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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA No.350/00160/2014

Dated of order: 18.11.2015

PRESENT:

THE HON'BLE MR. JUSTICE G. RAJASURIA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

1. Smt. Jaba Hembram, widow of late Rabi Hembram, residing at Rly Qrs No. 84/G, Sonarpur Railway Colony, Kolkata-700 150.
2. Sri Madan Hembram, son of Late Rabi Hembram, residing at Rly Qrs No. 84/6, Sonarpur Railway Colony, Kolkata-700 150, as unemployed.

.....Applicants

For the Applicant: Mr.D.K.Mukhapadhyay, Counsel

-Versus-

1. Union of India service through the General Manager, Eastern Railway, Fairlie Place, Kolkata-700001.
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata-700001.
3. The Divisional Railway Manager, Eastern Railway, Sealdah, Kolkata-700014.
4. The Senior Divisional Personnel Officer, Eastern Railway, Sealdah, Kolkata-700014.
5. Sr. Divisional Electrical Engineer (Traction Supply), Eastern Railway, Sealdah, Kolkata-700014.

.....Respondents

For the Respondents: Ms.G.Roy, Counsel.



ORDER

JUSTICE G. RAJASURIA, JM:

This matter, although has been listed before the Single Bench today, yet the matter has been taken by the Division Bench for adjudication on the consent of both sides.

2. Heard both.
3. This OA has been filed seeking the following reliefs:

“(a) Leave be granted to file this application jointly by the applicants under rule 4 (5) (a) of the CAT Procedure Rules, 1987;

(b) An order quashing and/or setting aside the purported decision of the Respondent Authorities, specially Respondent No.3 communicated vide letter dated 06.06.2012 issued by the Divisional Railway Manager, Sealdah, being annexure A/6’hereto;

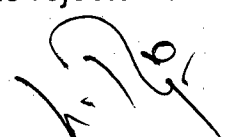
(c) An order directing the Respondent Authorities to recall and/or withdraw the purported decision dated 21.06.2012 rejecting the prayer of the Applicant, as communicated to the Addl. Private Secretary to M.R. being annexure A/7’hereto;

(d) An order directing the Respondent Authorities to extend and/or grant Employment assistance on Compassionate grounds in favour of the Applicant no.2 without implicating his case to that of his elder brother, Sanatan Hembram, upon considering his case on its own merit, within a time frame;

(e) And to pass such further order or orders, direction or directions as to y our Lordships may deem fit and proper.”

(Extracted as such)


4. The learned counsel for the applicant would put forth his client’s case to the effect that this case lies within a narrow compass to the effect that the candidature of the applicant was rejected on the sole



ground that the applicant's brother's candidature was rejected by the respondent authorities on the ground that he produced fake educational certificate while seeking employment on compassionate ground consequent upon the death of his father late Rabi Hembram; such a stand taken by the respondent department in the impugned order has to be set aside and the case of the applicant has to be reconsidered as per the scheme for giving compassionate appointment framed by the respondent department.

Per contra, the learned counsel for the respondents citing the decision of the Hon'ble High Court of Jharkhand at Ranchi rendered in WP (S) No. 434 of 2014 dated 17.07.2014 in the case of Azij Ansari Vs the Union of India & Anr would develop her argument that once a fake educational certificate was given by the member of the family of the deceased employee while seeking employment on compassionate ground, no other member of the same family could claim employment on compassionate ground even on production of genuine certificate. Accordingly, she would pray for the dismissal of this OA.


5. The point for consideration is as to whether the applicant's prayer for compassionate appointment could be rejected by the respondent authority on the sole ground that the his brother's candidature was rejected because he produced a fake educational certificate.



6. At the outset itself we would like to point out that the learned counsel for the respondents mainly relied upon the decision of the Hon'ble High Court of Jharkhand at Ranchi, cited supra. The said judgment was concerning a case where one and the same applicant after meeting with his Waterloo in his first round of approach to get employment due to production of the fake educational certificate, once again approached the authorities with genuine certificate and in that factual matrix the Hon'ble High Court of Jharkhand held that one and the same applicant cannot try to improve his case subsequently by producing the genuine certificate as his case became a tainted one.

7. Whereas, in this case, admittedly and indisputably the applicant was not the person who produced the fake educational certificate but his brother produced for which his candidature was rejected by the respondent authorities. Hence the ill fate of his brother cannot be focused as against the applicant who happened to be his brother.

We would like to fumigate our mind with the decision of the Hon'ble High Court of Calcutta in the case of Smt. Sushila Bauri & Anr Vs Union of India and others in WPCT No. 249 of 2013 dated 04.07.2013 and as per which it is no more *res integra* that the candidature of the person cannot be rejected merely because the applicant's brother produced earlier the fake educational certificate. Hence in these circumstances we would like to issue the following direction:



8. The Respondent authorities shall consider the candidature of the applicant for compassionate appointment in the ensuing Screening Committee and accordingly process it as per the existing Scheme.

9. This OA is accordingly disposed of. No costs.

(Jaya Das Gupta)
Admn. Member

(Justice G. Rajasuria)
Judicial Member

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