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In the Central Administrative Tribunal

Calcutta

In the matter of :

O.A.No.350/00 196 of 2017 :

An application under Section 19 of the
Administrative Tribunals Act, 1985 ;

And

In the matter of :

1. Smt. Subhra Banerjee

Wife of Late Jiban Kumar Banerjee

aged about 64 years,

by occupation : House-wife,

residing at C/o. Sri Ratan Kumar Mallick,
Badal Nagar, Alipurduar Junction,
P.O. Bhalardabri, P.S. Alipurduar.

District : Alipurduar, Pin : 736123.

2. Ms. Moumita Bandopadhyay,

Daughter of Late Jiban Kumar Banerjee,

aged about 39 years, by occupation : NIL,

residing at C/o. Ratan Kumar Mallick,
Badal Nagar, Alipurduar Junction,
P.O. Bhalardabri, P.S. Alipurduar.

District : Alipurduar - 736123.

.... Applicants.

contd....

- : 2 : -

- Versus -

1. Union of India, through the General Manager,

North-East Frontier Railway, (N.F.Rly),
Maligaon, Guwahati-11,
Assam - 781 011.

2. The Chief Personnel Officer,

North-East Frontier Railway, (N.F.Rly),
Maligaon, Guwahati - 11,
Assam, Pin : 781 011.

3. The Divisional Railway Manager,

Katihar Division,
North-east Frontier Railway (N.F.Rly),
Katihar, Behar-854105.

4. The Divisional Railway Manager (Works),

Katihar Division,
North-east Frontier Railway (N.F.Rly),
Katihar, Behar - 854105.

5. The Sr. Divisional Personnel Officer,

Katihar Division,
North-east Frontier Railway (N.F.Rly),
Katihar, Behar - 854105.

..... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/196/2017

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

SMT. SUBHRA BANERJEE & ANOTHER
VS.
UNION OF INDIA & OTHERS
(N.F. Railway)

For the applicant : Mr. K. Chakraborty, counsel

For the respondents : Mr. B.L. Gangopadhyay, counsel

Heard on :27.03.2019

Order On : 05.04.2019

ORDER

The ld. counsels were heard and materials on record were perused.

2. This application has been filed by widow along with her daughter to seek employment assistance on compassionate ground in favour of that daughter.
3. The order impugned in the present O.A. reads as under:-

"N.F. RAILWAY

Office of the
DRM(P)/KIR

No. E/208/Court Cell/KIR/OA/1588/2014

Dated: 27.12.2016

Smt. Subhra Banerjee
W/o Late Jibon Kumar Banerjee C/o Ratan Kumar Mallick
At – Badal Nagar, Alipurduar Junction, P.O – Bholardabri
P.S + Distt. Alipurduar – 736123 (W.B)

**Sub: Compliance of order dated 09.02.2016 passed by the Hon'ble Central Administrative Tribunal, Calcutta Bench, Calcutta in OA No. 350/01588 of 2014.
(Smt. Subhra Banerjee & Anr. – Vs- Union of India & Ors.)**

In compliance of order dated 09.02.2016 passed by Hon'ble CAT/CAL in above mentioned case, the undersigned has gone through the original application No.350/ 01588 of 2014 along with its Annexure and relevant documents pertaining to the matter and observed as under :-

