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OA 350/1006/2016

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

PARTICULAR OF THE APPLICANT:

Shri P. Srinivas Rao, son of late P. Nirmala, aged about 26 years, residing at C/O Laxmi Bai, Rly QTR. No. T/14. A-1, Unit 16, Traffic Gole Khole, P.O. & P.S. Kharagpur (Town), Dist. - Paschim Medinipur. 721301

..... APPLICANT

V E R S U S -

PARTICULARS OF THE RESPONDENTS:

- I) Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata 700043
- II) The Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata 700043
- III) The Divisional Railway Manager, South Eastern Railway, Kharagpur, Dist. Paschim Medinipur. 721301
- IV) The Divisional Personnel Officer-I, South Eastern Railway, Kharagpur, Dist. Paschim Medinipur. 721301

..... RESPONDENTS

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1006/2016

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

SHRI P. SRINIVAS RAO
VS.
UNION OF INDIA & ORS.(S.E. RAILWAY)

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

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

Heard on : 26.03.2019

Order On : 5.4.19.

ORDER

The applicant has sought for the following reliefs in this O.A.: -

"8.a) An Speaking Order dated 15.02.2016 issued by respondent no. 02 cannot be sustained and therefore the same may be quashed.

b) An order do issue directing the respondents to consider the case of the applicant for grant of an appointment of compassionate ground as he is declared as the son of the deceased employee by the competent court of law and grant him an appointment on compassionate ground.

2. The order impugned in the O.A. would read thus:-

"S.E. Railway

Office of the DRM(P)/KGP

No.E/Rectt/CG/25D/09/PSR

Dated: 18.3.2011

To
Sri P. Srinivas Rao
S/o Late P. Nirmala
C/o Laxmi Bai,
Qrs. No.T/14AI, Unit-16,
Traffic Gole Kholi(near Durga Mandir)
P.O. Kharagpur,
Dist : Paschim Medinipur.

Sub: Employment Assistance on compassionate ground in favour of Sri P. Srinivas Rao S/o Late x.Lab. P.Nirmala, ex. TWM under SMR/KGP

Your application for extending employment assistance on compassionate ground in your favour can not be considered since your bonafideness could not be established for the following reasons -

1. Late P. Nirmala got married with Sri P. Venkateswar Rao on 24.9.92 as per the Marriage Registration Certificate.
2. The date of birth of Sri Rao S/o Late P. Nirmala is 20.12.90 as per his School Certificate.

Hence, it is not a fit case to put up to competent authority for considering compassionate Appointment in favour of Sri. Srinivas Rao.

Sd/-
Asstt. Personnel Officer
S.E. Railway/Kharagpur"

3. The admitted facts that emerge from the pleadings are as under:-

The applicant has moved the instant application claiming to be the son of one deceased employee Late P. Nirmala, Ex.F/TWMSMR/KGP and has sought for employment assistance on compassionate ground.

As per office record, Late P. Nirmala before her marriage was known as Kumari Nirmala Mahankar. After her marriage with one Sri P. Venkataswera Rao she became known as P. Nirmala. In her life time P. Nirmala submitted her family composition as forwarded by SMR/KGP, as under:-

Sl.	Name	Relationship	Date of birth
1.	Smt. P. Nirmala	Self	01-09-1969
2.	Sri P. Venkataswera	Husband	27-02-1961
3.	P. Srinivas Rao	Son	20-11-1990
4.	P. Sujata	Daughter	25-03-1992
5.	P. Sumita	Daughter	25-11-1994
6.	P. Madhu	Son	14-11-1996

Her husband made an affidavit before a Notary Public, Eluru and confirmed the above particulars. He also stated that he re-married with P. Durga in the life time of 1st wife P. Nirmala and had two children out of the second marriage but he had no objection towards payment of the settlement dues, including the pension to the children of Late P. Nirmala and also grant of the compassionate appointment to the children of Late P. Nirmala. He also

mentioned that he had no objection if Smt. Laxmi Bai, the mother of the deceased employee acted as a natural guardian for the minor children and in this regard Smt. Laxmi Bai had obtained a natural guardianship certificate dated 11.02.2006 issued by the District Judge of Paschim Midnapur subject to furnishing a bond of Rs. One lakh as per provision of law.

As per medical identity card, it was seen that the date of birth of first two children was prior to the date of marriage of Late P. Nirmala, solemnised on 08.07.1992 as per marriage certificate issued by Marriage Registrar. Further that the employee, P. Nirmala was granted maternity leave twice on 05.06.1994 and 04.11.1996 respectively. However, Late P. Nirmala never intimated the administration about the second marriage of her husband, as such, the administration did not consider the compassionate appointment of Sri P. Srinivas Rao which was intimated to the applicant vide office letter dated 18.03.2011. The Railway administration moved before the Hon'ble District Judge, Paschim Midnapur.

In Other Appeal No.97/2015 against the judgment and order dated 31.03.2015 passed by the Court of Ld. Civil Judge (Junior Division) 2nd Court, Paschim Medinipur in Other Suit No.114/2011 that "the Ld. Court below has not observed rightly that the date of marriage of P. Nirmala with Mr. P. Venkteswar Rao was observed on 08.07.1992 whereas the date of birth of Respondent/Plaintiff on 20.12.1990." The court ordered as under:-

"The crux of the case lies on the fact whether Plaintiff is the son of P. Nirmala or not. To extract the same, let us turn our attention to the impugned Judgment and the document which was placed before the Ld. Court below for consideration.

