

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/512/2013

Date of Reserve:11.01.2019

Date of Order: 28.01.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

1. Sita Rout, aged about 61 years, Widow of late Arjun Rout, Ex-T.Man/Engineering/Con./BBS, permanent resident of Vill-Dandaghati, PO-Seragadamakundipur, PS-Dharmasala, Dist-Jajpur, Odisha.
2. Chagali Rout, aged about 35 years, S/o. Late Arjun Rout Ex-T.Man/Engineering/Con./BBS, permanent resident of Vill-Dandaghati, PO-Seragadamakundipur, PS-Dharmasala, Dist-Jajpur, Odisha.

...Applicants

By the Advocate(s)- M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Divisional Railway Manager/East Coast Railway/Khurda Road Division/Jatni, Dist-Khurda.
3. Senior Personnel officer/Con./Co-ordn./E.Co.Rly./Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
4. Senior Divisional Personnel Officer/E.Co.Rly.Khurda Road Division, At/po-Jatni, Dist-Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

PER MR. SWARUP KUMAR MISHRA, MEMBER(J):

Applicant No.1 is the wife of late Arjun Rout, who, while working as Trackman under the East Coast Railways died on 12.09.2000. Applicant No.2 is the son of Applicant No.2. Both of them have approached this Tribunal being aggrieved by the communication dated 10.05.2005 (A/6) whereby

employment assistance on compassionate ground in favour of applicant no.2 has not been acceded to on the ground that applicant no.2 did not possess the minimum requisite qualification, i.e., Class –VIIIth (Eighthth) pass as required for any post under the respondent-Railways.

2. Brief facts leading to filing of this O.A. are thus: After the death of the railway employee on 12.09.2000, applicant no.1 submitted an application for compassionate appointment in favour of her 1st son which could not be considered as the 1st son had not possessed the minimum required educational qualification, i.e., Class-VIII. In view of this, applicant no.1 submitted a further application for consideration of compassionate appointment in favour of her second son/the present applicant since he possessed the required educational qualification. On completion of necessary inquiry as required for the purpose, the applicants were called upon for submission of the necessary documents. On receipt of the documents, the respondents though considered, yet, rejected the request for compassionate appointment vide communication dated 10.05.2005(A/6), inter alia, on the grounds as already indicated above.

3. The ground based on which the applicant has claimed relief is that as per RBE No.166/2011 wherein the Railway Board relaxed the minimum qualification for appointment under certain categories including compassionate appointment. Based on the said RBE, it has been contended that the applicant no.2 can be appointed in the Railways as Trainee and regular Pay band and Grade pay could have been granted only on acquiring the minimum educational qualification prescribed under the recruitment rules. Therefore, non adherence of the provision of RBE No.166/2011 to the

case of applicant no.2 while considering his request for compassionate appointment is bad in law.

4. Contesting the claim of the applicants, respondent-railways have filed their counter. It has been submitted that this Tribunal while considering the O.A. on the question of admission, vide order dated 31.07.2013 dismissed an M.A. filed by the applicants praying for condonation of delay. Thereafter, the applicants approached the Hon'ble High Court of Orissa in W.P.(C) No. 18190 of 2013 and the Hon'ble High Court vide order dated 26.08.2013 passed the following order:

"In such situation, considering the nature of the grievance of the petitioners, which is for appointment under Rehabilitation Assistance Scheme, in our considered view that the Tribunal should not have dismissed the Original Application on the ground of limitation and should have heard the same on merit. We, therefore, quash the order dated 31.7.2013 passed by the Tribunal in O.A.No.512 of 2013 under Annexure-8 and remit the matter back to the Tribunal to decide the Original Application on merit as expeditiously as possible.

With the aforesaid direction, this writ petition is allowed".

