

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHCIRCUIT BENCH AT RANCHIOA/051/00882/2018Date of Order:- 26 -Oct-2018**C O R A M**

HON'BLE MR. K.N.SHRIVASTAVA, MEMBER (ADMN.)

HON'BLE MR. JAYESH V.BHAIRAVIA, MEMBER (JUDL.)

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Vinay Kumar Vishwakarma, aged 30 years, S/o Late Ramawatar Vishwakarma, village-Ghordag, PO-Lamarika, PS-Kandi, District-Garhwa-822 120.Applicant.

By Advocate:- Mr. M.A.Khan.

Vs.

1. Union of India through the General Manager, East Central Railway, Hajipur-844 101 (Vaishali).
2. Chief Personnel Officer, East Central Railway, Hajipur-844 101 (Vaishali).
3. Divisional Railway Manager, East Central Railway, PO & PS-Dhanbad-826 001.
4. Sr. Divisional Personnel Officer, east Central Railway, PO & PS-Dhanbad-826 001.
5. Senior Section Engineer (W), East Central Railway, PO & PS-Barwadih, Garhwa-822 120.Respondents

By Advocate:- Mr. Prabhat Kumar, Standing Counsel.

O R D E R (ORAL)**Per K.N.Shrivastava, Member (Admn.):**

The applicant is elder son of late Ramavtar Vishwakarma from his second wife, namely Deomuni Devi. Late Ramavtar Vishwakarma was working as Carpenter at Barwadih Railway

Station, Dhanbad Division under E.C.Railway. He died in harness on 13.01.2013. The deceased employee is survived by two widows, one daughter from the first wife, Basumati Devi, and two sons (including the applicant) and a daughter from the second wife. The applicant has claimed compassionate appointment for which besides his biological mother, Basumati Devi (1st wife of the deceased Ramavtar Vishwakarma) has also given the consent. Apparently, his case for compassionate appointment was not considered by the Railway department on the ground that he is offspring from the second wife of the deceased. The applicant approached this Tribunal in OA 462 of 2018 which was disposed of vide order dated 24.05.2018 (Annexure-A.11) with liberty to the applicant to prefer a representation within 15 days and a direction to the respondents to dispose of such representation within three months thereafter.

2. Pursuant to the aforementioned order of the Tribunal, the applicant submitted a fresh representation. The respondents have rejected the representation vide impugned Annexure-A/12 order dated 11.09.2018. In the rejection order the respondents have relied on Annexure-A/8 circular dated 02.01.1992 of the Railway Board. Aggrieved by these, the applicant has approached this Tribunal praying for the following reliefs:-

“8(i) To quash the speaking order dated 11.09.2018 (Annexure-12)

(ii) To quash the circular dated 02.01.1992 (Annexure-8)

(iii) To quash the order dated 15.07.2016 (Annexure-7) wherein the benefit of compassionate appointment has been denied on the ground that applicant is son from second wife

and the same is not permissible as per circular dated 24.01.1992.

(iv) To direct the respondents to reconsider the case of the applicant for benefit of compassionate appointment in lieu of death of his father on 31.01.2013 while working as Carpenter posted under respondent no.5”

3. Heard Shri MA.Khan, learned counsel for the applicant. Issue notice. Shri Prabhat Kumar, learned Standing Counsel accepts notice on behalf of the respondents. Learned counsel for the applicant at the very outset submitted that Annexure-A/8 circular dated 02.01.1992 has been quashed and set-aside by the Hon’ble Calcutta High Court in the case of Namita Goldar & Ors. Vs. UOI & Ors. (WPCT 20 of 2009) and by the Hon’ble Jharkhand High Court in WP(S) No. 8087 of 2012 dated 16.08.2017. He thus argued that the stand taken by the respondents in the impugned Annexure-A/12 order is legally not sustainable. He further stated that Hon’ble Calcutta and Jharkhand High Courts have clearly ruled that offspring from the second wife of the deceased government servant would also be entitled for consideration for the compassionate appointment.

4. Shri Prabhat Kumar, learned counsel for the respondents submitted that in the Annexure-A/1 death certificate issued by the

Director of Statistics and Evaluation, Government of Jharkhand, the name of the deceased government servant has been shown as Ramavtar Sharma, whereas his name in the official records of the department is registered as Ramavtar Vishwakarma. He also contended that in the list of family members/dependents issued by Circle Officer, Majhion (Annexure-A/2), the name of the applicant is mentioned as Binay Kumar Sharma whereas in the Intermediate Examination Marksheet of the applicant issued by the Jharkhand Academic Council (Annexure-A/6), his name is mentioned as Binay Kumar Vishwakarma. Likewise, in the caste certificate issued by the State Government the applicant's name is mentioned as Binay Kumar Vishwakarma. He thus, argued that these contradictions would raise question mark on the credentials of the applicant. He, however, fairly agreed that Circular dated 02.01.1992 has been quashed and set-aside by this Tribunal and the order of the Tribunal has been duly affirmed by the Hon'ble Calcutta and Jharkhand High Courts.

5. We have considered the arguments of learned counsel for the parties and have gone through the pleadings in the OA. It is settled position that circular dated 02.01.1992 of the Railway

Board has been quashed and set-aside. In this regard we would like to reproduce the relevant extracts from the judgment in the case of Union of India vs. Md. Farid (WP(S) No. 1048 of 2010) passed by Jharkhand High Court:-

“.....As such the Railway Board is stopped from taking the advantage of the Circular No. 1/1992 dated 02.01.1992 arising out of Rule 21 of Railway Service (Conduct) Rules, 1966 in similar matters after it being quashed by Hon’ble Calcutta High Court in the case of Smt. Namita Goldar and another vs. Union of India and others. Resultantly we hold that the Central Administrative Tribunal has rightly decided the OA No. 212 of 2011(R) rejecting the contention of the Railway Board. We do not find any illegality or infirmity in the impugned order dated 04.05.2012 passed in OA No. 212 of 2011 (R) and as such, the writ petition merit dismissal.”

6. We, however, notice that the judgment dated 16.06.2017 of the Hon’ble Jharkhand High Court passed in WP No.8078 of 2012 has been challenged by the Railway Department in SLP Diary No. 23914 of 2018 on 02.07.2018. We have been informed by Shri Abhishek Kumar Dubey, learned Jr. Counsel to Mr. Mahesh Kumar Tiwary, learned counsel who is on the panel of Railway Department for Jharkhand High Court, that the Hon’ble Apex Court has stayed the judgment of Hon’ble Jharkhand High Court in WP(S)

No. 8078 of 2012. He has also furnished a copy of the order dated 05.10.2018 passed by the Hon'ble Apex Court in that regard.

7. In view of the above, we direct that the proceeding in this OA be closed with liberty to the applicant to seek its revival in case the judgment of the Hon'ble Jharkhand High Court survives in the Hon'ble Apex Court. The OA accordingly stands disposed of.

(Jayesh V.Bhairavia)
Member (Judl.)

(K.N.Shrivastava)
Member (Admn.)

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