

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION No. 18 OF 2015

Dated this Friday, the 16th day of February, 2018

CORAM : HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (JUDICIAL)

Shri Swapnil Sharad Wable,
 Son of late Sharad Wable,
 Age :- 19 years (21.02.1995), unemployed,
 Residing at :- Mali wada, near Bhairavnath Mandir,
 Satyagrihi Chowk, Sambhaji Road,
 Devlali Village, Nashik Road, Nashik,
 Pin Code 422 101 State : Maharashtra. ***Applicant***
 (By Advocate Ms. Vaishali Agane)

VERSUS

1. Union of India, Through the General Manager,
 Central Railway, C.S.T.M. Mumbai 400 001.
2. The Divisional Railway Manager,
 Central Railway, Mumbai Division,
 CSTM 400 001. ***Respondents***

(By Advocate Shri V.S. Masurkar)

OA filed on 02.12.2014

Order reserved on 13.02.2018

Order delivered on 16.02.2018

O R D E R

The applicant who is the major son of the deceased Sharad Wable, who was engaged by the respondent No.2 on daily wages approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same and directed to the Respondent to consider their

Representations, and grant the compassionate appointment to the Applicant.

(b). Directed to the Respondent to grant compassionate appointment to the Applicant.

(c). Grant costs and such other benefits as this Hon'ble Tribunal finds the same fit and proper.

(d). The Applicants wants that his Original Application may be decided at the admission stage.

(e). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The deceased Sharad Wable was engaged as Casual Labour by the respondent No.2 way back on 18.05.1980. He continued in the said capacity and was considered for regularization after screening which was held on 08.07.1993. However, he was not recommended. He, therefore, approached this Tribunal in previous OA No.489/2001, which came to be disposed of by the order dated 17.08.2001 with a direction to the respondents to dispose of the pending representations of the deceased employee. In compliance of the said direction, the order dated 30.10.2001 was passed informing the deceased employee that his Causal Labourer Card produced by him was found to be bogus and he was not placed in the panel nor he could be

absorbed. Hence, his services were terminated.

3. The order of termination has again been challenged by the deceased employee in OA No.920/2003. It was allowed vide order dated 20.08.2007 in which it was held that since the deceased employee has rendered the minimum service as daily wager for requisite period without break, he is denied to have acquired temporary status. Hence, this Tribunal directed the respondents to reinstate him with continuity of service and all other consequential benefits except that he will be entitled to get 50% back wages only. The respondents were also directed to consider the applicant for regularization as per the rules.

4. Aggrieved by the said order, the respondents approached the Hon'ble High Court of Bombay in Writ Petition No.751/2008. The said Writ Petition was dismissed vide order dated 24.06.2008 thereby confirming the order passed by this Tribunal on 20.08.2007.

5. Again dissatisfied with the order passed by the Hon'ble High Court, the respondents have taken the matter to Hon'ble Supreme Court in Special Leave Petition

No.26027-26028 of 2008. However, vide order dated 26.08.2014, the Hon'ble Supreme Court confirmed the order passed by the Hon'ble High Court and this Tribunal, with slight modification that instead of granting 50% back wages, 25% back wages were allowed, since it was transpired that the deceased Sharad Wable already expired in the year 2009 when the SLP was still pending.

6. The present OA was filed after decision in SLP claiming compassionate appointment as per Master Circular No.16 issued by the respondents on the ground that the deceased Sharad Wable had acquired temporary status as per order of this Tribunal and since he died while in service, the applicant is entitled to compassionate appointment. The applicant submitted representations to the respondents on 13.08.2009, 10.09.2014, 13.11.2014 and finally on 20.11.2014 before approaching this Tribunal on 01.12.2014 for appointment on compassionate grounds. However, since no order was passed on his pending representations, he has filed present OA.

7. The reliefs sought are based on the

following grounds as mentioned in the paragraph No.5 of the OA. The same are reproduced here for ready reference :-

“5(a). According to the Hon'ble Tribunal Order dated 20.08.2007 which is confirmed by the Supreme Court by the order dated 26.08.2014 the deceased employee attained the temporary status.

(b). According Master Circular 16 XI the Applicant is entitled to compassionate Appointment. The Applicant is eldest son of the deceased employee. Hence he is entitled to compassionate appointment.

