

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 350/00563/2014

Date of order : 15.2.16

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

JYOTSNA MUKHERJEE @ CHATTERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.N.C.Debnath, counsel

For the respondents : Mr.S.Banerjee, 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. This application has been filed seeking the following reliefs :

- a) The respondents may be directed to offer employment in Group 'D' post to the applicant in any office of the Eastern Railway office, Howrah.
- b) Direction may be given to the respondent No.2 to consider and dispose of the application made before them (Annexure A/6) to this application, which is pending before him within a short time.

3. Ld. Counsel for the respondents has opposed the relief on the ground that the OA is not maintainable being barred by principles of res judicata as in an earlier round seeking the same benefit the husband of the applicant had filed an application before this Tribunal which was withdrawn. The order passed on 18.11.04 is extracted hereunder :

"By the present MA 164/04 the legal heirs have prayed for substation of their names in place of Susanta Chaterjee, the original applicant who died on 10.1.04.

It is seen that in the OA the original applicant had sought for direction to given him regular appointment in Group 'D' post. That being the personal relief, the application abates. Learned counsel for the legal heirs state that family is eligible for pension. We find that the grant of family pension was not the subject matter of OA. Hence we refrain from making any comments thereon.

Therefore the present MA is not maintainable and accordingly same is rejected. No order as to costs."

The said order reveals that an application No. 462/99 was filed by Susanta Chatterjee, the employee, seeking appointment in Group 'D' category for holding temporary status, as per extant rules. During pendency of the application he passed away on 10.1.04. After his demise his widow preferred a Substitution Application being MA 164/04 and prayed for substitution as well as appointment on compassionate ground. Since the prayers in the OA were personal, the OA was dismissed and as family pension or compassionate appointment was not claimed in the OA, the MA was not found to be maintainable and accordingly dismissed.

4. In the present OA the applicant being the widow of the said deceased Susanta Chatterjee has sought for employment assistance in favour of herself as widow of the deceased employee. Therefore the question that would arise for consideration is whether the present OA by the widow would be maintainable in view of the relief claimed for or would be barred by principles of res judicata as pleaded by the Id. Counsel for the respondents and if so, whether she would be entitled to the relief prayed for.

5. I have heard both the Id. Counsels and perused the materials on record. I have given my anxious consideration to the materials on record.

6. Since the earlier OA was for a different relief, the present OA seeking compassionate appointment would evidently be not barred by principles of res judicata. Now the second question that requires to be answered is being a widow of a Railway servant (not regularised) whether the applicant would be entitled to any employment assistance on compassionate ground.

7. I have noticed that the applicant had relied upon a decision rendered by Hon'ble High Court in Calcutta in **WPCT 275/09 [2013 (3) CHN Cal 45]** where the Hon'ble High Court held in case of a casual worker who acquired a status of substitute that he would be entitled to all rights and privileges of temporary Railway servant upon completion of six months of continuous service, in view of IREC 2315 and family member of such employee would be entitled to pension upon completion of six months' continuous service of the employee, in view of Rule 2311 (3)(b) of IREC. The present applicant having not served as a

Substitute against a regular post, would not be considered as identically circumstanced and so the cited decision would not apply to the present fact situation.

8. It is noticed that in terms of Railway Board's circular dated 31.12.86 General Managers have been authorised to exercise their personal discretionary power for giving appointment on compassionate ground, to the wards or widows of casual labours having attained temporary status or substitutes or the wards of casual labour who died due to accident while on duty, in terms of order dated 4.5.84, 31.12.86 and 6.12.89.

9. Therefore the present OA is disposed of with a direction upon the authorities to consider the prayer of the widow, ascertain the status of the employee and pass appropriate reasoned and speaking order within three months from the date of receipt of the copy of this order.

10. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)  
MEMBER (J)

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