



O.A. No. 350/338/2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

CALCUTTA BENCH, KOLKATA.

PARTICULARS OF THE APPLICANT :

Shri Tarak, son of late Dasharath Prasad, aged about 44 years, residing at Block No. T-3-A/1, Unit No. 4, Traffic Settlement, P.O. & P.S. Kharagpur, Dist. Paschim Medinipur.

.... APPLICANT.

- V E R S U S -

1. Union of India through the General Manager, S.E.Rly., Garden Reach, Kolkata-700 043.
2. The Workshop Personnel Officer, S.E.Rly., Kharagpur, P.O. Kharagpur, Dist. Paschim Medinipur.
3. The Assistant Welfare Officer, S.E.Rly., Kharagpur, P.O. Kharagpur, Dist. Paschim Medinipur.

.... RESPONDENTS.

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A/ 350/338/2014

Date of order:26.04.2018

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

For the applicant : Mr. A. Chakraborty, counsel

Mr. P. Bhowmick, counsel

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

ORDER

A. K. Patnaik, Judicial Member

This O. A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

"a) Speaking Order No. P/403/CAT/TARAK/2013/3624 dated 06/10/2013 issued by the Workshop Personnel Officer, S. E. Rly., Kharagpur cannot be tenable in the eye of law and as such the same may be quashed;

b) An order do issue directing the respondents to grant an appointment on compassionate ground in favour of the applicant at an early date."

2. Heard Id. counsel Mr. A. Chakraborty leading Mr. P. Bhowmick, Id. counsel for the applicant. Id. counsel for the official respondents Mr. B.L. Gangopadhyay is also present and heard.

3. Brief facts of this case as narrated by the Id. counsel for the applicant are that the mother of the applicant was working as Technician Gr.II under the respondents who died on 16.08.2003 while in service. The father of the applicant died before the death of his mother. It is submitted by the Id. counsel for the applicant that the applicant received only the Provident Fund and Group Insurance money of her late mother and he made a representation to the authority concerned praying for grant of settlement dues and also for grant of



appointment on compassionate ground. However, the applicant was informed vide office order dated 18.08.2006 that his application for appointment on compassionate ground was regretted by the competent authority on the ground of "genuineness of the candidate had been in doubt" and he "failed to submit the requisite documents for the purpose". Being aggrieved the applicant had filed an O.A. before this Tribunal i.e. O.A.No.1072/2010 which was disposed of on 22.08.2013 with certain orders. In pursuance of the said order of this Tribunal a speaking order was issued by the authority concerned on 06.10.2013(Annexure A/7) rejecting the claim of the applicant on the ground that his case was not a fit case for grant of compassionate appointment. Challenging the order of rejection of his prayer for compassionate appointment dated 06.10.2013(Annexure A/7), the applicant has approached this Tribunal praying for the aforesaid reliefs.

4. The Id. counsel for the applicant Mr. A. Chakraborty has drawn my attention to the order dated 22.08.2013 passed by a Division Bench of this Tribunal which has been annexed as Annexure A/6 to the O.A. With the aid and assistance of Mr. Chakraborty I have perused the records and I find that the concluding part of the said order reads as under:-

"11. A bare perusal of the aforesaid provisions shows that there is absolutely no reason to come to a finding that a widow cannot adopt a child. Thus the reason which is proposed to operate as a bar for consideration of the applicant for appointment on compassionate ground is not a valid reason. Although we are not endowed with the authority to declare the status of the applicant as a son, but as the applicant was already declared as a son by the employee (since deceased) herself, and in absence of any evidence to the contrary we hold that he has a right to be considered for employment assistance on compassionate ground, also.

12. Such being the position and as verification report with regard to the educational qualification of the applicant, is awaited, we dispose of this O.A. with a direction upon the respondents to proceed with the case depending upon the outcome of the clarification from the educational authorities of Jharkhand which is said to be pending, and to pass appropriate orders within 3 months of receiving such clarification.



13. Accordingly, the O. A. is disposed of. No costs."

By drawing my attention to the impugned order dated 06.10.2013(Annexure A/7) Mr. Chakraborty, Id. counsel for the applicant submitted that the respondent authorities have not passed the said order dated 06.10.2013 in the proper perspective; they have ignored the valid points raised by this Tribunal while considering the case of the applicant for grant of compassionate appointment and lost sight of the observations made by this Tribunal regarding verification of the educational qualification of the applicant.