(c). Non-grant of compassionate Appointment to the Applicant is arbitrary, discriminatory and violative of Articles 14 and 16 of Constitution of India.

(d). The Applicant is entitles to compassionate appointment.”

8. On notice, the respondents appeared and by a common reply dated 23.06.2015 resisted the OA by denying all the adverse averments, contentions and grounds raised therein. The previous judicial proceedings instituted by the deceased employee and the order passed therein by this Tribunal, Hon'ble High Court and finally Hon'ble Supreme Court are, however, not disputed. It is the contention of the respondents that as per rules, the applicant is not entitled to claim compassionate appointment, since the deceased

employee was not on actual duty when he died on 24.05.2009 and since the order passed by this Tribunal was sub-judice for final adjudication before the Hon'ble Supreme Court. Further, it is stated that there is no evidence that family of the deceased employee faced indigent condition after his death. Hence compassionate appointment is not justified, which cannot be claimed as a matter of right. Thus, the impugned order cannot be faulted, which is strictly in conformity with paragraph (XI) (b) of Master Circular No.16 since there is no evidence to show that deceased employee died of accident while on duty. The OA is, therefore, liable to be rejected.

9. The applicant then filed rejoinder on 15.09.2016 in which all the adverse averments made in the reply are denied and the grounds stated in the OA are reiterated to justify the claim, which his based on the provision of clause (XI) (a) of Master Circular No.16.

10. On 13.02.2018 when the matter was called out for final hearing, heard Ms. Vaishali Agane, learned Advocate for the applicant and the reply arguments of Shri

V.S.Masurkar, learned Advocate for the respondents.

11. I have carefully gone through the entire case record including the pleadings of the parties and the documents relied upon by the applicant in support of his contentions.

FINDINGS

12. The only controversy involved for resolution of this Tribunal in the present OA is whether the applicant is entitled to claim the appointment on compassionate ground in the peculiar facts and circumstances of the case.

13. In the previous OA No.920/2003 filed by the deceased employee again the order of termination, after hearing both the parties, this Tribunal has passed the following operative order :-

“Thus, both the applicants in the present O.As. are deemed to have acquired the status of temporary railway servant and hence their services could not have been terminated without holding disciplinary enquiry and without following due process of law provided under the relevant railway rules. The right to fair hearing, which is treated as a rule of universal application, becomes more meaningful when the administrative act is likely to affect the rights of individuals adversely. In this connection, we may further note that the order of respondents is void ab-initio and hence nullity.

10. The impugned orders are, therefore, quashed and

the respondents are directed to reinstate the applicants with continuity of service and all other consequential benefits, except that the applicants would be entitled to only 50% of the backwages. The respondents are also directed to consider the applicants for regularization as per Rules.

11. The two O.As. stand allowed with the above directions to the respondents. No order as to costs."

14. It is obvious from record that this order has been confirmed by the Hon'ble High Court on appeal by the respondents and finally by the Hon'ble Supreme Court. However, when the matter was pending before the Hon'ble Supreme Court, unfortunately the employee died on 24.05.2009. The SLP was then finally disposed of on 26.08.2014, in which the order passed by this Tribunal is modified only to the extent of grant of 25% back wages. It is directed that the legal representatives of deceased employee shall be paid 25% back wages till the date when the deceased employee was alive from the date of his removal / termination in the year 1991. However, considering the fact that it is further directed that the deceased employee is deemed to have acquired the temporary status of railway servant (Monthly Rated Casual

Labourer), however, instead of the implementing aforesaid order of this Tribunal, the same has been challenged by the respondents firstly before the Hon'ble High Court and, thereafter, Hon'ble Supreme Court and in the meantime, the deceased employee expired. As such, he could not be reinstated as causal labourer with temporary status by issuing appropriate office order nor could be considered for regularization / absorption in Group 'D'.

15. It is needless to say that the respondents have a statutory right to challenge the order passed by this Tribunal before higher forums which they exercised in the present case. As such, it cannot be said that the order passed by this Tribunal was final till it is confirmed by the Hon'ble Supreme Court and till then it was sub-judice. As such, this Tribunal finds substantial force in the contention of the learned Advocate for the respondents that there is no question of considering the applicant for compassionate appointment since the deceased employee was not regularly appointed after due screening in Group 'D' on decision of Hon'ble Supreme Court

and before his death.