Late Jiban Kumar Banerjee, Ex. OS-I under DRM(W)/KIR died on 01.08.1999 while in service. His widow Smt. Subhra Banerjee applied for compassionate appointment in Group-C for herself vide her application dated 16.11.1999. Accordingly, her name was registered in Group-C under Pt-II of GRB. She was called to appear in the Group-C screening test and she failed to qualify for Group-C and finally approved for Group-D in the result published on 22.11.2000. Having known about her failure in Group-C screening, she applied on 06.02.2001 and 16.02.2001 for change of nomination in favour of her daughter Madhurima Bandhopadhyay. The request was not considered on the plea that change of nomination cannot be permitted having availed an opportunity of appearing in Group-C exam by one candidate. Accordingly, she was offered for Gr. 'D' vide this office letter no E/227/10/C(Rectt.)Pt.IV dated 24.05.2001. Instead of joining she kept on filing representation dt. 07.06.2001 for change of nomination. Again she was issued reply that this request cannot be considered. She was also asked to report within 10 days vide this office letter dated 06.07.2001 with intimation that if she fails to report, her offer will be treated as withdrawn. Despite this warning, she did not report and her name was deleted from the list of compassionate appointees vide letter dt. 25.07.2001. Once again she made representation to DRM/KIR on 02.08.2001. She was given another 15 days time by DRM/KIR to report vide this office letter dated 22.10.2001 but she did not report. In reference to GM(P)/MLG's L/No. 586E/81/1(W)KIR Pt.X dated 07.11.2003, the case was sent to HQ vide DRM(P)/KIR's L/No. E/227/Rectt/JKB/08/99/335/72/C dated 12.02.2004. GM(P)/MLG vide their L/No. 586E/81/1(W)/KIR Pt.X dated 24/30.06.2004 communicated that the case of compassionate appointment of Madhurima Banerjee, D/o Late Jiban Kumar Banerjee, Ex. OS/I under DRM(W)/KIR was put up to CPO/A who has agreed to the decision taken by DRM/KIR. Consequently, the above case was treated as closed. After a long gap of about 10 years widow Smt. Subhra Banerjee & one Maumita Bandhopadhyay filed above court case (OA) which has been disposed of. In the said O.A. she says that due to marriage of Madhurima Banerjee, she applied for her younger daughter Maumita Bandopadhyay.

It is pertinent to mention that Miss Maumita Bandhopadhyay of above said O.A. is the second daughter of widow Smt. Subhra Banerjee and She (Smt. Subhra Banerjee) never applied before Railway Administration for compassionate ground appointment in favour of Miss Maumita Bandhopadhyay. She applied for Compassionate ground appointment in favour of her first daughter Madhurima Banerjee which was regretted. The applicant is relying on GM(P)/MLG's L/No. 586E/81/1(W)KIR Pt. XII dated 31.08.2010 which states, "the provision contained in the GM(P)/MLG's letter NO. 586E/81/0(W) Pt.I dated 16.07.1991 is hereby treated as cancelled. Henceforth, all past & future cases in regard to change of nomination should be dealt with by merit of each case and in terms of extant rules of Railway Board". In this connection, it is mentioned that applicant's case has already been decided long ago by DRM/KIR on 18.10.2001 and by CPO/A in the year 2004 having no merit in the instant case.

There is no substantial change in the merit of case as on date also. The Railway employee Late Jiban Kumar Banerjee expired on 01.08.99. Since then 17 years have elapsed. In a number of cases the Hon'ble Judiciary have held that "The object behind grant of compassionate ground appointment is to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

In this case, death occurred in 1999 and therefore crisis situation cannot be considered valid after lapse of 17 years. Wife of deceased employee is making frequent change in nomination for compassionate ground appointment. I do not find any additional aspect in her claim except that she has now claimed

B

compassionate ground appointment for her second daughter stating that her 1st daughter got married.

In view of the above claim of Smt. Subhra Banerjee wife of Late Jibin Kumar Banerjee for compassionate ground appointment in favour of her second daughter Miss Maumita Bandhopadhyay is regretted.

This disposes Hon'ble CAT/CAL's Order 09.02.16 passed in O.A. No. 350/01588 of 2014 (Smt. Subhra Benerjee & Anr. -Vs- Union of India & Ors.)

