

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

**LIBRARY**

REGN. NO.: OA/350/01012/2015

with

MA/350/00265/2015

[Kolkata, this , the 29<sup>th</sup> Day of September, 2016]

C O R A M

HON'BLE MRS. URMITA DATTA (SEN), MEMBER [JUDL.]

Amresh Kumar, aged about 23 years, son of Late Babu Lal Singh, residing at village - Kohraul, PO-Bajitpur, PS-Karpi, Distt.- Arwal, Bihar-804 426. ....APPLICANT.

By Advocate :- Ms. Anindita Roy.

Vs.

1. The Union of India, service through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700 043.
2. The General Manager, South Eastern Railway, Garden Reach, Kolkata-700 043.
3. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-700 043.
4. Senior Divisional Personnel Officer, South Eastern Railway, Adra Division. PIN 723 121.
5. Divisional Railway Manager, South Eastern Railway, Adra Division. PIN 723 121. ....RESPONDENTS.

By Advocate :- Mr. A.K.Datta.

O R D E R

Urmita Datta (Sen), Member [Judl.] :- The instant OA has been filed by the applicant praying for direction to set aside and quash the Memo dated 10.01.2012 [Annexure-A/3] and the Memo dated 18.06.2013 [Annexure-A/5] and further to direct the respondents to grant compassionate appointment in favour of the applicant.

2. As per the applicant, his father died on 21.03.2010 after falling down from the train at Jehanabad Railway Station, Bihar and his body was cut into pieces and found in between Pole No. 44/23A and 44/21A at about 21.25 Hrs. which would be evident from the Police Report as well as postmortem report, declaration given by the staff

118

of the SE Railway, villagers, etc. [Annexure-A/2 series]. Immediately thereafter, the applicant made an application before the Sr. Divisional Personnel Officer on 06.07.2010 for compassionate appointment in Group 'D' category. However, the Sr. Divisional Personnel Officer, Adra, vide his memo dated 10.01.2012 regretted the employment assistance to the applicant [Annexure-A/3]. Immediately thereafter the mother of the applicant wrote a letter to the Divisional Railway Manager [Annexure-A/4], South Eastern Railway, Adra Division, through Sr. Divisional Personnel Officer, Adra giving clarification on the doubts raised by the respondents, wherein it has been categorically stated that the father of the applicant, namely, Babu Lal Singh, reached his village at Kohraul at 16.30 Hrs. on 20.03.2010 and he left the village to catch train from Jahanabad for Bokaro in the evening of 21.03.2010 and met with the accident at about 21 hours at Jahanabad Railway station. Thereafter, the Asstt. Personnel Officer vide his communication dated 18.06.2013 communicated the rejection of the representation preferred by the mother of the applicant by the Sr. Divisional Personnel Officer only on the ground that there is no change in the decision taken by the earlier Divisional Railway Manager [Annexure-A/5].

3. According to the applicant, he is staying with his mother in village at Kohraul, Bihar and suffering with acute financial hardship as the mother is only getting pension and there is no other person to look into the family. He also made repeated representations before the respondent authorities and since nothing happened, being

aggrieved with, he has filed the instant OA for compassionate appointment.

4. The applicant has also filed a Misc. Application, bearing No. MA/350/00265/2015, for condonation of delay in filing the instant OA, wherein it is stated that he is staying with his aged mother in village having no other source of income. Inspite of rejection of his claim, time and again he visited the office of the respondent authorities and made repeated representations before them. In the month of January, 2014, the mother of the applicant suddenly became ill and subsequently undergone a surgery in the month of April, 2015 for Appendicitis. However, in the meantime, he contacted the lawyer in December, 2014, who in turn asked him to bring certain documents which took considerable time. Again, he approached the lawyer in May, 2015 along with all the documents and ultimately, filed the OA on 30.06.2015.