16. However, for the purpose of her submission, the learned Advocate for the applicant strongly placed reliance on the provisions of Master Circular No.16 Compendium on Appointment on Compassionate Ground vide [E (NG) II/90/RC-II/17 dated 12.12.1990] and particularly paragraph (XI) thereof. The same reads as under :-

“XI (a). The General Managers have powers to consider and decide requests for appointment on compassionate grounds of the wards / widow of a causal labour who dies due to accident while on duty provided the causal labourer concerned is eligible for compensation under the Workmen's Compensation Act, 1923. Such appointments should be as casual labour (fresh face) or substitute.

(b). Similar consideration may also be shown to a ward / widow of a casual labourer with temporary status at the discretion of the General Manager.

(c). This power should be exercised by the General Manager personally and should not be delegated to any authority. This power should be exercised judiciously keeping in view the particular need to contain the total casual labour force.”

17. Referring the above provisions of paragraph No. (XI) (b), it is submitted by the learned Advocate for the applicant that although the deceased employee died after having acquired temporary status in pursuance of order of this Tribunal in previous OA, the

applicant being his ward is entitled to compassionate appointment and General Manager is competent to pass the appropriate order in this behalf. However, careful perusal of the aforesaid provisions would reveal that any causal labour or causal labourer with temporary status when died naturally while in service, his wards is not eligible for compassionate appointment. It is only when causal labour or causal labourer with temporary status died of accident while on duty (not in service simplicitor), his ward is eligible for being considered for compassionate appointment.

18. In the present case, admittedly, although the temporary status was conferred on the deceased employee by virtue of the order passed by this Tribunal, he was not actually reinstated as causal labour with temporary status, obviously for the reason that the said order was subjudice for final adjudication before Hon'ble Supreme Court and in the meantime, the deceased employee expired. In this behalf, there is nothing on record to show that the order passed by this Tribunal was stayed by the Hon'ble High Court, however, the

fact remains that the said order was not actually implemented by the respondents during pendency of the Writ Petition in the Hon'ble High Court or SLP in the Hon'ble Supreme Court. Even if it is held for a sake of moment that by virtue of the order passed by this Tribunal, which is not stayed by the Hon'ble High Court or Hon'ble Supreme Court, the deceased employee may be presumed to be in service and since back wages are allowed, still there is no averment made in the OA nor supported by any documentary evidence to show that the deceased employee died of accident while in deemed service by virtue of order passed by this Tribunal. In such circumstances of the case, he must have met with natural death, which is not covered under Master Circular No.16 paragraph No.(XI) (a) (b). This being so, it cannot be said that the applicant is eligible for being considered for compassionate appointment since there is no evidence to show that his father died of accident while on actual duty on reinstatement. Hence, no relief can be granted to the applicant.

19. During the course of arguments, the

learned Advocate for the applicant placed reliance on the decision rendered by CAT Principal Bench, New Delhi in OA No.512/2000 Smt. Anarkali and others Vs. Union of India decided on 21.05.2001 and submitted that the applicant is entitled to be considered for compassionate appointment. I have carefully perused the said decision. It is obvious that although it pertains to appointment on compassionate ground while considering the claim, the respondents cannot take into consideration retirement / terminal benefits given to the family members of the deceased employees to hold that they were facing indigency. As such, in that case, the issue if daily wager or employee who acquired temporary status and died while in service / duty, if his ward can be considered for compassionate appointment was not involved. Hence, no reliance can be placed on the said decision to hold anything in favour of the applicant.

20. From the above discussion, it is obvious that the applicant is not entitled to the relief sought.

21. The respondents are, however, directed

to comply with the order passed by the Hon'ble Supreme Court regarding payment of 25% back wages to the legal heir of the deceased employee from the date of his termination till his death. The arrears of wages be settled and paid accordingly within a period of eight weeks from the date of receipt of certified copy of this order, if not complied with earlier.

22. The OA stands disposed of with the aforesaid direction, without granting any relief to the applicant so far as his claim for compassionate appointment is concerned.

23. In the facts and circumstances of the case, the parties are directed to bear their respective costs of this OA.

Place : Mumbai
Date : 16th February, 2018

(Arvind J. Rohee)
Member (Judicial)

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