

LIBRARY

O.A No. 350/1015/2016

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

PARTICULARS OF THE APPLICANTS:

(1) Smt. Bhagabati Bera, Wife of Late Banamali Bera, aged about 57 years, residing at Village - Asanpur, P.O. - Baicha, District - Paschim Midnapur, Pin 721301

(2) Nagedra Nath Bera, son of Late Banamali Bera, aged about 33 years, residing at Village - Asanpur, P.O. - Baicha, District - Paschim Midnapur, Pin 721301

.... APPLICANTS

V E R S U S

- I. The Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata 700 043.

- II. The Divisional Railway Manager, South Eastern Railway, Kharagpur, P.O. + P.S. - Kharagpur, District - Paschim Midnapur, Pin 721301

- III. The Senior Divisional Personnel Officer, South Eastern Railway, Kharagpur, P.O. + P.S. - Kharagpur, District - Paschim Midnapur, Pin Code No. 721301.

.... RESPONDENTS

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A/350/1015/2016

Date of Order: 22/11/18

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

Bhagabati Bera & Another

-vs-

Union of India & Ors. (S.E Railway)

For the applicant : Mr. A. Chakraborty, counsel
Ms. P. Mondal, counsel

For the respondents : Ms. G. Roy, counsel

A.K. Patnaik, Judicial Member

Instead of going to the deep of the matter it would suffice to state that one Banamali Bera was working as TPM-A under the Station Manager, S.E.Railway, Uluberia and while working as such he prematurely died on 26.02.2012. After his death, the widow applied for providing appointment in favour of applicant No.2. Alleging no consideration to such request, they filed OA No. 350/01937/2015 which was disposed of on 11.02.2016 with direction to the Respondents to consider their representation dated 31.8.2015 and pass a speaking order. In compliance of the said order, the Respondents considered the representation and intimated vide letter dated 20.5.2016 the reason of not providing appointment on compassionate ground to the Applicant No.2 which reads as under:

"In connection with the above, the competent authority has observed that there is difference of age of 02 yrs 08 months between the Rly records of your husband and the school certificates of your

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son. It is found that the date of birth of your son Sri Negendranath Bera has been recorded as "01.03.1983" in his class-X(Ten) reading & class-VIII(Eight) pass certificates whereas in the Railway record i.e. Rly. Medical card of the ex-employee Late Banamali Bera, Ex TPM-A under SMR/ULB his date of birth recorded as "18.06.1980"

As per the orders of the competent authority, you are advised to change the date of birth of your son Sri Nagendranath Bera as per the Rly. record i.e. "18.06.1980" in his academic certificates and submit fresh copies duly correction of certificates at an earliest, so as to enable this office to process the employment case of Sri Nagendranath Bera."

2. Challenging the said order, the applicant has filed the present OA seeking the following reliefs:

- "I) Office order dated 25.05.2016 issued by Divisional Personnel Officer, S.E. Railway cannot be sustained in the eye of law and the applicant no.2 may be granted an appointment on compassionate ground at an early date.
- II) An order do issued directing the respondents to grant applicant no.2 an appointment on compassionate ground.
- III) Leave may be granted to add the other applicants in the Original Application jointly under Rule 4(5)(a) of the CAT Procedure Rules, 1987."

3. The Respondents in their Reply, by reiterating the stand taken in the order of rejection, have tried to justify their action in rejecting the claim of the applicant. It has been stated that due to discrepancy in the date of birth of the applicant between the service record/medical card of ex-employee and the School Leaving Certificate, the applicant No.2 is not entitled to such appointment. In this regards, the Respondents have relied on an order of this Bench dated 18.8.2016 in OA No. 718/2016 (Pravin Babu vs UOI & Ors) to justify that in the circumstances judicial intervention is uncalled for.