5. On the other hand Mr. B.L. Gangopadhyay, Id. counsel for the respondents submitted that though the respondents have filed their written reply, no rejoinder has been filed by the applicant refuting the same. He further submitted that respondent authorities have duly examined the case of the applicant and issued the order dated 06.10.2013(Annexure A/7) in obedience to the directions given by the Division Bench of this Tribunal on 22.08.2013. Mr. Gangopadhyay also submitted that while rejecting the prayer for compassionate appointment of the applicant the authority concerned has cited the objects for grant of such appointment and the settled legal propositions according to which, compassionate appointment cannot be treated as an alternative mode of appointment and such appointments are made only to help the family of the deceased employee to tide over the sudden financial crisis caused to them due to the untimely death of the sole bread winner. According to Mr. Gangopadhyay, compassionate appointment is nothing but a beneficial legislation, therefore, the applicant cannot claim compassionate appointment as a matter of right.

6. The impugned order dated 06.10.2013(Annexure A/7) reads as under:-

"You have filed the instant Original Application before the Hon'ble CAT/Kolkata, seeking the following reliefs:

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(a) Order No. W/5/1/Comp Apptt/Gr D/456 dated 21.08.2009 issued by the Workshop Personnel Officer, S.E. Railway, Kharagpur W/S P.O. Kharagpur, Dist. Paschim Medinipore is bad in law and as such the same should be quashed.

(b) An order does issue directing the respondents to grant an appointment on compassionate ground in favour of the applicant.

The matter was heard and the Hon'ble Tribunal was pleased to dispose of the matter on 22.08.2013 with the direction to the Railway respondents as under:

"12 Such being the position and as verification report with regard to the education qualification of the applicant, is awaited, we dispose of this O.A. with a direction upon the respondents to proceed with the case depending upon the outcome of the clarification from the educational authorities of Jharkhand which is said to be pending, and to pass appropriate orders within 3 months of receiving such clarification."

In obedience to the above direction, upon receipt of the report of the District Education Officer/Jamtada/Jharkhand, in connection with the genuineness of your Transfer Certificate being No.98 dated 01.02.93, I, the Workshop Personnel Officer, S.E. Railway, Kharagpur, after examining your case in detail pass the following order :

In your case it is found that after demise of the ex-employee, Smt. Sushila Bai on 16.08.2003, you had approached before the Railway authority with an application for grant of employment assistance only on 24.05.2005. Thereafter, you had come forward before the authority on 13.07.2006, after making a certain correction to your education certificate.

In this perspective, it is stated that the very object of granting compassionate appointment is to tide over the sudden crisis caused to the family due to untimely death of the sole bread winner and thereby helping out the family members who were wholly dependent upon the ex-employee. In your case, it is admitted fact that the deceased employee had left over no other claimants for her settlement dues except you and you have already been paid Rs.1,41,995/- & Rs.40/93/ in respect of PF & GIS of the ex employee and the remaining dues of Settlement i.e. DCRG & Leave Salary will be paid in your favour on receipt of claim subject to fulfillment of conditions thereon.

Law relating to compassionate appointment has recently been aptly summarized in State of Gujarat & Ors. vs Arvind Kumar Tiwari and Anr.,(2012)9 SCC 545. The relevant extracts of the said judgment are as under :-

"8 It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another

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method of recruitment. A claim to be appointed on such a ground has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16 which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it."

Under the above circumstances, I have come to the conclusion that your case is not a fit case for grant of compassionate appointment.

This disposes your case.

Acknowledge receipt of this letter."

7. I have considered the submissions made by Id. counsel for both sides and perused the materials placed on record.

8. Sitting in a single Bench, I cannot go beyond the observations made by a Division Bench of this Tribunal which has already been quoted above. From the bare perusal of the aforesaid orders I find that the respondent authorities have wrongly passed the order dated 06.10.2013(Annexure A/7) by ignoring the valid points regarding examining the genuineness of the educational qualification of the applicant and have taken the plea that the applicant approached the authority concerned long after the death of the employee and as a long time has elapsed, benefit of compassionate appointment cannot be extended to the applicant as per the law laid down in this regard. Therefore, I am of the considered view that the order dated 06.10.2013 (Annexure A/7) is not in conformity with the observations made by the Division Bench of this Tribunal.

9. In view of the above, I have no hesitation to quash the order dated 06.10.2013(Annexure A/7) and remand the matter back to the respondent No.2 i.e. the Workshop Personnel Officer, South Eastern Railway, Kharagpur to

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reconsider the entire issue strictly keeping in mind the observations made by this Tribunal in Para 11 and 12 of the order dated 22.08.2013 passed in O.A.No.1072/2010 and communicate the result thereof to the applicant by way of a well reasoned order within a period of three months from the date of receipt of this order. After such consideration if the applicant's educational qualification is found to be genuine, then expeditious steps may be taken by the respondent authorities to process his case for compassionate appointment within a further period of six months from the date of taking decision in the matter, if he is found otherwise eligible.

10. With the above observations and directions, the O. A. is disposed of. No order as to cost.

(A. K. Patnaik)
Judicial Member