

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Original Application No 050/00230/2017

Reserved on 14.03.2018

Pronounced on _ 23.03.2018

CORAM :

Hon'ble Shri Jayesh V. Bhairavia, Member (J)

.....
1. Bhaskar Tejasvi, S/o Late Chandra Shekhar Prasad, resident of Golaghat, Sonebarsa Lane, P.O.- Naya bazaar, P.s. -Tatarpur, District- Bhagalpur.

.....**Applicants**

By Advocate : Shri J.K. Karn

VERSUS

1 . The Union of India through the General Manager, Eastern Railway, Kolkata.
2. The Chief Personnel Officer, Eastern Hajipur, Kolkata.
3. The Chief Works Manager, Jamalpur Railway Workshop, Eastern Railway, Jamalpur.

.....**Respondents**

By Advocate : Shri S.K. Ravi

O R D E R

Per Jayesh V. Bhairavia, Member (J): In the present OA the applicant has sought reliefs as under :-

"[8.A] The impugned order issued in shape of Speaking Order No. : CPO/SC/SA/COMP/7381 Kolkata, dated 16th Feb 2017 by General manager, Eastern Railway, Kolkata, communicated to applicant vide letter No. E/Con.Cell/Com.Appt/02/2011/C(M) Jamalpur, the 17th Feb, 2017 issued under signature of for Chief Works Manager, E. Railway, Jamalpur as contained in Annexure -A/5, may be quashed and set aside.

[8.B] The respondent authorities may be directed to re-consider the case of applicant for compassionate appointment afresh by placing his candidature in the next meeting of compassionate committee in accordance with extant rules/Circulars.

[8.iii] Any other relief/reliefs as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice."

2. The brief facts of the case as submitted by the applicant, are as under :-

[i] The applicant is the son of late Chandra Shekhar Prasad who was an employee of Railway Workshop, Eastern Railway, Jamalpur who was killed on 24.09.2008 by miscreants. However

for the said murder the applicant alongwith his brothers were made accused. At that relevant time, the applicant was aged about 17 years and his brother was 15 years of age.

[ii] The criminal case was decided vide order dated 09.08.2010 passed by the Juvenile Justice Board, Munger in G.R. case no. 1538/08 T.R. case no. 256/2000 whereby the applicant and his brothers were ordered to be acquitted from the alleged offence by the learned Trial Court, Munger, (Annexure A/1 refers). The learned Trial court has observed in their order that “.....*thus not only there is no evidence on record to prove the complicity of the aforesaid juveniles in conflict with law but also there is material to suggest that someone other than them might have been involved in the occurrence.*” and finally the trial Court concluded as under “.....*that the juveniles in conflict of law (1) Bhaskar Tejashvi and (2) Bharat Bhushan are found not guilty for offences u/s 302/34 IPC and accordingly acquitted for the these offences.*”

[iii] Thereafter, the applicant had made several representation to the respondents for consideration of this application for compassionate appointment. However, the application was not considered and therefore he had approached this Tribunal by way of filing OA 662/2016 before this Tribunal, the said OA of the applicant was decided and disposed of vide order dated 15.09.2016 with a direction to the respondents to consider and dispose the claim of the applicant by passing a reasoned and speaking order within a period of four months.

In response to the said order dated 15.09.2016, the respondents have considered the case of applicant and by way of passing speaking order dated 16.02.2017 rejected the application/claim of the applicant for appointment on compassionate ground. The respondents have communicated

about the said decision to the applicant vide their letter dated 17.07.2017 (Annexure A/5 series refer). Aggrieved by the said decision the applicant preferred this O.A.