Sd/-
 (Manoj Kumar)
 Sr. Divisional Personnel Officer
 N.F. Railway, Katihar"

4. The order passed in the Original Application No.350/1588/2014 with M.A.350/403/2014 which led to issuance of the speaking order, is extracted as under:-

"3. The applicants, the widow and the daughter of the deceased employee Jibin Kumar Banerjee who died while in harness on 1.8.99, are aggrieved as by an order dt. 5.1.05 the widow's prayer for consideration for employment assistance in favour of applicant no.2 has been turned down. The order impugned is set out hereunder for clarity:

"The above case forwarded vide Boards letter under reference has been examined by this Railway: The factual position of the case is as under:

Late Jibin Kumar Banerjee Ex OS-I under DRM(W)/KIR expired on 1.8.99 while in service. His widow Smt. Subhra Banerjee applied for herself appointment on compassionate ground in Gr. 'C' category. Accordingly she appeared in the suitability test for Gr. 'C' category but she could not qualify in the said test and finally approved for Gr. D post. Knowing about her failure in Gr. C suitability test, she applied for change of nomination in favour of her daughter Smt. Madhurima Banerjee on 6.2.01. The request for change of nomination was not considered by DRM(P)/KIR as the candidate has already availed the opportunity of appearing in the suitability test and replied to the widow. Thereafter she was offered appointment in Gr. 'D' post vide DRM(P)/KIR vide letter No. E/227/10C/Rectt. Pt.IV dated 24.5.01 and asked to report for medical examination within 25.6.01.

Instead of joining she again applied for change of nomination. But the same has been rejected and replied. She was asked to report for her appointment in Gr. 'D' vide DRM(P)/KIR's letter No. E 227.Rectt. JKB/08/99/335 72C dated 6.7.01 by giving 10 days time. But she did not report.

She was given another 15 days time to report to the office of DRM(P)/KIR vide letter dated 22.10.01 but the widow did not report.

Since the widow has already been given adequate opportunities for her appointment but she did not report, her name was deleted from the waitlist of compassionate appointees.

The request for change of nomination for appointment of her daughter Smt. Madhurima Banerjee has not been considered by this Railway."

4. *The applicants with supporting medical certificates have satisfactorily proved that applicant No. 1 was not in a position to take up employment that was offered to her in Group 'D' category. She sought for consideration of her daughter. She preferred representations on 1.11.02 and 11.7.03 and appealed to the General Manager on 10.9.03. Her prayer seeking assistance in favour of her daughter was turned down on 5.1.05 by the CPO (Admn) for the General Manager. However, she was given a fresh chance vide letter dt. 11.6.09 by way of a suitability test for Group 'C' category.*

5. *It is evident that the respondents have applied a circular of 16.7.91 (Annexure A/17) to reject her prayer, while the circular was cancelled on 1.8.2010 (Annexure A/17) with retrospectivity. The later circular/letter dt. 1.5.2010 would read as under:*

*"Sub : Compassionate appointment – change of nomination
Ref : GM(P)/MLG's letter No. 586E/81/0(W) Pt.I dt. 17.7.91*

The provisions contained in the GM(P)/MLG's letter No. 586E/81/0(W) Pt.I dt. 17.7.91 is hereby treated as cancelled. Henceforth all past and future cases in regard to change of nomination should be dealt with by merit of each case and in terms of the extant rules of Railway Board.

This issues with the approval of CPO/A/NFR/Maligaon."

Further, it would be evident from the explicit provisions of RBE 3/09, that compassionate appointment cases could be considered upto 20 years from the date of the employee, as such the present case could not be dismissed on the ground of delay. The excerpts of RBE 3/09 whereof would be as under:

"in order to simplify procedure of appointments on compassionate grounds, Board have decided that in supersession of provisions contained in letter ibid, powers are delegated to DRMs/CSMs/HODs to consider compassionate appointment in favour of widow/widower or any ward of her/his choice in respect of case up to 20 years old from the date of death of the Railway employee. Further, wherever in individual cases of merit, it is considered that justification exists for extending consideration to cases where death of the ex-employee took place over 20 years ago, prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma as circulated vide Board's letter No E(NG)II/87/RC-1/143 dated 19.4.88."