The Exbt.3 the Voter's Identity Card in the name of P. Srinivas Rao indicates that his mother's name is P. Nirmala.

The medical treatment card standing in the name of P. Nirmala which was the subject matter of scrutiny before the Ld. Court below highlights that present Plaintiff/Respondent P. Srinivas is the son of P. Nirmala.

Pension Payment Order which has been marked as Exbt.4 highlights that P. Srinivas is the son of P. Nirmala.

The Co-worker Service Act VIII highlights that Plaintiff is the son of P. Nirmala.

Order of appointment or declaration u/s 7 of the Guardian and Wards Act VIII of 1890 i.e. Act VIII Case No.6/2006 in form No.(J)63 which has been marked as Exbt.8 also indicate that the present plaintiff/Respondent P. Srinivas is the son of P. Nirmala.

The document as furnished by Railway authorities also highlights that she was an employee of railway and was married to P. Venkteswar.

The Exbt.F, the Memo of Address to the Assistant Personnel Officer, South Eastern Railway, Kharagpur by Station Manager, South Eastern Railway, Kharagpur highlights that P. Srinivas was the elder son of P. Nirmala.

These documents indicate that the railway has admitted that the Plaintiff is the son of P. Nirmala. The question of bona fides of the Plaintiff, as raised by the Railway authorities is devoid of real spirit and meaning so far the present context of the suit is concerned. In the present suit the Plaintiff has called upon the Court by filing the suit with the prayer for declaration that he is the legitimate son of P. Nirmala and P. Venkteswar. It is not the domain of the railway to challenge such realm because the railway is concerned only the question "whether the Plaintiff is the son of P. Nirmala or not."

In the present dispute it is admitted by the Railway that P. Srinivas, the present Plaintiff, is the son of P. Nirmala. Section 115 of the Indian Evidence Act reflects as follows:-

"When one person has, his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or

proceeding between himself and such person or his representative to deny the truth of that thing."

In the present case, Railway by its previous act, has admitted P. Nirmala to be the mother of Plaintiff/Respondent and now by filing written statement, challenging and denying the same. The railway Authorities cannot be allowed to blow hot and cold at the same time.

On perusal of the documents, as highlighted by the railway authorities and the Plaintiff it is very much clear that Plaintiff is the biological son of P. Nirmala whereas the biological father of the present Plaintiff is P. Venkteswar Rao.

It is not the railway authorities to go for search when and how the Plaintiff was born as neither P. Venkteswar nor any other heir of P. Nirmala has challenged the legitimacy or parentage of Plaintiff. It has also not seen the day light that Plaintiff is not the biological son of P. Nirmala. In other words, the Defendant/Railway has passively admitted the Plaintiff to be the son of deceased P. Nirmala so far the observation of Ld.

Court below is concerned. I do not find any error either in the finding or on the point of law. The Ld. Court below has clearly and candidly observed all the matter in detail highlighting the documents which were placed before the Ld. Court below. The agitation in the form of appeal is baseless as the Assistant Personnel Officer has not authority to approbate or reprobate at the same time. At the time of grant of family pension they have admitted the Plaintiff to be the legitimate son of P. Nirmala and have been sending money to them and at the time of suit they are challenging that the Plaintiff is not their son on flimsy ground, which is not the subject matter of their look out. As Plaintiff is, no doubt, the son of P. Nirmala in other words, the appeal is devoid of merit as such this Court has no other alternative but to turn down the same.

Hence it is

ORDERED

the Other Appeal being No.97/2015 be and the same is dismissed on contest with cost of Rs.2000/-."

The applicant filed an O.A.No.1794/2015 which was disposed of on 16.12.2015 with the direction that the candidature of the applicant for

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compassionate appointment shall be considered on merit and as per the rules taking into consideration the Civil Court's decree also wherein the Railway also a party defendant within a period of three months from the date of receipt of a copy of the order. Sr. DPO/KGP, in compliance thereof passed a reasoned and speaking order on 15.02.2016. According to the respondents, *"the administration has already rejected the case of the applicant for his compassionate appointment on the ground of his date of birth being earlier of the date of marriage of his mother with Sri P. Venkataswer Rao. Furthermore, the case is now of 13 years old of the date of death of his mother. Hence, the compassionate appointment lacks its merit."*

4. Ld. counsel for the applicant would submit that having rejected the case once, on the ground of disputed date of marriage the railways can not turn around to deny the claim as a belated one, since despite holding all evidences in his favour, the applicant had to get it decreed from a Civil Court of Competent Jurisdiction about his status as the son of P. Nirmala and once it was decreed the Railways are trying to fish out new grounds to reject the claim. Whereas Ld. counsel for the respondents would vehemently defend the Railways' action.

5. Ld. counsels were heard and materials on record were perused. The declaration by the Civil Court would make it imperative for the Railways to consider the applicant as son of the deceased.

6. In view of the order passed in the earlier round asking the authorities to consider the case on the basis of merit and Civil Courts' orders, I direct the authorities to issue appropriate order on the basis of Civil Courts' declaration untrammelled by earlier reason for rejection, and issue fresh order by three months from the date of receipt of a copy of this order.

Accordingly the O.A. is disposed of. No costs.

(Bidisha Banerjee)
Judicial Member