

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No.O.A.350/01045/2014
M.A.350/00081/2015

Date of order : 19.4.16

Present : Hon'ble Mrs. Urmita Dutta Sen, Judicial Member

O.A.350/01045/2014

Tinku Bhakta, daughter of
Late Bistupada Bhakta,
aged about 31 years, residing
at C/o. Mahadev Chandra Bera,
Village-Bhooyarah, P.O.Mugkalyan,
District-Howrah-711 312

.....Applicant

Vs.

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,
P.O. Kharagpur, District – Paschim
Midnapore, PIN – 721 301;
3. The Workshop Personnel Officer,
South Eastern Railway, Kharagpur,
P.O. Kharagpur, District – Paschim
Midnapore, PIN-721 301

.....Respondents

M.A.350/00081/2015

Netai Bhakta

Vs.

Union of India & Others
(S.E. Railway)

For the applicant : Mr.A.K. Majumdar, counsel(in O.A.)

Mr. N.D. Banerjee, counsel (in M.A.)

For the respondents : Ms. Gargi Roy, counsel

O R D E R

The O.A.No.350/01045/2014 has been filed by the applicant, Tinku Bhakta under

Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

Ms.

"a) Commanding the respondents and each of them to consider the appointment of the applicant on compassionate ground under died-in-harness category in place of her deceased father in terms of the observation and/or direction made by the Hon'ble High Court at Calcutta dated 03.7.2013 passed in W.P.C.T.No.252 of 2013 as contained in Annexure "A-5" herein.

b) Commanding the Respondents and each of them to revoke, cancel, withdraw and/or to forbear from giving any effect and/or further effect to the purported order dated 17.9.2013 as contained in Annexure "A-6" herein;

c) To certify and transmit all the records and documents in original before this Hon'ble Tribunal in connection with the claim of the applicant for appointment on compassionate ground under died-in-harness category;

d) Commanding the Respondents and each of them to produce the said purported order dated 17.9.2013 passed by the respondent no.3 herein for being quashed and/or set aside by this Hon'ble Tribunal;

e) Pass such other or further order or orders mandate or mandates, direction or mandates as may appear to be fit and proper."

2. Brief facts of the case of the applicant in the O.A. are as follows:-

The father of the applicant died in harness on 05.10.1994 leaving behind the following family members:-

<u>Sl.No.</u>	<u>Name</u>	<u>Relationship</u>
1.	Smt. Sandhya Rani Bhakta	Wife(since deceased)
2.	Sri Netai Bhakta	Son
3.	Sri Dilip Bhakta	Son
4.	Sri Shyamal Bhakta	Son
5.	Kumari Tinku Bhakta	Unmarried daughter
6.	Kumari Sharmistha Bhakta	Daughter (married)

As per the applicant, after death of the first wife, Smt.Bina Bhakta, the father of the applicant, Late Bistupada Bhakta married Smt. Sandhya Bhakta, who had received his Privident Fund dues and thereafter died on 05.04.2007. Although the father of the applicant died on 05.10.1994, no pensionary benefits were extended to the family as the eldest son of the deceased, Sri Netai Bhakta who is leaving separately along with his own family and not looking after his brothers and sisters, filed a suit before the Munsif Court at Midnapore praying for 1/5th share of the settlement dues of Late Bistupada Bhakta. Said suit bearing No.139/ of 1995 was dismissed declaring Late Sandhya Rani Bhakta as the wife of Late Bistupada Bhakta by declining 1/5th share of the settlement dues of Late Bistupada Bhakta. Though the eldest brother Sri Netai Bhakta was not looking after his brothers and sisters, he filed an application for appointment on compassionate ground on account of death of his father. The applicant in the O.A., Tinku Bhakta also filed a representation on 24.08.2009 to the respondent authorities praying for compassionate appointment (Annexure A-2). Her prayer was not considered by the respondent authorities and therefore she had filed O.A.No.1706 of 2009 seeking direction upon the respondents to grant her appointment on compassionate ground. The said O.A. was

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disposed of by this Tribunal vide order dated 25.01.2011 directing the respondents to take a decision within three months from the date of passing of the order(Annexure A-3). However, the respondents rejected the claim of the applicant in a speaking order dated 24.04.2011. The respondents rejected the claim of the applicant in a speaking order dated 24.04.2011. The applicant being aggrieved by the said order had filed another O.A.No.431/2011 before this Tribunal, which was dismissed vide order dated 08.04.2013. Against the said order of this Tribunal, the applicant filed a Writ Petition before the Hon'ble High Court at Calcutta bearing No.W.P.C.T.252 of 2013 and the Hon'ble High Court, Calcutta vide its dated 03.07.2013 observed that no objection Certificate from sons and daughter of the first wife was already submitted by the applicant and remanded back the matter to the Workshop Personnel Officer to review its earlier decision in terms of their observation, within a period of 4 weeks from the date of communication of the order.(Annexure A-5). The respondents vide their order dated 17.09.2013(Annexure A-6) rejected the claim of the applicant.