3. The learned counsel for the applicant submitted that the applicant submitted that acquittal is acquittal and there is no concept of honourable acquittal or dishonourable acquittal. The applicant has been ordered to be acquitted after full fledged trial and the prosecution does not prove their case as there is no evidence against the applicant and his brother and the examining the said fact, the learned Trial court had acquitted the applicant. Therefore, the ground stated by the respondents for rejection of the application of the applicant on the ground that the charges levelled against the applicant in criminal case was grave in nature and therefore claim of the applicant cannot be accepted due to antecedents. The reasons stated for rejecting the application of applicant is totally arbitrary and amount to deprivation of fair consideration of the application of the applicant. It is further submitted that the Para 101 Sec.-D of Chapter -I of IREM Vol-I cannot be applicable in the case of applicant because the applicant is not yet appointed by the Railway authority and the said instructions are only applicable after the selection and at the time of appointment. The learned counsel for the applicant placed reliance on the judgement passed by Rajasthan High Court in the case of Govind Prasad Vs UOI, (S.B. Civil Writ Petition no. 460.1978 decided on December 17, 1979) and submitted that after considering the judgment of Hon'ble Rajasthan High Court had referred the observation made by the Hon'ble Apex Court in the case of M.K. Balappachar vs State of Mysore which is read out during the argument and placed strong reliance on the observation that "once he is acquitted, whether such acquittal is on ground of lack of evidence or on account of any defect in the procedure of trial or on account of the court extending the benefit of doubt, so long as acquittal stands, the presumption of innocence of the accused, should be given the full effect and he must also be regarded as being acquitted of the blame flowing from any of the acts of omissions which forms the subject matter of the charge.

The learned counsel for the applicant, vehemently submitted that in view of the facts and law laid down by the Hon'ble Court in judgement relied upon by him the relief sought by the applicant is required to allowed.

4. The respondents have filed their written reply and denied the contention of the applicant. The learned standing counsel for the respondents submitted that the applicant claiming for appointment in Group 'C' category on compassionate ground the same has been considered by the respondents in view of the directions passed by this Tribunal in OA 662/2016 (supra) and as per the existing policy and instructions with regard to appointment to government service vide order dated 16.02.2017 and by speaking order the claim of applicant has been regretted. It is further submitted that on the basis of character and antecedents of the applicant rendered him doubtful for appointment to railway service as per the provisions of instructions stipulated in para 101, chapter-I, Sec.-D IREM, Vol-I. The learned counsel placed reliance on the said instruction. (Annexure R/1 refers). It is further submitted that the reasons stated by the respondents in their order are just and proper, it is prerogative of the appointing authority to satisfy itself that the character and antecedents of the person do not render him unsuitable for appointment. The appointing authority does not satisfy with the entire character of applicant and regretted his claim. The cannot claim any vested right to be appointed. The learned counsel placed reliance upon the judgement passed by the Hon'ble Supreme Court reported in (2013) 7 Supreme Court Cases 685 Commissioner of Police, New Delhi and Anr Vs Mehar Singh and submitted that the competent authority has considered the case of applicant and rightly carry out the object of policy to ensure that people with doubtful background do not enter the Railway service. He further submitted that compassionate appointment is not a vested right of the applicant, it is only a compassion of the department for survival of a family/dependents. The charges levelled against the applicant was grave in nature and the applicant has been acquitted only on technical grounds, Therefore the respondents is well within their right to deny the appointment on compassionate ground in the case of applicant. The applicant is not entitled for any relief.

5. Heard the parties and perused the entire records of the present case.

6. In compliance to the direction issued by this Tribunal in earlier O.A 662/2016 passed by this Tribunal, the respondents i.e the General manager, Eastern Railway, Kolkata, had examined the claim of the applicant for appointment

on compassionate ground vide speaking order dated 16 February 2016, and rejected the claim of the applicant mainly by stating the following facts and circumstances.

"late Chandrasekhar Prasad, Ex. Head Clerk, Jamalpur Workshop, Eastern Railway, was killed/murdered on 24.09.2008 and for the said incident FIR was registered as PS case no. 125/08 u/s 302/34 IPC against the present applicant and his brother, both the sons of the deceased employee were put in jail custody subsequently, both were released on bail. Since both the accused were minor on the date of occurrence the Trial was held before the Juvenile Justice Board and vide order dated 09.08.2010 acquitted both the son of deceased as prosecution has failed to prove the case beyond the said of all reasonable doubt and thereafter the applicant had applied for appointment on compassionate ground in Group 'C' post in Railway."