4. Learned Counsel for the applicant, in course of argument has submitted that in railway there are specific rules for providing appointment on compassionate ground and financial hardship is not the sole basis in the railway to provide appointment on compassionate ground unlike other department which is based on administrative instructions. The Railway did not question the son-ship of applicant No.2 but rejected the claim on the ground of discrepancy in the date of birth of the applicant No.2 between the Service record/Medical card of the deceased employee and the School Leaving Certificate of Applicant No.2 which is bad in law.

5. This was opposed by the learned counsel appearing for the Respondents by stating that compassionate appointment cannot be claimed as a matter of right. The widow did not apply for such appointment. She had applied for providing appointment in favour of her elder son and subsequently applied for her youngest son. Both are married and no documentary proof has been produced that their financial condition is such that requires appointment on compassionate ground. Further it has been stated that the respondents found discrepancy in the date of birth of applicant No.2 and on consideration of all aspects of the matter, the claim was rejected.

6. Having considered the rival submissions of the parties, perused the record. It is profitable to note that the philosophy behind giving compassionate appointment is just to help the family in harness to tide over the immediate crisis due to the loss of sole breadwinner. Such appointments should, therefore, be provided immediately to redeem the family in distress. The concept of compassionate appointment has been recognized as an exception to the general

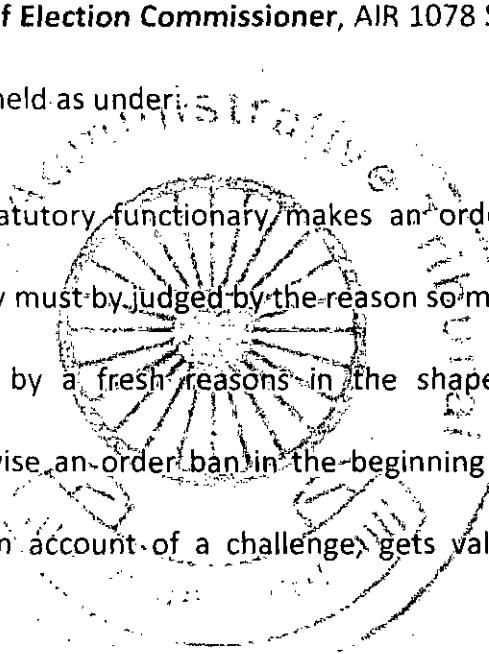


rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of service rules.

7. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare state. I find that the Respondents rejected the claim on one ground i.e. discrepancy in the date of birth whereas in the Reply the respondents have tried to justify by giving some other grounds which according to me is opposed to law laid down by the Hon'ble Apex Court in the case of

Mohinder Singh Gill Chief Election Commissioner, AIR 1078 SC 851 : (1978) 1 SCC

405 wherein it has been held as under:


"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by a fresh reason in the shape of an affidavit or otherwise. Otherwise, an order, ban in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds."

8. In the case of **Amrutlal Someshwar Joshi v. State of Maharashtra (II), 1994 SCC (Cri) 1604 : AIR 1994 SC 2516** it has been held by the Hon'ble Apex Court that School Leaving Certificate can be acted upon with reference to the date of birth given in the certificate and, therefore, whatever has been recorded in the service record furnished by the ex-employee is of no consequence. This has also been fortified by the Railway Board Circular No. E (NG) II/70/BR/1 dated 3.11.71, Rule 225-RI and E (G) 84/FR1/1 dated 12.12.1985. In this view of the matter, the date

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of birth recorded in the SLC of the applicant No.2 is to be taken into consideration provided the said SLC is genuine one.

9. It is seen that the Respondents have rejected the claim on the ground of discrepancy in the date of birth which having been clarified above, the case of the applicant needs reconsideration. Accordingly, the order of rejection dated 20.5.2016 (Annexure-A/4) is quashed and the Respondents are directed to reconsider the case of the applicant No.2 in the light of the discussions made above and communicate the result of such consideration within a period of 90 (ninety) days from the date of receipt of a copy of this order.

10. This OA is accordingly allowed. No costs.

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(A.K.Patnaik)
Member (Judicial)