

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

O.A. 1318 of 2017

**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

1. Smt. Buchi Devi @ Buchi Goala,
Wife of Late Krishna,
Aged about 54 years,
By occupation House-wife,
Residing at Vill-& P.O. Fakiragram,
District Kokrajhar, Assam – 783345.

2. Ms. Lilabati Debi @ Lila Goala,
Daughter of Late Krishna Goala,
Aged about 28 years,
By occupation unemployed,
Residing at Vill & P.O. Fakiragram,
District Kokrajhar, Assam – 783345.

..... Applicants.

Versus

1. Union of India,
Through the General Manager,
North-East Frontier Railway
Maligaon Guwahati-II,
Assam – 781 011.

2. The Chief Personnel Officer,
North-East Frontier Railway
Maligaon Guwahati-II,
Assam – 781 011.

3. The Divisional Railway Manager,
Alipurduar Junction Division, Alipurduar,
North-East Frontier Railway,
P.O. & Dist – Alipurduar – 736 121.

4. The Sr. Divisional Personnel Officer-Incharge,
Alipurduar Junction Division, Alipurduar,
North-East Frontier Railway,
P.O. & Dist Alipurduar – 736 121.

5. The Senior Section Engineer,

Permanent Way, Fakiragram,
North-East Frontier Railway Fakiragram,
Alipurduar Junction Division,
District Kakrajhar,
Assam – 783 345.

..... Respondents.

For the applicant : Mr. K. Chakraborty, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Reserved on : 09.09.2019

Date of Order : 8.11.19

ORDER

Per : Bidisha Banerjee, Judicial Member

This application has been preferred by a widow and a daughter of deceased Rly. employee, to seek the following reliefs:

"8.A) To file and prosecute this application jointly under Rule 4(5)(a) of the R.T. (procedure) Rules, 1987 since both the applicants have prayed for the same and similar relief arising out of same cause of action.

B) Do issue mandate upon the respondents, their men and agents and each of them to forthwith consider and decide the prayer of the applicants for compassionate appointment for the applicants no. 2 on changing nomination of/by the applicant no. 1 in favour of the applicant no. 2 forthwith and on such consideration, compassionate appointment to the applicant no. 2 forthwith.

C) Do issue mandate upon the respondents, their men and agents and each of them to forthwith Certify and transmit all the papers and documents in connection with the instant lis before this Learned Tribunal for kind perusal of the same and on such kind perusal do conscionable justice for the applicants;

D) Grant cost of this proceeding in favour of the applicants;

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

2. The admitted facts that could be culled out from the pleadings of the parties in this O.A., are as under:

Late Krishna husband of applicant no 1 while working in the capacity of Sr Gang Man under SSE/P-Way/FKM died in harness on 10.05.03 while in service. On 20.06.2003

applicant, Smt Buchi Devi, applied for employment assistance on compassionate ground in her favour for erstwhile Group 'D' post.

Her prayer was registered with the approval of competent authority. Her medical examination was conducted and she was called to appear for physical efficiency test on 29.06.2004. On being found fit in all respect she was offered compassionate appointment against a post of trackman, on 20.07.2004 [Annexure as R-1] but she did not accept the offered job.

On 04.03.2005, after 8 months she submitted an appeal stating her inability to work as Gang Man and wanted to be posted as Khalasi. In that appeal she also requested to appoint her un-married daughter Miss Lilabati Kumari on her attaining 18 years of age.

In terms of GM (P)/MLG's circular No.586E/81/O(W) Pt.1. dated: 16.07.1991, competent authority (Sr. DPO/APDJ) that her regretted for change of nomination of CGA could not be considered. He also ordered that the post of S/Cleaner in medical or C&W (Mech) be offered to her and in case she did not accept the offer within one month, her name be deleted from the wait list of CGA.

Accordingly views of competent authority was communicated to Buchi Devi on 25.08.2005 (R-2) but she did not turn up to join the post as offered to her within the stipulated period of time.

After remaining silent for almost six years Smt Buchi Devi on 21.05.2011 once again submitted an application for CGA in favour of her un-married daughter Miss Lila Goala for Group 'D' post, with educational qualification @class IX passed.

Meanwhile, in terms of GM (P)/MLG's circular No.586E/81/1 (W)/KIR/Pt.XII. dated 31.08.2010, the provision contained in GM (P)/MLG's earlier circular No.586E/81/O(W) Pt.1 dated. 16.07.1991, was treated as cancelled with advise that 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 extant rules of Railway board.

Accordingly based on the above circular, appeal of Buchi Devi (Applicant No. 1), submitted on 21.05.2011 for re-examination of the case and consideration for appointment in favour of her daughter was processed. But the competent authority didn't agreed to re-open the case, since the case has already being finalized on 25.08.2005 and was informed to Smt Buchi Devi.

3. The applicants have assailed the rejection on the ground that the respondents have deviated from extant rules and acted illegally.

4. The respondents have refuted such allegation and dispelled the claim for employee assistance, of applicant No. 1 for applicant No. 2, primarily due to the following reasons, that

(i) She did not come forward to join the allotted post twice.

(ii) There was no valid ground to re-open the case, further as per the Judgement of the Apex Court in Umesh Kumar Nagpal vs State of Haryana and others (1994) 4 Sec 138, "Compassionate appointment cannot be granted after lapse of a reasonable period which must be specified in the rule. The consideration for such employment is not a

vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread winner the compassionate employment cannot be claimed and offered whatever the laps of time and after the crisis is over".

