

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

No. O.A.719 of 2016

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

1. Anjali Pandit,
Wife of Late Lalit Mohan Pandit,
Aged about 64 years,
By occupation House wife.

2. Pradip Kumar Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 38 years,
By occupation unemployed.

3. Manik Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 35 years,
By occupation unemployed.

4. Hiralal Pandit,
Son of Late Lalit Mohan Pandit,
Aged about 32 years,
By occupation - unemployed.

Nos. 1 to 4 residing at Village and P.O. Banchukamari,
P.S. Alipurduar, District Alipurduar - 736 122.

..... Applicants.

Versus

1. Union of India,
Through the General Manager,
North East Frontier Railway,
Maligaon, Guwahati - 11 Assam.

2. The Chief Personnel Officer,
North-East Frontier Railway,
Maligaon, Guwahati - 11, Assam.

3. The Divisional Railway Manager,
Alipurduar Junction Division,
North -East Frontier Railway,
P.O. - Alipurduar,
District - Jalpaiguri.

4. The Sr. Divisional Personnel Officer,

Alipurduar Junction Division,
North-East Frontier Railway,
Alipurduar, District – Jalpaiguri.

..... Respondents.

For the applicant : Mr. K. Chakraborty, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Reserved on : 19.09.2018

Date of Order : 13.11.2018

ORDER

This is the second journey of the applicant Anjali Pandit to this Tribunal. She has preferred this application along with others in order to seek the following reliefs:

"8.(a) To file and prosecute this application jointly under Rule 4(5)(a) of the A.T. Act (Procedure) Rules, 1987 since the reliefs prayed for by the applicants are same arising out of same cause of action.

(b) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind recall and withdraw the purported order dated 4.4.2016 being annexure "A/12" thereto and not to give any or further effect to the same and take step to offer employment assistance to the applicant no. 2 on compassionate ground forthwith without any further unnecessary delay;

(c) To Certify and transmit all the papers and documents in connection with the instant lis before this Learned Tribunal for kind perusal do conscionable justice to the applicants, in particular, to the applicant no. 2.

(d) Grant cost of this proceeding in favour of the applicants;

(e) Pass such other or further order or orders mandate or mandates, direction or directions as may appear to be fit and proper."

2. Earlier, she had preferred O.A. 933 of 2012, which was ordered on 26.06.2014 as under:

"The present application has been filed by Smt. Anjali Pandit who is seeking compassionate appointment in favour of her eldest son Pradip Kumar Pandit. Admittedly according to the family declaration made by the employee during his life time as given at page 15 of the O.A. the applicant

No. 1 is widow and the legal heir of the deceased employee Late Lalit Mohan Pandit, who died on 15.09.2006. The rest of the applicants are his sons.

2. The Railway respondents submit that the compassionate appointment has been granted to one Alok Kumar Pandit, who is admittedly not the son born out of wedlock with the first wife Anjali Pandit, but son of one Gita Rani Pandit, who was not the legally married wife of the employee (since deceased). However the Alok Pandit was dismissed from service subsequently.

3. The respondents have also stated in their reply that the dismissal order passed in regard to Alok Kumar Pandit was challenged before this Tribunal in O.A. 62 of 2011 and on the ground of procedural lapse the order was set aside. Thereafter the respondents have initiated the departmental proceedings against Alok Kumar Pandit for securing appointment by fraud. With the initiation of the proceedings Alok Kumar Pandit has been kept under deemed suspension on 20.01.2011 as per rules and in terms of order in O.A. 62 of 2011. In such a situation, consideration for compassionate appointment of any other family member of Late Lalit Mohan Pandit does not arise i.e. unless proceedings are concluded and Alok Kumar is dismissed, no order can be passed in favour of any other legal heir not even to applicant No. 2.

4. In such view of the matter, since the respondents have already admitted the claim of the applicant with consent of parties, the O.A. is disposed of with a direction upon the respondents to conclude the disciplinary proceedings initiated against Alok Kumar Pandit expeditiously preferably within three months and based upon the outcome of the proceedings, to consider the case of applicant No. 2 for appointment on compassionate ground and to intimate the result of the same to the present applicant within two weeks from date of outcome of proceedings.