3. However, as per the applicant, as the Hon'ble High Court directed the respondents to review the case of the applicant in terms of their observation, therefore, the respondents cannot reopen the case afresh taking into consideration the point of delay in approaching the concerned authority. It has been further submitted that the eldest brother of the applicant, Sri Netai Bhakta had also filed an application challenging the impugned order dated 24.04.2011 denying the claim of compassionate appointment and prayed for grant of compassionate appointment in his favour, in O.A.No.795 of 2012 before this Tribunal, which was dismissed vide order dated 07.09.2012. Being aggrieved with Sri Netai Bhakta had filed a Writ Petition before the Hon'ble High Court, Calcutta being No.W.P.C.T.413 of 2012, which was also dismissed vide order dated 18.02.2013(Annexure A-4).

4. The respondents have filed their written statement wherein they have stated following :-

(a) The ex employee Sri Bistupada Bhakta expired on 05.10.1994 leaving behind Smt. Sandhya Rani Bhakta, the second wife, three major sons and two minor daughters from the first wife at that point of time. As per rule, widow is the first claimant for compassionate appointment and if she is not in a position to take appointment then as per wish of the widow the appointment is granted to son/daughter, subject to fulfillment of certain terms and conditions laid down by the Railway Board. Late Sandhya Rani Bhakta nominated her youngest son, Sri Shyamal Bhakta for appointment on compassionate ground in April, 1995 as he was most obedient and dutiful to her. However, due to some family disputes, Sri Netai Bhakta approached the Appellate Court at District Court, Midnapore and during pendency of the said case, the widow, Sandhya Rani Bhakta died on 05.04.2007.

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(b) It appears that the widow neither nominated Tinku Bhakta nor Netai Bhakta for compassionate appointment on account of death of her husband during her life time of long 13 years after the death of her husband. However, after 15 years from the death of the deceased employee both Tinku Bhakta and Netai Bhakta approached the respondent authorities seeking compassionate appointment. The applicant submitted representation to the respondent authorities on 24.08.2009 and without waiting for reply of the respondents for sufficient time, she approached this Tribunal by filing O.A.No.1706/2009.

(c) According to the respondents, Para 3(iii) of Railway Board's circular under Estt.Srl. No.58/1985 states that "in such cases, the competent authority should be satisfied about the bonafide of the request of the widow or if there is no surviving widow, of the family, that appointment should be given to a minor son (when he attains majority) instead of a daughter or an employed son who is already a major."(Annexure R-2). Moreover, S.E. Railway's circular under Estt. Srl. No.200/2000 (Annexure R-3) stipulates that:-

"The object of the scheme of providing appointment on compassionate grounds to an eligible dependent family member of a Railway employee, who dies in harness or is retired on being totally medically incapacitated is to relieve the dependent family members from financial distress caused by the death.

It is therefore, incumbent on the part of a person appointed on compassionate grounds to look after the other family members who were wholly dependent on the ex-employee for their sustenance....."

(d) Therefore, in terms of the above rule, the very object of compassionate appointment is to look after the entire family due to sudden demise of bread earner. In the instant case, it is noted that the applicant and other family members are living separately and no one is dependent on others. The other family members i.e. Sri Shyamal Bhakta and Dilip Bhakta are earning members and they are not dependant on the applicant, Tinku Bhakta or their brother Netai Bhakta. Moreover, the applicant is entitled to family pension till her marriage and is already getting the same. It is further submitted that as per the Hon'ble High Court's order, prayer of the applicant was further reviewed and regretted keeping in view all the circumstances and merit of the case as well as in the light of the instructions laid down in Railway Board's circulars in Estt. Srl. No.58/1985 and Estt. Srl.No.200/2000.

5. The applicant has filed rejoinder stating that the respondents have gone beyond the direction of the Hon'ble High Court while considering her case.

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6.(a) The M.A.350/00081/2015 has been filed by Netai Bhakta, brother of the applicant for addition of party wherein it has been stated that the applicant in the O.A. being married is claiming compassionate appointment, therefore, he should be a party to this O.A.

