

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. MA 350/00403/2014
OA 350/01588/2014

Date of order : 9.2.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

SMT SUBHRA BANERJEE & ANR.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.K.Chakraborty, counsel
For the respondents : Mr.B.L.Gangopadhyay, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Counsels are heard.

3. The applicants, the widow and the daughter of the deceased employee Jiban Kumar Banerjee who died while in harness on 1.8.99, are aggrieved as by an order dt. 5.1.05 the widow's prayer for consideration for employment assistance in favour of applicant No.2 has been turned down. The order impugned is set out hereunder for clarity :

"The above case forwarded vide Board's letter under reference has been examined by this Railway. The factual position of the case is as under :

Late Jiban Kumar Banerjee Ex OS-I under DRM(W)/KIR expired on 1.8.99 while in service. His widow Smt. Subhra Banerjee applied for herself appointment on compassionate ground in Gr. 'C' category. Accordingly she appeared in the suitability test for Gr. 'C' category but she could not qualify in the said test and finally approved for Gr. D post. Knowing about her failure in Gr. C suitability test, she applied for change of nomination in favour of her daughter Smt. Madhurima Banerjee on 6.2.01. The request for change of nomination was not considered by DRM(P)/KIR as the candidate has already availed the opportunity of appearing in the suitability test and replied to the widow. Thereafter she was offered appointment in Gr. 'D' post vide DRM(P)/KIR vide letter No. E/227/10C/Rectt.Pt.IV dated 24.5.01 and asked to report for medical examination within 25.6.01.

Instead of joining she again applied for change of nomination. But the same has been rejected and replied. She was asked to report for her

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appointment in Gr 'D' vide DRM(P)/KIR's letter No. E 227.Rectt. JKB/08/99/335 72C dated 6.7.01 by giving 10 days time. But she did not report.

She was given another 15 days time to report to the office of DRM(P)/KIR vide letter dated 22.10.01 but the widow did not report.

Since the widow has already been given adequate opportunities for her appointment but she did not report, her name was deleted from the waitlist of compassionate appointees.

The request for change of nomination for appointment of her daughter Smt. Madhurima Banerjee has not been considered by this Railway."

4. The applicants with supporting medical certificates have specifically urged that applicant No.1 was not in a position to take up employment that was offered to her in Group 'D' category. She sought for consideration of her daughter. She preferred representations on 1.11.02 and 11.7.03 and appealed to the General Manager on 10.9.03. Her prayer seeking assistance in favour of her daughter was turned down on 5.1.05 by the CPO (Admn) for the General Manager. However, she was given a fresh chance vide letter dt. 11.6.09 by way of a suitability test for Group 'C' category.

5. It is evident that the respondents have applied a circular of 16.7.91 (Annexure A/17) to reject her prayer, while the circular was cancelled on 1.8.,2010 (Annexure A/17) with retrospectivity. The later circular/letter dt. 1.8.2010 would read as under :

"Sub : Compassionate appointment - change of nomination
Ref : GM(P)/MLG's letter No. 586E/81/0(W) Pt.I dt. 17.7.91

The provisions contained in the GM(P)/MLG's letter No. 586E/81/0(W) Pt.I dt. 17.7.91 is hereby treated as cancelled. Henceforth all past and future cases in regard to change of nomination should be dealt with by merit of each case and in terms of the extant rules of Railway Board.

This issues with the approval of CPO/A/NFR/Maligaon."

Further, it would be evident from the explicit provisions of RBE 3/09, that compassionate appointment cases could be considered upto 20 years from the date of death of the employee, as such the present case could not be dismissed on the ground of delay. The excerpts of RBE 3/09 whereof would be as under :

"in order to simplify procedure of appointments on compassionate grounds, Board have decided that in supersession of provisions contained in letters ibid, powers are delegated to DRMs/CSMs/HODs to consider compassionate appointment in favour of widow/widower or any ward of her/his choice in respect of case up to 20 years old from the date

of death of the Railway employee. Further, wherever in individual cases of merit, it is considered that justification exists for extending consideration to cases where death of the ex-employee took place over 20 years ago, prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma as circulated vide Board's letter No E(NG)II/87/RC-1/143 dated 19.4.88." (emphasis supplied)

6. No existing instructions have been cited which would debar a consideration in favour of the daughter on the ground that the widow was considered, offered appointment but could not take up such appointment due to her ill health, the factum of her ill health remaining undisputed. Furthermore, if the widow is considered eligible and found deserving employment assistance, but her daughter who could be the bread winner for the family, is debarred, the very purpose of the policy of offering employment assistance on compassionate ground to the family of the deceased, would get frustrated. There is no rationale in depriving the daughter to act as a bread winner. It has no nexus with the purpose sought to be achieved.

7. In support of his contention that the daughter deserved consideration, Id. Counsel for the applicant would place reliance on the decision of the Hon'ble High Court at Calcutta in **Dipak Kr. Mondal -vs- State of West Bengal** [(2013) 3 WBLR (Cal) 886] wherein the Hon'ble Court relied upon the decision rendered by Hon'ble Apex Court in case of **Syed Khadim Hussain -vs- State of Bihar & Ors.** [(2006) 9 SCC 195] that, if an application is made by the widow within a prescribed period, subsequent application by the ward upon attaining majority with requisite qualification could not be rejected and further upon the decision of the Division Bench of Hon'ble High Court at Calcutta in case of **Syed Iftikar Ali -vs- State of West Bengal** [(2011) 2 Cal HN (Cal) 17] that

"in view of the special fact that the widow of the deceased teacher claimed appointment on compassionate ground within the time limit and pending consideration of such claim the said widow surrendered her claim in favour of the appellant herein due to her ill health xxx xxx xxx xxx the authorities concerned failed to consider, the claim of the widow of the deceased teacher for appointment on compassionate ground even though appropriate application/representation was submitted by the said widow within the prescribed time limit."

The Hon'ble Court, in such a case where the widow surrendered her claim due to her ill health, in favour of her son who attained majority in the meanwhile, while her application was kept in "suspended animation", held

"that the Director of School Education, West Bengal, could not have dismissed the said application on the aforesaid grounds."

8. In the aforesaid backdrop I would condone the delay in filing of the OA, and allow the MA and further direct the authorities to consider the claim of applicant No.1 in favour of applicant No.2 in view of the observations made in the foregoing paras, within three months from the date of receipt of a copy of this order.

9. Accordingly the OA is disposed of. No order is passed as to costs.

Bidisha Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

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