5. O.A. is disposed of accordingly. No costs."

3. Emboldened by such liberty, as supra, Alok K. Pandit was dismissed from service on 15.10.2014 with the following order:

" N.F. Railway

Notice of Imposition of Penalty under Rule-9 of the RS(D&A) Rules – 1968

No. Con/OP/VIG-118(2)

Date 15/10/2014

To,
Sri Alok Kumar Pandit,
Gateman under TI/NCB
N.F. Railway

Sri Alok Kumar Pandit, Gateman under TI/NCB was charge vide memorandum No. Con/OP/G-118(2) dt. 06.06.2012 and asked to defend the charges leveled against him within 10 days time, which was acknowledge by CO on 12.06.2012. Charge official had submitted his defence against the memorandum on 21.06.2012. But defence of CO was found unsatisfactory by DA. Hence on 03.09.2012 DA appointed Sri Swapan Kumar Majumder, Chief Staff & Welfare Inspector/APDJ to enquire into the case. After completion of enquiry on 19.07.2013 Sri Majumder, CS&WI/APDJ had submitted his report. A copy of the report was also supplied vide I/No.CON/OP/VIG-118(2) dt. 23.07.2013 to CO for his representation if any against the enquiry report. On 07.08.2018 CO submitted his representation.

ORDERS

On going through the memorandum of charges and defence the enquiry report submitted by the enquiry Officer is accepted. Representation of CO against the enquiry report is not acceptable on following grounds:-

Sri Alok Kumar Pandit, Gateman under TI/NCB did not bring the fact into the notice of the Railway Administration that he was the son born from second wife of his father Late Lalit Mohan Pandit rather he had shown his step mother as his mother suppressing as well as giving such false declaration while filling up forms for CGA (Compassionate Ground Appointment). It is well established from the enquiry report. His such act is showing lack of integrity on his part and acted in a manner unbecoming of Railway servant and thereby violated rule no. 3(I)(i) and 3(I)(iii) of the Railway services (Conduct) Rules 1966 and as such Article-1 of charge sheet, to the extent of such charge, is proved.

Sri Alok Kumar Pandit, Gateman under TI/NCB made following two false declaration at the time of initial appointment for securing Railway service :-

1. He made false declaration that Smt. Anjali Pandit (i.e. first wife of Late Lalit Mohan Pandit) was his mother.
2. He made false declaration in his family declaration that Miss. Sabita Pandit and Miss. Arati Pandit were his sisters.

Above two allegations against Sri Alok Kumar Pandit are established and thereby article-II of charges are also proved on account of following:-

- (i) In terms of para 6(G) of enquiry report submitted by EO it appears that against the examination of EO(Q.9) he (Sri Alok Kumar Pandit) clearly stated that "my mother did not prefer for family pension because there was a gentlemanly agreement in family discussion during the lifetime of my father that my step mother would occupy and enjoy the properties at Bachukamari and also receive the family pension and application for appointment on CG in Group-C post would be

submitted by the father in favour of me and it is pertinent to mention that none of my step brother was having minimum qualification to become eligible for Group-C post". Thus it proves that the fact for eligibility criteria for getting compassionate ground appointment was known to him and he has given impression that as if he is the son born from the 1st wife Smt Anjali Pandit and even not indicated Manik Pandit and Hiralal Pandit his step brother or born by the wife Smt Anjali Pandit and clearly signed himself against the family particulars of the Ex. Employee column on 29.05.2000 inscribing "The above particulars has been explained by me". Hence his involvement in family dispute to have the Railway job can not be ruled out and above facts prove that he made false declaration that Smt. Anjali Pandit was his mother.

- (ii) After verification of all records of his father Late Lalit Mohan Pandit and in terms of Para 7 of enquiry report submitted by EO, it is evidently proved that Sri Alok Kumar Pandit gave false declaration that Miss Sabita Pandit and Miss Arati Pandit were his sisters. In fact no such girls ever existed and it was accepted by CO during the course of enquiry.

