

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/01359/2014

Date of order : 14.1.2016

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

AVIJIT RAO

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chatterjee, counsel
Mr.S.K.Bhatta, counsel

For the respondents : Mr.P.Prasad, counsel
Ms.K.Ghosh Dey, counsel (Pvt. Resp.)

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) to direct upon the respondent No.2 and 3 to consider the case of the applicant, by considering judgment and decree passed on 22.7.13 in T.S.No. 89 of 2012;
- b) to direct the respondent No.2 and 3 to grant appointment under compassionate ground in favour of the applicant as he is the elder son of the respondent No.5 as per judgment and decree passed by the Learned Civil Court of Law;
- c) to direct upon the respondent No. 2 and 3 not to give any effect or further effect of the letter dated 27.6.11 issued by the respondent No.2 and 4 due to judgment and decree passed by the Learned Civil Court of Law.

3. The said Title Suit on the basis of which the relief has been claimed was filed by M. Trinidha Rao impleading Avijit Mukherjee and Sumitra Chatterjee as defendants seeking a declaration that the plaintiff is not the father of the defendant No.1 rather he has been begotten by defendant No.2 from other person. Further claim was made restraining or prohibiting defendant No.1 from claiming himself as son of plaintiff as also the service as son of plaintiff. The said Suit TS 8/12 was dismissed on 29.7.13 on contest with cost against the defendants. The present applicant Avijit Rao, defendant No.1 in the said Suit

has therefore sought for appointment on compassionate ground as elder son of respondent No.5 M. Trinidha Rao, the plaintiff in the said Suit.

4. On the contrary respondent No.5, M.Trinidha Rao, has claimed that he filed Matrimonial Suit No. 64/99 u/S 13 of Hindu Marriage Act, 1955 against Smt. Sumitra Rao, the mother of the present applicant, on the ground of desertion, adultery and cruelty and obtained an ex parte decree of divorce on 20.3.01. The said Sumitra Rao after 08 (eight) years filed Miscellaneous Case No. 2/09 before the District Judge, Purulia for setting aside the ex parte decree, along with a Section 5 application. It was summarily rejected on 26.6.12.

Further the respondent No.5 has claimed that Avijit was begotten out of the illicit relation of Sumitra Rao with her present husband Ranjit Mukherjee and further that Sumitra Rao had filed an application for maintenance being Miscellaneous Case No. 01/81 against him wherein she prayed for maintenance of herself and her minor daughter, therefore without making any claim for any son born out of their wedlock.

Further that OA 2032/10 (Avijit Rao & Anr.) was moved by the applicant and his mother Sumitra Mukherjee without impleading M.Trinidha Rao and in the OA they obtained an order on 13.11.10 which they assailed before the Hon'ble High Court of Calcutta in WPCT 123/11 wherein a direction was given to the petitioners to approach Civil Court to resolve their controversy inter se before approaching the Railway Authorities for compassionate appointment and the Railways were directed not to consider any one of them. The order of the Tribunal was kept in abeyance till the disposal from the competent Civil Court was placed before the Railways.

5. Challenging the judgment and decree dated 29.7.13 passed by Civil Judge, Sr. Division Purulia in Title Suit No. 8/12 M. Trinidha Rao filed Title Appeal TA 79/14 before the Court of District Judge at Purulia which is pending and therefore he has prayed that during pendency of such Title Appeal the applicant would not be entitled to any relief.

6. The reply filed by the official respondents would disclose that the employee M. Trinidha Rao was medically de-categorised on 11.7.06 and sought for voluntary retirement from Railway service which was accepted on 20.9.10. As per Railway Rules he further sought for employment assistance on compassionate ground for his son M. Prasad Rao who was a minor at the material time. In the meantime Sumira Rao claiming to be the legal wife of the employee M. Trinidha Rao submitted application on 9.7.08 seeking retiral benefits and employment assistance for her son Avijit Rao, on compassionate ground and as per family composition declaration submitted by M. Trinidha Rao, Sumitra Rao and Avijit Rao were not declared as legal heirs. The official respondents have therefore sought for dismissal of the OA on the ground that the applicant has failed to substantiate the fact that he is the son of the employee.

7. I have heard Id. Counsel for the parties and perused the materials on record. I have given my anxious consideration to the same.

8. The Civil Court declaration in favour of any of the parties have not emerged clear. Therefore, in view of the decisions of the Hon'ble High Court in WPCT 123/11 directing M. Trinidha Rao who had approached Civil Court to resolve the controversy inter se, unless the said controversy was completely and finally resolved by a competent Court of Law the Railways are bound to strictly follow the judgment of the Hon'ble High Court i.e. not to consider any of the claimants for compassionate appointment which would equally bind this Tribunal.

9. Accordingly the OA is disposed of with a direction upon the parties to obtain necessary declaration from Civil Court and upon the respondents to act in accordance with the direction of the Hon'ble High Court.

10. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)