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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CALCUTTA BENCH  
KOLKATA

OA No. 350/01468/2014

Date of Order : 01/08/2016

*Present:*

*The Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member*

*The Hon'ble Ms Jaya Das Gupta, Administrative Member*

1. Pintu Nayak, son of Hemanta Kumar Nayak (Ex-KSI (H), KGP under SSE (C&W), KGP unemployed, residing at Village Tukuria, Post Office Gidni, PS. Jamboni, District Paschim Medinipur, Pin-721 505.
2. Smt. Habul Bala Nayak, wife of Hemanta Kumar Nayak (Ex. KSI (H), KGP under SSE (C&W) KGP, House wife, residing at Village Tukuria, Po. Gidhni, Ps. Jamboni, District Paschim Medinipur, Pin-721 505.

.....Applicant

*-Versus-*

1. Union of India service through the General Manager, South Eastern Railway, Garden Reach, Kolkata-700 043.
2. Divisional Railway Manager, South Eastern Railway, Kharagpur, Post Office and Police Station Kharagpur, District Paschim Medinipur, Pin-723101.
3. The Divisional Personnel Officer, South Eastern Railway, Kharagpur, Post Office and Police Station Kharagpur, District Paschim Medinipur, Pin-723101.

.....Respondents

For the Applicant : Mr. T.K.Biswas, Counsel

For the Respondents: Mr.A.K.Dutta, Counsel.

**ORDER**

**JUSTICE V.C.GUPTA, JM:**

With the consent of parties, this OA is taken up today for

hearing as pleadings are complete.

(Signature)

2. The short question that arises in this Original Application for our consideration is that if a person dies four days before retirement whether he shall be treated as dying in harness or not?

3. The Applicant No.2 (Shri Pintu Nayak) is the son of Hemanta Kumar Nayak and Late Hemanta Kumar Nayak was working as Khalasi under SSE (C&W), Kharagpur. The said Hemanta Kumar Nayak died before four days of his normal date of retirement on reaching the age of superannuation. The Respondents declined appointment in favour of Applicant No.1, on compassionate ground due to the fact that his father died just four days before his normal date of superannuation and, as such, there was no sudden financial crisis and that full retirement benefits, including monthly family pension, have been paid to the widow.

4. Reply has been filed by the Respondents in which it has been stated that as the full and final retiral benefits including monthly family pension have been paid to the family of the deceased and that the family could carry out their livelihood after the death of the employee there is no ground to provide appointment on compassionate ground in favour of applicant No.1. Accordingly, the Respondents have prayed for the dismissal of this OA.

5. The applicants have filed rejoinder denying the stand taken by the Respondents in their reply.

6. Heard and perused the records.



7. The learned counsel for the applicant pointed out that the Respondents are under obligation to pay the retirement benefits upon retirement of an employee but payment of retirement benefits cannot be a valid ground to deny the appointment on compassionate ground. Further it has been argued that in the scheme there is no such prohibition that appointment on compassionate ground cannot be granted to the legal heir of an employee merely because the employee concerned died before four days of his normal date of retirement. Accordingly, the learned counsel for the applicants has reiterated the relief sought in this OA.

8. On the other hand, the learned counsel appearing for the Respondents strongly and strenuously pointed out that the taking into consideration the retirement benefits and family pension granted to the family of the deceased employee it cannot be said that the financial condition of the family is such so as to be provided an appointment on compassionate ground to the applicant No.1.

9. Having heard the rival submissions of the respective parties we are of the considered view that the order is not sustainable at all on any of the grounds mentioned therein.

10. In so far as the death of the employee is concerned, if he dies during tenure of his service irrespective of the days left for normal date of superannuation, the legal heir would be entitled to the benefit of dying in harness by operation of law.

11. In so far as the second ground is concerned, it is not born out from record that the authority has made any detailed enquiry whether the pensionary and other retiral benefits would meet the sustenance of the livelihood of the whole family of deceased employee. The order denying appointment cannot be passed on conjecture and surmises and if it is so then it cannot be allowed to sustain as in the instant case. Hence we left with no option except to allow this OA.

12. Accordingly, the impugned order is set aside. The Respondents are directed to reconsider the case of the applicant No.1 for appointment on compassionate ground in accordance with law keeping in mind the observations made above within a period of three months and pass a speaking and reasoned order under intimation to the Applicants.

13. Accordingly, this OA stands disposed of. No costs.

(Ms.Jaya Das Gupta)  
Administrative Member

(Justice V.C.Gupta)  
Judicial Member