(b) The counsel for the applicant in the O.A. objects to the M.A. and submits that the prayer for compassionate appointment of the applicant has already been rejected by the Hon'ble High Court and subsequent review filed by Sri Netai Bhakta was also dismissed therefore, he does not have any claim on the same issue and he should not be made party to this O.A. Ld. counsel for the applicant in the M.A. submits that he has filed a review application against the order of the Hon'ble High Court, which is lying pending for decision.

7. I have heard Id. counsel for the parties and perused the records.

8. Since the issue of compassionate appointment in case of Netai Bhakta has already been rejected by the Hon'ble High Court vide order dated 18.02.2013 in W.P.C.T.413 of 2012(Annexure A-4) against which a review application was filed and dismissed by the Hon'ble High Court(however no document regarding review is found in the file) Therefore, he has no scope to be added as a party in this O.A. Accordingly the M.A. is rejected.

9. It is noted that according to the applicant, since the Hon'ble High Court had directed the Workshop Personnel Officer to review its earlier decision in terms of their observations, therefore, the respondents cannot reopen the case and consider the case of the applicant afresh on other grounds also. It is vehemently contended by the Id. counsel for the applicant that as the respondents never took the plea of delay in filing the application in earlier occasions, therefore, they cannot take such plea at this stage. As per the respondents, they had already raised the point of delay on earlier occasion, which would be evident from the recording of submissions in earlier order dated 08.04.2013 in O.A.No.431/2011 and reviewed the case in the light of the observations of the Hon'ble High Court taking into account all the facts and law relating to compassionate appointment. Moreover, the Hon'ble High Court had directed the respondents to review the earlier order in the light of their observation that the applicant had filed "No Objection Certificate" and given necessary undertaking to maintain all the dependent persons. It is noted that the Hon'ble High Court in the order dated 03.07.2013 had observed as follows:-

"This writ petition has been filed challenging the judgment and order dated 8th April, 2013 passed by the Central Administrative Tribunal, Calcutta Bench in O.A.431 of 2011 whereby the learned Tribunal rejected the claim of the petitioner for appointment on compassionate ground and dismissed the application accordingly.

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The learned Tribunal in the aforesaid impugned judgment and order dated 8th April, 2013 specifically observed that "the applicant has submitted no objection only from the sons/daughter of first marriage and not from the second marriage. The respondents have annexed with the reply the Railway Board circular dated 2.08.2000 circulated by Estt. Srl. No.200/2000. It provides for furnishing of undertaking to maintain all dependent persons and failure to do so after being given appointment would make them liable for disciplinary action."

Learned advocate representing the petitioner submits that there is no scope to obtain no objection certificate from the son/daughter of the second wife of the deceased employee since second wife had no issue. Furthermore, the second wife is also not alive.

It is not in dispute that the petitioner herein submitted no objection certificate from the sons and daughter of the first wife. The first wife is, admittedly, dead. In terms of the Railway Board Circular dated 2nd August, 2000 necessary undertaking to maintain all dependent persons has been furnished by the petitioner herein which has not been properly considered by the authorities concerned in its reasoned order dated 24th April, 2011.

The learned Tribunal in our opinion has also failed to take note of the aforesaid fact that the petitioner herein duly furnished undertaking in terms of the Railway Board Circular dated 2nd August, 2000.

In the aforesaid circumstances, we are unable to approve the decision of the learned Tribunal and the reasoned order passed by the Workshop Personnel Officer on 24th April, 2011.

Accordingly, we send the matter back to the Workshop Personnel Officer to review its earlier decision in terms of our aforesaid observation at an early date but positively within four weeks from the date of communication of this order.

In view of the aforesaid direction, the impugned judgment and order passed by the learned Tribunal cannot be sustained and the same is set aside.

This writ petition thus stands allowed.

There will be no order as to costs."

On a perusal of the above order, it transpires that the Hon'ble High Court had observed that the applicant had filed "No Objection Certificate" from the sons and daughters of the first wife and given the undertaking to maintain all dependent persons in terms of the Railway Board's letter dated 22.08.2000 under Estt. Srl. No. 200/2000, which was not taken into account while dismissing the O.A.431/2011 vide order dated 08.04.2013 and the respondents were directed to review the case of the applicant keeping in view the aforesaid two factual aspects. Therefore, It transpires that the applicant had filed No Objection Certificate as well as the undertaking to maintain all dependent persons. However, while considering the case on review, it appeared that there was no dependent family member to be looked after by the applicant, there was no indigenous condition and the applicant is the sole member of the family. Therefore, in totality, the respondents have rejected the case of the applicant.

