

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. 350/01381/2015

Date of order: 22.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

1. Smt. Lakshi Paul,
Wife of Late Goutam Paul,
Worked as Shunter/Diesel/E.Railway,
Residing at Quarter No. 205/C, Segun Bagan,
Ranaghat, Nadia, Pin - 741 201.
2. Sri Subrata Paul,
Son of Late Goutam Paul,
Residing at Quarter No. 205/C, Segun Bagan,
Ranaghat, Nadia, Pin - 741201,
Unemployed Youth.

.. Applicants

- V E R S U S -

1. Union of India,
General Manager,
Eastern Railway,
N.S. Road,
Kolkata - 700 001.
2. The Divisional Railway Manager,
Eastern Railway, Sealdah Division,
Sealdah, Kolkata - 700 014.
3. The Sr. Divisional Personnel Officer,
Eastern Railway, Sealdah Division,
Sealdah, Kolkata - 700 014.

.. Respondents

For the Applicant : Mr. N. Roy, Counsel

For the Respondents : None

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard the Ld. Counsel for the applicant.

2. This O.A. has been filed seeking the following reliefs:-

"(a) To issue direction upon the respondent to consider the case of the applicant No. 2 on compassionate ground forthwith.

(b) To issue further direction upon the respondent to give compassionate appointment on compassionate ground to the Applicant No. 2 forthwith.

(c) To quash/cancel and/or set aside the impugned order dated 16.7.2015 passed by the Sr. DPO, E. Railway, Sealdah forthwith.

(d) To produce connected departmental record at the time of hearing of the case.

(e) Any other order or orders as the learned Tribunal deem fit and proper.

(f) Leave may be granted to file this joint application under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987."

3. The gist and kernel of the case of the applicants is that Shri Goutam Paul, a Shunter under the Railways died-in-harness leaving behind his legal heirs namely his widow the first applicant, and his son the second applicant. Their endeavour to get appointment for the second applicant on compassionate ground was faced with the reply as contained in Annexure 35, which is extracted hereunder for ready reference,

"

EASTERN RAILWAY

No. E/SCR-7541

Sealdah the 16 July, 2015-09-23

Sri Subrata Paul,
S/o. Lt. Goutam Pal,
Segun Bagan,
Rly. Qtr. No. 205/C,
Ranaghat, Dist. - Nadia,
Pin - 741201.

Sub: Compassionate ground appointment.

Ref.: Your appeal dated 18.2.2015.

Reference above, on scrutiny of your appeal for comp. ground appointment it appears that your deceased father Lt. Goutam Paul, Shunter/SSE(L)/RHA has married 2nd time with Smt. Lakshmi Paul though 1st wife Smt. Lakshmi Rani Paul is alive.

Son out of 2nd marriage is not entitled for compassionate ground appointment as per existing rules in the Railways.

Thus, your case has not been considered by the Competent Authority.

Hence it is regretted.

Sr. Divl. Personnel Officer/Sealdah
Eastern Railway"

4. Challenging and impugning the stand taken by the Railways this O.A. has been filed and the Ld. Counsel for the applicant would put forth his argument placing reliance on the decision of the Hon'ble Calcutta High Court in WPCT No. 24 of 2012 dated 27.4.2012. That as per Section 16 of the Hindu Marriage Act even a son born to an illegitimate wife is eligible for compassionate appointment.

5. At this juncture, we would to refer to the said judgment of the Hon'ble Calcutta High Court which, would point out that as per Section 16 of the Hindu Marriage Act an illegitimate son born through the second wife also could claim compassionate appointment. There should be an actual second marriage, valid in all respects except for the fact that it was invalid because of the subsistence of the first marriage. While holding so, we cannot lose sight of another judgment of Hon'ble Supreme Court in Vijaya Ukarda Athor (Athawale) vs. State of Maharashtra & Ors. (2015) 1 SCC (L&S) 603. An excerpt from it would run thus :

"9. The learned counsel for the respondent No.3 submitted that even though respondent No.3 is the son of a deceased employee out of second wedlock and illegitimate child, yet there is no denying the fact that he remains the son of deceased-Ukarda Athor and therefore, the respondent No.3 was entitled to the same treatment as is available to the child of first marriage. It was submitted that as the illegitimate son of the deceased the 3rd respondent is entitled to get appointment on compassionate ground subject to the fulfilment of certain criteria as laid down by the authorities and in consideration of the status of the respondent No.3 and the Policy Decision of the State Government, rightly respondent No.3 was given the appointment and the High Court rightly dismissed the writ

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petition and also the review application and the impugned orders warrant no interference.