(emphasis supplied)

6. *No existing instructions have been cited which would debar a consideration in favour of the daughter on the ground that the widow was considered, offered appointment but could not take up such appointment due to her ill health, the factum of her ill health remaining indisputed. Furthermore, if the widow is considered eligible and found deserving employment assistance, but her daughter who could be the bread winner for the family, is debarred, the very purpose of the policy of offering employment assistance on compassionate ground to the family of the deceased, would get frustrated. There is no rationale in depriving the daughter to act as a bread winner it has no nexus with the purpose sought to be achieved.*

7. *In support of his contention that the daughter deserved consideration, Id. Counsel for the applicant would place reliance on the decision of the Hon'ble High Court at Calcutta in Dipak Kr. Mondal –vs- State of West Bengal [(2013) 3 WBLR (CAL) 886] wherein the Hon'ble Court relied upon the decision rendered by Hon'ble Apex Court in case of Syed Khadim Hussain –vs- State of Bihar & Ors. [(2006) 9 SCC 195] that, if an application is made by the widow within a prescribed period, subsequent application by*

the ward upon attaining majority with requisite qualification could not be rejected and further upon the decision of the Division Bench of Hon'ble High Court at Calcutta in case of *Syed Iftikar Ali -vs- State of West Bengal* [(2011) 2 Cal HN (Cal) 17] that

"in view of the special fact that the widow of the deceased teacher claimed appointment on compassionate ground within the time limit and pending consideration of such claim the said widow surrendered her claim in favour of the appellant herein due to her ill health xxx xxx xxx the authorities concerned railed to consider, the claim of the widow of the deceased teacher for appointment on compassionate ground even though appropriate application/ representation was submitted by the said widow within the prescribed time limit."

The Hon'ble Court, in such a case where the widow surrendered her claim due to her ill health, in favour of her son who attained majority in the meanwhile, while her application was kept in "suspended animation", held

"that the Director of School Education, West Bengal, could not have dismissed the said application on the aforesaid grounds."

8. In the aforesaid backdrop I would condone the delay in filing of the OA, and allow the MA and further direct the authorities to consider the claim of applicant No.1 in favour of applicant No.2 in view of the observations made in the foregoing paras, within three months from the date of receipt of a copy of this order.

9. Accordingly the OA is disposed of. No order is passed as to costs."

5. The order passed by this Tribunal was affirmed by the Hon'ble High Court where the following order was issued:

"This petition has been preferred by the Railways contending that Respondent No.1, who was the widow of one Jiban Kumar Banerjee, has changed her stance with respect to the nominee for compassionate appointment every now and then.

There is no dispute that Jiban Kumar Banerjee died in harness. Respondent No.1 applied for being appointed in his place on compassionate grounds. However, her application to be appointed in Group 'C' was rejected and she was offered the job in Group-'D' post. Respondent No.1 did not accept the post instead requested that her eldest daughter be considered for compassionate appointment. Before that could be done the eldest daughter got married. Respondent No.1, therefore, requested the Railway Authorities to consider the candidature of Moumita Bandopadhyay (Respondent No.2) for appointment on compassionate grounds. The candidature of Moumita Bandyopadhyay was rejected by an order dated 5th January, 2004.

The contention of Mr. Chaturvedi is that the Railways have issued a Circular that the candidature for appointment on compassionate grounds cannot be altered once a nomination has been submitted by the family of the employee, who died-in-harness. He, therefore, submitted that the Tribunal has committed an error by directing the petitioners to consider the claim of Respondent No.2.

Mr. Chakraborty, learned Counsel for the Respondents, on the other hand points out that the Respondents had annexed a Circular dated 1st August, 2010 in their original application which cancelled the earlier Circular of 16th July, 1991 whereby the nomination could not be changed. The Circular further stipulates that all past and future cases in regard to the change of nomination should be dealt with on merits and in terms of the Rules of the Railway Board.

Despite this Circular the Railways have ignored the same not only before the Tribunal but have unnecessarily filed this frivolous petition. We are surprised that the Railway Officers have instructed their Counsel to file such petition. The Tribunal in its impugned order has merely directed the Railways to remunerate the widow of Annexure No.2 in accordance with law.

In our opinion, this petition has been filed without reason and without considering the Railway Rules itself.

The petition is dismissed with costs, quantified as Rs.5,000/- which is payable to the Respondent No.1.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities as expeditiously as possible."