It is further observed in the said impugned decision that "character and antecedents of a candidate are crucial while considering for appointment in govt. service. As per, Rule 101 of IREM Vol-I " the appointing authority should satisfy itself that the character certificate and antecedents of a person to be appointed are such as do not render him unsuitable for appointment to govt. service in accordance with the instruction issued by the Railway Board to Railway Administrations from time to time". ".....His acquittal on lack of evidence does not wash off his criminal antecedents. A candidate to be recruited in a govt service must be worthy of confidence of appointing authority, therefore, the character, integrity and antecedents of a candidate aspiring to join service, assume utmost importance and even if he is acquitted, it cannot be presumed that he was honourably exonerated. Moreover, in the applicant's case, when the charges is so grave for murder of his father on whose death account he is claiming compassionate ground appointment. The application cannot be considered and accordingly, the case does not deserve consideration on compassionate ground.

7. At this juncture, it is appropriate to take notice of the recent judgement passed by the Hon'ble Apex Court in the case of Union Territory Vs Pradeep Kumar and Another, reported in 2018 (1) SCC (L&S) 149, in the said judgement the Hon'ble Apex Court in para 13 observed as under :-

"It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is

suitable for appointment to the post. From the observations of this Court in Mehar Singh and Parvez Khan cases, it is clear that a candidate to be recruited to the police service must be impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be malafide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character."

8. The reasons stated by the respondents in denying the appointment on the compassionate ground cannot be said to be erroneous. The applicant does not have any fundamental right to claim appointment in railway department, further, the policy adopted by the respondents with regard to compassionate appointment for dependents of their ex-employee who died in harness, under the said scheme, no dependent have any vested right to claim appointment as a matter of vested right, it is the prerogative of the employer to chose his employee. The statutory instructions under IREM Vol -I, para-101, Chapter- I Section- D, made it compulsory for the appointing authority to verify the character and antecedentss of the person proposed to be appointed and accordingly the character and antecedents of applicant are verified by the respondent authority before recommending his claim for appointment on compassionate ground. From the record it can be seen that the said authority not satisfied with the claim of applicant and for that cogent reason stated in their decision. There is no allegation of malafide action against the respondents, the respondents has thoroughly examined the application of the applicant did not found appropriate to recommend for the appointment on compassionate ground, the said decision cannot be said to be erroneous or passed without any authority. The respondents had passed the impugned order within their statutory power and authority and therefore, this Tribunal cannot interfere in the said administrative decision by which the

respondents had assessed and verified the credential of the applicant and did not find suitable to consider the case of the applicant.

The judgement, (as referred hereinabove) relied upon by the counsel of the applicant is not helpful to the applicant in the present case, the facts and circumstances of the said judgement are different. It was a case of reinstatement of the employee and he claimed full pay and allowances of his salary, the said employee was acquitted in the criminal case and thereafter he was ordered to be reinstated. In the present case, the issue of satisfaction of the employer's confidence and satisfaction with regard to character and antecedents of the applicant before his case is recommended for the appointment on compassionate ground and as stated hereinabove the respondents have followed the instructions issued under IREM to verify the details and to satisfy themselves with regard to credential of a person before selection or recommendations for appointment on compassionate ground and, the respondents did not find the credential of the applicant to be appropriate for recommendation. Therefore, the judgement relied upon by the applicant is not applicable in the facts and circumstances of the present case. Even otherwise, the reason stated by the respondents in the impugned decision/order cannot be said to be erroneous or illegal.

9. In conclusion, what is stated hereinabove and the law laid by the Hon'ble Supreme Court in the case of State (UT of Chandigarh) Vs Pradeep Kumar (supra), no interference is required with regard to the impugned decision dated 16.02.2017. Hence, the O.A deserves to be dismissed and accordingly dismissed with no order as to costs.

(Jayesh V. Bhairavia)

Memnber (Judl)

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