5. The respondents have filed their written statement, wherein they have mainly objected on the point of limitation stating that there is no sufficient reasons for condonation of delay as the rejection was made in the year may 2012. Even subsequent representations were also turned down in 2013. However, the applicant has filed the instant OA in June, 2015 only. The respondents have further contended that the father of the applicant was due to retire on 31.03.2010. As per the respondents, the father of the applicant after performing his normal duty on 20.03.2010 followed by his normal rest on 21.03.2010 did not join his duty till his

date of retirement and ultimately, he was treated as absentee retiree till the date of his superannuation i.e. 31.03.2010. However, subsequently, the mother of the applicant informed the office vide death certificate dated 08.05.2010 that her husband died due to accident on 21.03.2010. They have also relied upon Apex Court Judgment in the case of Umesh Kr. Nagpal vs. State of Haryana wherein it is held that the consideration for compassionate appointment is not a vested right, which can be exercised at any time in future and it should be extended to cover up the sudden financial crisis caused due to sudden and untimely death of the bread earner. It is further stated that in the present case, the father of the applicant unfortunately died only 9 days before his due date of retirement i.e. 31.03.2010. In that situation, even if the employee would be alive, he could have retired normally on superannuation on 31.03.2010 i.e. just after 9 days of his death. Therefore, in that situation the authorities did not find the applicant in penurious condition as the applicant was extended with all the retirement benefits, even they were granted some benefits due to the unnatural death caused while in service.

Thus

~~Therefore~~, the respondent authorities did not find anything on merit to extend compassionate appointment to the applicant considering the overall liability as well as left over service of nine days. Moreover, the applicant if he has managed to survive from 2010 to 2015 for long five years, he has no right to be considered after a long time.

In view of above, the respondents have prayed for dismissal of the OA.

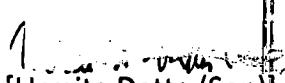
6. The applicant has filed rejoinder wherein it is stated that the respondents have rejected the claim of compassionate appointment of the applicant raising some doubts on the death of the ex-employee, which has been further clarified by the mother of the employee. However, the respondents without considering the same, has simply rejected the case of the applicant.

7. I have heard both the parties and perused the records. It is noted that the respondents while rejecting the claim of the applicant had preliminary raised certain doubts about the authenticity of the death of the ex-employee, which was further clarified by the mother of the applicant but was not accepted by the respondent authorities and again rejected the claim of the applicant in the year 2013. However, the respondents in their written statement has made it ~~that~~ clear since the ex-employee was due to retire within 9 days from the date of his death, therefore, the family was ready with the subsequent financial situation due to the superannuation of the ex-employee. Therefore, there was no sudden financial crisis due to the death of the ex-employee taking into account the overall liabilities of the applicant. Though, in my opinion, the initial reason for rejecting by raising certain doubts is not a valid ground for rejection, which was subsequently clarified by the mother of the applicant. However, as held by the Apex Court with regard to compassionate appointment in the case of Umesh Kr. Nagpal vs. State of Haryana [1994 (4) SCC 138] <sup>reported in</sup>

ML

the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis occurring in the family on account of the death of the bread winner while in service. Therefore, compassionate appointment cannot be granted as a matter of right by way of largesse irrespective of the financial condition of the employee at the time of his death and in the instant case, since the father of the applicant was due to retire within 9 days of his date of death, therefore, no financial crisis can occur for this 9 days as the family was ready with the further financial position after superannuation. Therefore, the respondents did not find the case of the applicant fit for compassionate appointment. Moreover, the application of the applicant was rejected on 10.01.2012 followed by another rejection on 18.06.2013. However, the applicant has approached this Tribunal after two years on 30.06.2015 with an excuse of illness of his mother due to Appendicitis and, that too, for the period from January, 2014 to April, 2015.

8. Since there is no overwhelming merit in the case, I do not find any reason to condone the delay. Accordingly, the OA, along with the MA, is dismissed being devoid of merits. No costs.

  
[Urmita Datta (Sen)]

Member [Jud]

skj.