10. Compassionate appointment is not a matter of right. The Hon'ble Apex Court in the case of *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138, observed inter alia :-

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"2. ...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be kept in mind:

- (i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.
- (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.
- (iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course.

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by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts." (Underlining added).

11. Law relating to compassionate appointment has been aptly summarized in the case of **State of Gujarat and Others vs. Arvindkumar T. Tiwari and Anr.** (2012) 9 SCC 545. The relevant portion of the said judgment is extracted as under"-

"8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide **Union of India Vs. Shashank Goswami**, (2012)11SCC307.

12.The court should, therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscience" and "equity". (Vide **State of J&K Vs. Shiv Ram Sharma**, (1999)3 SCC 653 and **Praveen Singh Vs. State of Punjab**, (2000)8 SCC633.)"

12. In the present case, the main point of consideration is whether the impugned order has been passed by the respondents taking into consideration all the factual aspects of the matter as well as in view of the settled law of the land. Admittedly, the father of the applicant died in the year 1994 and the mother of the applicant filed application for compassionate appointment in favour of her son, namely, Shyamal Bhakta. However, they never approached thereafter as Sri Shyamal Bhakta was in employment. However, the mother of the applicant died in 2007 and during her lifetime, she neither nominated the applicant in the O.A., Tinku Bhakta nor Sri Netai Bhakta for compassionate appointment and lived for long 13 years after death of her husband. After 15 years from the death of her father, the applicant approached the respondents for

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compassionate appointment. Therefore, the respondents have rightly rejected the claim of the applicant on the ground that there is no dependent family member of the deceased as per the Railway Board's orders and as per the settled principle of law that compassionate appointment is not a matter of right and such appointment is to be provided to enable the family of the deceased to tide over the sudden financial crisis, as would be evident from the judgments of the Hon'ble Supreme Court quoted above. The Hon'ble Supreme Court made it clear that the authorities should consider such claims of compassionate appointment as per the scheme without any undue delay and within a reasonable period of time. In the present case, the respondents have rejected the claim of the applicant vide order dated 17.09.2013(Annexure A-6), on the following grounds:-

"The very object of the appointment on compassionate ground is to mitigate the hardship of the family due to untimely death of the sole bread winner and to look after the family members who were wholly dependent of the ex-employee. In your case, it is seen that the other family members are not depending on you and are married except Sri Shyamal Bhakta. More over your father was expired on 05.10.1994 and you have approached the authorities for the first time on 24.08.2009. You and other family members were survived for more than 15 years without the compassionate appointment and the substantial crisis period is over.

In your case, it is observed that your brother Sri Dilip Bhakta and Sharmistha were married and not dependant on you. Your elder brother was also a married one and living separately and he is also not dependant on you. More over the settlement dues were paid unmarried daughter pension was sanctioned in favour of your younger sister Sharmistha Bhakta and she continue to draw F/pension till her marriage on 02.02.09 and the said pension was stopped after her marriage. You are the unmarried daughter left to be entitled to get F/pension after 25 years of age and pension forms have been received by you and it is under process and you are also entitled to get arrear of F/pension i.e. from 02.2.09 to till date.

Under the circumstances, it is observed that no family liability lies on you.

It is pertinent to mention here that during the life time of Smt. Sandhya Bhakta she never nominated you as bread winner of the ex-employee.

In this regard Railway Board's instructions contained in para 3(iii) of Estt. Srl. No.58/85 stipulates that "Further, in such cases, the competent authority should be satisfied about the bonafide of the request of the widow or if there is no surviving widow, of the family, that appointment should be given to a minor son (when he attains majority) instead of a daughter or an employed son who is already a major."

There is no reason to believe that the financial crisis exists in the family as the family could survive without the benefit of appointment on compassionate grounds for the last 15 years.

Keeping in view of the above, after review of your case, and in obedience to Hon'ble High Court/KOLKATA's order dtd.03.07.2013 in WPCT No.252/13, I have come to the conclusion that it is not a fit case for grant of compassionate appointment.

This disposes your case."

On a perusal of the aforesaid order, it appears that the respondents after considering the case of the applicant in totality have rightly come to the conclusion that it is not a fit case for appointment on compassionate ground, therefore, they rejected the case.

M.L.

13. In the above facts and circumstances and in view of the judgments of the Hon'ble Apex Court referred to supra, I do not find any reason to interfere with the decision of the respondents in this case. Accordingly the O.A. is dismissed. No cost.

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(Urmita Dutta Sen)
Judicial Member

s.b