applicant made an application on 07.02.2007 seeking employment assistance of her daughter Kumari Maya Kumari on compassionate ground, that is, more than 3 years after death of the ex-employee.

10. Undisputedly, the applicant, while making application for appointment on compassionate ground, produced a fake School Certificate and not genuine for which the respondent authority, that is, respondent No. 3 vide letter No. E/Rect/EA/CG/09/O/F/07 dated 21.08.2007 intimated the applicant as follows:-


"With regard to employment assistance on compassionate ground to You Maya Kumari it is stated that School Transfer certificate issued by Sambhu Vidyalay Junior High School has been established as fake one on verification. Consequently, employment assistance to Maya Kumari on compassionate ground cannot be considered on the ground of submitting fake School Certificate."

11. Thereafter, the applicant herself made an application before the respondent authority on 23.09.2008 for giving compassionate appointment to her in Group 'D' post. The respondent authority, that is, respondent No. 2 vide letter No. P/Rect/Comp/Misc/KGP/24/642 dated 19.11.2008 forwarded the said application of the applicant to the respondent No. 4. However, her case has not been considered as she adopted fraudulent means to get compassionate appointment to her daughter.

12. The applicant approached this Tribunal vide O.A. No. 350/00010/2014 for employment on compassionate ground as well as for setting aside the impugned letter dated 23.11.2011 issued by Asst. Public Information



Officer/Admn to the PIO & CPO (Admn), SE. Rly. Garden Reach by which her case was not considered. This Tribunal after hearing both parties, vide order dated 09.12.2015 disposed of the said O.A. Relevant portions of the said judgment are being reproduced below:-

“8. In view of the specific observation of the Hon’ble High Court supra which would bind this Tribunal, the CPO (Rectt) or any other competent authority is directed to consider the matter afresh in terms of the earlier decision in regard to the claim of the widow. It is also noticed from the Board’s letter dated 10.08.1999, the Railway cannot insist for any minimum educational qualification in regard to the widow who seek employment assistance on compassionate ground, therefore certificate furnished by the daughter should not stand in the way of her consideration. Therefore the consideration be made untrammelled by the earlier rejection.

9. Let appropriate order be passed within 3 months.”

13. In due compliance, the department thereafter passed the speaking order on 05.02.2016 and rejected the case of the applicant.

14. From above, it is noted that the Railway department, that is, the Office of the Chief Personnel Officer, Garden Reach, Kolkata, vide Circular No. P/Rectt./Poly/Comp/L/237 dated 19.04.2010 adopted a guideline for appointment on compassionate ground on submission of fake/false certificate wherein it is stated that:-

“In order to bring out transparency in the process of such appointment and to ensure that persons with dubious character do not get job in the Railways, It has been decided that stringent action be taken against such person who are adopting fraudulent means, which will act as a deterrent. Person who are trying to get appointment in the Railway by adopting corrupt practices, even before joining the organisation would definitely cause greater harm to the Organisation in future when they join by adopting corrupt means. The Railway does not need such persons in its roll.”



Further states that:-

"Sr. DPOs/DPOs/WPOs are advised to give wide publicity to the issue and ensure that genuine persons who are in the need of job should be helped by all means and persons with dubious character should equally be punished.

This issues with the approval of CPO/S.E. Railway."

15. On the basis of the said adopted guideline, the respondent authority rejected the case of the applicant stating as here under:-

"Appointment in Govt. Service requires subjective satisfaction of the appointing after due verification of character and antecedents of a candidate whether fit and suitable for appointment in Govt. Service. The deceptive means, the family had resorted to in order to secure appointment on compassionate ground, by producing false school certificate, did not speak in favour of the applicant and family. As such, there is no further merit found to consider appointment on compassionate ground."

16. Accordingly, DRM did not agree to consider the case because of fraudulent conduct adopted to secure employment in favour of her 2nd daughter by producing fake certificate.

17. I have carefully gone through the decision of Hon'ble Calcutta High Court dated 04.07.2013 passed in W.P.C.T. 249 of 2013 referred above by the applicant, from which it reveals that the elder brother of the Petitioner No. 2 did not submit 2 valid certificates in support of his educational qualification and date of birth as a result whereof the respondent authorities refused to consider the claim of the said elder brother for employment on compassionate ground. In the said case, the Petitioner No. 2 is another son of the deceased father who also made his application for compassionate appointment. But the respondent



authorities rejected his case stating that his elder brother had submitted fake and false certificates in the past in support of his educational qualification and date of birth. The Hon'ble High Court observed that the respondent authorities herein sought to punish the other members of the deceased family including the Petitioner No. 2 by refusing to grant employment on compassionate ground to the said Petitioner No. 2 upon considering the conduct of the elder brother of the Petitioner No. 2 herein. This is a misplaced punishment on an unerring person for the wrong committed by somebody else in which he had no role to play.

18. The divisive situation in the present case is that, the widow, that is, the applicant in the present case made application for compassionate appointment on behalf of her daughter by giving false certificate and when the case of her daughter was rejected, she made further application for appointment on compassionate ground on behalf of herself. Thus, the conduct of the aspirants of the said W.P.C.T. 249 of 2013 and present case are different because the lady, that is, widow of deceased employee Late Ashok Prasad, made application herself by filing fake certificate in her previous application for the case of her daughter for compassionate appointment.

19. In my view, even if, the case of the applicant is genuine, it cannot be superseded by earlier action which is not befitting for an employee. Compassionate appointment is not a matter of right. More so, the deceased employee died in 2003 wherein the applicant made application for appointment



on compassionate ground on behalf of her daughter after long 3 years and she made her application in 2008 for her appointment on compassionate ground.

20. The very basic inception of the scheme for compassionate appointment 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.

21. After taking into consideration the entire conspectus of the case, as discussed in the foregoing paragraphs, I do not find any merit in the present case.

22. Accordingly, the O.A. stands dismissed. No order as to costs.

(Manjula Das)
Member (J)

PB