10. We have carefully considered the rival contentions and perused the impugned order and other materials on record.

11. The fact that the appellant is the daughter through the first wife-Shantabai Athor and respondent No.3 is the son through the second wife-Kuntabai Athor of Late Ukarda Athor are not in dispute. Ukarda Athor died on 18.06.1997. According to the Page 77 appellant, her mother submitted an application dated 29.12.1997 stating that her daughter Vijaya Athor-appellant who is aged seventeen years and then a minor studying in 10th standard, should be given compassionate appointment when she attains majority. According to the appellant after she attained majority she has submitted another application on 19.03.1998, seeking compassionate appointment; but for quite sometime, the same was not considered by the authorities. The appellant was married in the year 2009.

12. The contention of the appellant is that her application for compassionate appointment was kept pending by the authorities without any justifiable reason. But according to the respondent No.2-Corporation, giving employment in government service on compassionate ground was then governed by "Government Resolution, General Administration Department, No. Comp.1093/2335/M.No.90/93/Eight, dated 26 October, 1994". As per the said Resolution only the unmarried daughter of the deceased would be eligible for the appointment as per Rules. Reliance is placed on clause (3)(a) of Government Resolution which reads as under:

"(3) (a). Husband/wife, son or unmarried daughter of the deceased/ prematurely retired government employee OR son/unmarried daughter lawfully adopted, before death/premature retirement, shall be deemed to be the relatives eligible to be appointed as per rules. Except Page 88 them, no other relative shall get the benefit under this scheme."

The State Government has taken a Policy Decision on 26.02.2013 and held that the married daughters are also entitled for compassionate appointment subject to certain conditions.

13. In our considered view, the questions viz.:

(i) the effect of "Government Resolution, General Administration Department, No. Comp. 1093/2335/M. No.90/93/Eight, dated 26.10.1994 and effect of Clause (3)(a);

(ii) the plea that the appellant submitted application on 29.12.1997 and 19.03.1998, that the same was not considered by the authorities for quite sometime;

(iii) at the time when the applications for compassionate appointment was considered in 2012 whether 3rd respondent was eligible to be considered;

(iv) the effect of subsequent policy decision dated 26.02.2013 taken by the State Government as per which the married daughter is also eligible to get compassionate

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appointment; and

(v) such other relevant questions which are to be examined.

In our considered view, instead of this Court examining the above questions, the matter is to be remitted back to the High Court for considering the above questions in the light of the facts and circumstances of the case.

14. In the result, the impugned Orders of the High Court in Page 99 Writ Petition No.1341 of 2013 dated 18.03.2013 and Review Application No. 511 of 2013 dated 22.11.2013 are set aside and the appeals are allowed and the matter is remitted back to the High Court for consideration of the matter afresh. The High Court shall give sufficient opportunity to the appellant and the respondents and consider the matter afresh expeditiously and in accordance with law."

A bare perusal of the said judgment of the Hon'ble Apex Court would indicate and exemplify, that the issue relating to granting of compassionate appointment to an illegitimate son, cannot be taken as the one no more re-integra. The Hon'ble Supreme Court remitted the case to the Hon'ble High Court of Bombay for considering the issue afresh. As such the issue decided by Hon'ble Calcutta Bench cannot be taken as no more res-integra. How this CAT, which is situated within the Calcutta High Court's jurisdiction should follow the Calcutta High Court's judgment to the effect, that even an illegitimate son under Section 16 of the Hindu Marriage Act is entitled to compassionate appointment. As of now as per the proposition of law obtaining in West Bengal the Railway authority has to consider in *strict sensu*, the eligibility of the second applicant to get compassionate appointment and if out of the two sons born to the deceased through his first wife, if any one is appointed on compassionate ground then the question of granting compassionate appointment to the second applicant would not arise, and it is for the Railway authority to consider on merits the claim of the second applicant. The aforesaid process shall be completed within a period of 3 months from the date of receipt of a

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copy of this order.

O.A is disposed of. No costs.

(JAYA DAS GUPTA)
ADMINISTRATIVE MEMBER

(G. RAJASURIA)
JUDICIAL MEMBER

SP