5. Respondents have pointed out that after the death of her husband, applicant no.1 made an application for compassionate appointment in favour of her youngest son, the present applicant. While examining the documents submitted by the applicant no.2 for compassionate appointment, it was found that the applicant no.2 had not passed Class-VIII which is the minimum requirement to hold the base level post. Therefore, the prayer for compassionate appointment was not acceded to and the same was communicated to the applicant no.1 vide letter dated 10.05.2005 (R/5). In Paragraphs-5 & 6 of the counter-reply, the respondents have submitted as under:

- i) One application dated 16.01.2006 of Chagali Rout (applicant No.2) in which the applicant has stated that he has discontinued his study while reading in Class-IX and the Head Master has wrongly issued the Transfer Certificate to his mother as not passed Class-VIII. After his return from Kolkata, he brought the matter to the notice of the Head master to issue a duplicate Certificate and accordingly, a duplicate Certificate was issued vide T.C.No.0442393 on 30.7.2005.
- ii) One attested copy of letter No.186/05 dated 30.07.2005 issued by the Head Master, Patrapur, G.P: Jagabalia High School, Badabari Sahi and addressed to the applicant No.2 in which it has been stated that the T.C.Bearing No.0442322 issued in favour of the applicant No.2 in Column No.9 has been erroneously mentioned as 'NO' which may be read as "YES". Further, the Headmaster has stated that the applicant No.2 has passed Class-VIII and discontinued from Class-IX. Hence, a duplicate T.C. BEARING No.-0442393 dated 30.07.2005 has been issued cancelling the previous one.

6. It is the case of the respondents that whereas after thorough verification of the School Records the Headmaster of the School who had earlier certificated that the applicant not no.2 was studying in Class-VIII at the time of leaving the school and had not passed Class-VIII, the same headmaster by issuing a duplicate certificate is stating that the applicant no.2 has passed VIII and while studying in Class-IX had left the school. According to respondents, the applicant no.2 has managed to get one duplicate certificate to take advantage from the administration. Respondents have pointed out that as per CPO/BBS letter No.E.Co.R/Pers./CPO/Notes/89/dated 25.6.2012, the candidate as well as their family who have submitted the forged documents shall be black listed for ever and should be debarred for taking the benefit of employment on compassionate ground.

7. Respondents have brought to the notice of the Tribunal the decision of the Hon'ble Supreme Court in *Abhyudya Sanstha vs. Union of India & ors.* Reported in 2011 (4) Supreme 148) and stated that since the applicant has

not approached the Tribunal with clean hands and succeeded in polluting the stream of justice by making patently false statement in the pleadings is not entitled to any reliefs.

8. Similarly relying on the decision of the Hon'ble Supreme Court in Steel Authority of India vs. Madhusudan das (2009) 2 SCC (L&S) 378), respondents have submitted that compassionate appointment is a concession and therefore, cannot be claimed as a matter of right. Further, the respondents have relied on the decision of the Hon'ble Supreme Court in Local Administration Dept. & Anr. Vs. M.Selvanayagam @ Kumaravelu (AIR 2011 SC 1880) in which it has been laid down that if the family could tide over the first impact of the death of the employee, there is no reason to provide compassionate appointment to a person after lapse of 7 ½ years from the death of employee even if the claimant was minor at the time of death and submitted application after attaining majority.

9. With these submissions, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

10. I have heard the learned counsels for both the sides and perused the records. During the course of hearing, learned counsel for the applicant brought to the notice of the Tribunal RBE No.166/2011 on the subject of recruitment/engagement of persons in Pay band of Rs.5200-20200 (Grade Pay of Rs.1800/-) – minimum educational qualification-reg. to support his argument. It is the case of the respondents that certificate earlier issued by the Headmaster of the School makes it conspicuous that applicant no.2 at the time of leaving the school had not passed Class-VIII. Later on, the same Headmaster issued certificate showing that applicant no.2 had passed Class-VIII and while studying in Class-IX had left the school. The two certificates

issued by the same Headmaster being self-contradictory, there was every reason to entertain doubt on the genuineness of the certificates and therefore, no action was warranted. Having regard to this, the Tribunal is of the opinion that the interest of justice would be met if the Respondents take up the matter with the authorities higher to the Headmaster of the concerned School for providing necessary support in the matter of verification of the authenticity of the certificate later on produced by the applicant no.2 showing that he has passed Class-VIII and if the certificate so furnished is found to be genuine to take further follow up action accordingly. In any case, this exercise shall be completed within a period of 120 (One hundred twenty) days from the date of receipt of this order.

11. With the above observation and direction, this O.A. is disposed of with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

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