6. Ld. counsel for the respondents would submit that Hon'ble High Court did not consider the merits of the matter but on technical grounds dismissed the matter imposing cost. However a bare perusal of the order would reveal otherwise. The Hon'ble High Court duly took notice of the circular dated 1st August, 2010 and observed that "Despite this Circular the Railways have ignored the same not only before the Tribunal but have unnecessarily filed this frivolous petition."

6. It is noticed from the record that time and again the respondents have refused to apply the circular dated 1st August, 2010 which permits change of nomination whereas the earlier circular dated 16.07.1991 did not altogether debar change of nomination but restricted such concession only if the request was made within one year of son or daughter attaining the age of majority after the death or medical incapacitation. However, if at the time of death or medical incapacitation any unemployed son was eligible but the widow preferred to register her own name for appointment on compassionate ground, the change of nomination at a later date in favour of any other son or daughter was not permitted. Further, under no circumstances such change of nomination was permitted after the widow of the deceased employee was offered regular appointment. Such embargo was removed on 31.08.2010 by an order(Annexure A/17) which reads as under:-

"The provisions contained in the GM(p)/MLG's letter No.586E/81/0(W)Pt.I dated 16.7.91 is hereby treated as cancelled. Henceforth all past and future cases in regard to change of nomination should be dealt with by merit of each case and in terms of the extant rules of Railway Board.

This issue with the approval of CPO/A/NFR/Maligoon."

The subsequent order of 31.08.2010 did not explicitly spell out that a widow, provided with employment assistance, would not be permitted to change nomination in any event and under any circumstances, in absence of any clause as in the previous circular which too was cancelled vide subsequent circular.

7. In the present case, the applicant was offered job under Group 'D' category vide letter dated 24.05.2001 and was directed to report to the office within 30 days but before that, she preferred representations dated 29.01.2001 and 06.02.2001 to consider her eldest daughter Ms. Madhurima Bandyopadhyay for appointment. However, the representations dated 29.01.2001 and 06.02.2001 were never acted upon. As available in the records, it seems that the widow due to her ill health was unable to take up the employment and thus had nominated her daughter for the purpose. Since no relief was granted and meanwhile the eldest daughter, Madhurima Bandyopadhyay got married, the widow sought for change of nomination in favour of her youngest daughter Ms. Moumita Bandyopadhyay before the first representation seeking change of nomination was considered and rejected. This Tribunal in the earlier round had considered all the aspects of the matter that as a widow the applicant could seek change of nomination and even though it was a past case of 20 years old, her case would be considered in terms of explicit provisions of RBE 3 of 2009 which has been extracted in the order passed in the earlier round.

8. Having considered all the extant provisions and the decisions cited by the applicant permitting change of nomination by the widow, this Tribunal had directed the authorities to consider the claim of Applicant No.1 i.e. the widow for

appointment in favour of Applicant No.2. The respondents have assailed the order before the Hon'ble High Court but failed to get any relief whereafter they rejected the claim on the ground that the matter was already decided in the year 2004 and after a lapse of 17 years the crisis being long over the claim for the second daughter was not tenable. Therefore, every time in order to reject the case the respondents have made out all efforts to fish out new grounds which did not exist at the time of earlier rejection. The respondents, Senior Divisional Personnel Officer has observed in a speaking order that the applicant's case was decided in the year 2004 but failed to enclose a copy of the said rejection order while filing their reply in the instant matter. Had the case been rejected in the year 2004, such rejection would have lent a different complexion to the entire gamut of the claim. The widow could have preferred an application challenging the said rejection at the time when such rejection was made and communicated to her, instead she was prevented from challenging the rejection in an appropriate application.

9. In the aforesaid backdrop, the speaking order is quashed. The matter is remanded back to the said authority to delve into the provisions in terms of the earlier order passed by this Tribunal, the decision of the Hon'ble High Court and the relevant circulars operating in the field which no longer debars a change of nomination and issue appropriate order untrammelled by the earlier reason for rejection.

10. The O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)
Judicial Member