Considering all aspects and application of mind it is established that the CO Sri Alok Kumar Pandit, Gateman under TI/NCB has indulged himself in fraudulent act by giving false declaration. Thus Sri Alok Kumar Pandit failed to maintain absolute integrity and acted in a manner unbecoming of Railway Servant and thereby violated Rule No. 3(1)(i) and 3(1)(iii) of the Railway services (Conduct) Rules 1966.

Hence, to meet the end of justice, the undersigned has passed the following orders:-

"Sri Alok Kumar Pandit, Gateman under TI/NCB is hereby dismissed from Railway service with immediate effect"

(Vinod Kumar Meena)

Asstt. Operations Manager

N.R. Rly./ Alipurduar Jn.

Signature of Disciplinary Authority"

4. The prayer for appointment of Pradip Kr. Pandit are of the present applicant, was turned down on 29.10.2014 with the following order, extracted infra:

"Sub:- Prayer for appointment of Sri Pradip Kumar Pandit on Compassionate Ground.

Late Lalit Mohan Pandit, Ex. Kh. Helper under SSE(Sig)/NCB had become medically decategorised and retired voluntarily w.e. from 09-4-99.

As per the last family declaration submitted by Late Lalit Mohan Pandit, while in service on 04-01-1999 there was name of Sri Pradip Kumar Pandit as son of Late Lalit Mohan Pandit and Smt. Anjali Pandit. As per that declaration he had only four sons namely: 1) Sri Manik Pandit 2) Sri Alok Pandit 3) Sri Ashok Pandit 4) Sri Hira Pandit. (copy enclosed)

On 27-6-2000 Late Lalit Mohan Pandit had applied for Compassionate Ground Appointment in favour of his son Sri Alok Kumar Pandit. (copy enclosed)

Alongwith the application, Late Lalit Mohan Pandit also submitted one 'No objection' (in Bengali language) given by his eldest son Sri Manik Pandit where Sri Manik Pandit (son of Smt. Anjali Pandit) had clearly stated that Sri Alok Kumar Pandit is his own brother and he had no objection for compassionate appointment to his brother Sri Alok Kumar Pandit. (copy enclosed)

Accordingly, Sri Alok Kumar Pandit was appointed to the post of Gateman(Traffic) on Compassionate Ground w.e. from 16-6-2001.

In terms of Railway Board's Circular No. E(NG)III/78/RC-1/1 dated 07/04/1983 in no case there can be more than one appointment against one death/medical incapacitation. For example, it should not be permitted where the family wants another son or daughter to be employed in lieu or in addition to an appointment already made on compassionate grounds.

Therefore, your prayer for appointment of Sri Pradip Kumar Pandit on compassionate ground cannot be considered since one appointment has already been made in favour of Sri Alok Kumar Pandit on compassionate ground which was made as per request of Late Lalit Mohan Pandit, Ex. Kh. Helper under SSE (Sig)/NCB against medical incapacitation.

This has the approval of competent authority.

5. A bare perusal of the order supra would inexplicably demonstrate that the direction of this Tribunal upon respondents, in the earlier O.A., to consider the case of the applicant Pradip Kr. Pandit, was given a complete go bye.

The respondents have in fact refused to consider his case on the ground weird, untenable and frivolous grounds.

The tenor of the order was misread either deliberately or with total non application of mind.

The respondents were bound to consider Pradip Kr. Pandit on merits when Alok Kr. Pandit was dismissed. The respondents are yet to form an opinion that Pradip Kr. Pandit is not the son of deceased or is an imposter in that way.

6. The order impugned, being thus tainted with the vice malafide, arbitrariness, non application of mind and upon misreading and mis interpreting the order of this Tribunal, is quashed.

7. Consequently the O.A. is allowed with a direction to consider Pradip Kumar Pandit afresh, untrammelled by earlier consideration, and with issuance of appropriate order within 3 months from the date of communication of this order.

8. Present O.A. accordingly stands disposed of. No costs.

drh

(Bidisha Banerjee)
Judicial Member