(iii) Offer of appointment in her favour was also issued but she did not join the offered job, which indicated that she did not have any financial crisis; and

(iv) she is also in receipt of family pension."

5. Ld. Counsel for the applicant would vociferously submit that change of nomination of widow in favour of her daughter was permissible in view of the decision of this Tribunal rendered in O.A. 1588 of 2014, that was upheld in WPCT 193/2016.

6. We heard the Ld. Counsels and perused the materials on record.

7. We would note that in fact the applicant was offered appointment twice, but she failed to join.

However, the reason for rejecting her prayer for change of nomination in favour of her daughter is not forthcoming.

8. The circular dated 16-7-91, that allegedly debars change of nomination would explicitly spell out the following; as extracted hereunder with supplied emphasis for clarity:

"Northeast Frontier Railway.

No.586E/81/O(W)Pt.I

Office of the
General Manager (P)
Maligaon, dated 16-7-91

To: DPMs/N.F. Railway,

Sub:- Compassionate appointment – Change of nomination.

Clarifications have been sought by the Divisions in regard to change of nomination for compassionate apptt: from the widows/wives of deceased/medically incapacitated railway employees. ON consideration of various requests and keeping in view the extent instructions/rules on the subject, the following guidelines are issued.

2. Admissibility of only one compassionate appointment for every case of death/medically incapacitation will be the guiding principle in accepting the requests for the change of nomination.
3. Relaxation of Time limits upto 5 years at the Divisional level, upto 10 years at the zonal level with the prior approval of General Manager and beyond 10 years with the prior approval of Railway Board from the date of death/medical incapacitation would be applicable in these cases.
4. The change of nomination for the son/daughter should be accepted only if the request is made within (not legible) son/daughter attaining the age of majority. At the time of death/medical incapacitation, if any unemployed son is eligible for compassionate appointment but the widows/ wives preferred to register her own name for appointment on compassionate grounds, the change of nomination at a later date in favour of any other son/daughter should not be accepted.
5. In case, where the widows/wives have got herself registered initially for compassionate appointment and they have been given seasonal appointment, their requests for change of nomination may be accepted after ensuring that there is no possibility of their being/ a regular appointment in the near future with a clear undertaking in writing from them that they would not claim regularisation of their casual service nor they would claim for engagement for seasonal appointment in future. The date of registration in such cases would, however, be with prospective affect i.e., the date they made a request for change of nomination and not from the date of death/medical incapacitation.
6. In cases where the widows/wives have not been given seasonal appointment, change of nomination would not alter their date of initial registration provided the normal procedure for approval of such appointment is taken as mentioned in para 3 above.
7. Under no circumstances, the change of nomination must be accepted after the widows/wives of the deceased/medically incapacitated employees offered regular appointment."

Sd/-
(M.K. Srivastava)
Chief Personnel Officer (Admn)
For General Manager (P)"

9. We note that the said circular of 1991, was cancelled vide Circular dated 31.8.2010, prospectively, with notings as under:

"Sub: Compassionate appointment – change of nomination.

Ref: GM(P)/MLG's letter No.586E/81/O(W) Pt. I dated 16.7.91.

The provision contained in the GM(P)/MLG's letter No. 586E/81/O(W)Pt. I dated 16.7.91 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 extant rules of Railway Board.

This issue with the approval of CPO/A/NFR/Maligon."

10. In the aforesaid backdrop in order to find out whether the applicant was even offered a regular appointment we would discern that the applicant was offered appointment against a temporary post of Trackman in 2004 (R-1) with following terms as extracted hereinbelow from the offer of appointment:

"On your written declaration to accept the post on Track Man. I am prepared to after you a post in above usual dearness allowances subject to your passing the prescribed medical examination by and authorised officer of any of the Indian Rlys. and on production of your original certificate in support of your qualification and satisfactory proof in support of your age, such as school leaving Certificate from head master.

It must be clearly understood that appointment is terminal on days notice on either said except no such notices is required if the termination of service is due to this expiry of the sanction to the post you held or on return to duty of the absentee in whose place you may be engage, in which case your service will be automatically terminable from the date of expiry of the sanction or from the date from resume his duty as the case may be also no such notices will be required if the termination of service is due to your mental or physical incapacity or to your removal or demised as a disciplinary measure after (not legible) with the provision of clause-II on Article 311 of the constitution of India.

You will not be eligible for any pension or benefit the state Railway provident fund or Gratuity rules or to any absentee allowance beyond those admissible to temporary employee under the rules in force from time to time during such temporary service."

The terms of offer, therefore clearly and unambiguously spelt out and manifested that it was not a regular one but a temporary appointment, terminable at the sweet will of the respondents, as if the incumbent resumed his duty, upon expiry of sanction. The applicant would also not be eligible for pension gratuity etc.

Therefore, the clause (7) of the circular dt. 16.7.91 stipulating an embargo that "under no circumstances, the change of nomination must be accepted after the widows/wives of the deceased/medically incapacitated employees offered regular appointment" have no manner of application in the present case.

11. In the aforesaid circumstances, neither the circular of 16.7.91 (supra) nor the present one in 31.8.2010 should stand in the way of acceptance of change of nomination, that was expressly permitted under '91 circular if the employment offered to the widow was not a regular one and has been made explicitly

permissible by virtue of the present circular of 31.8.2010 as on the basis of merit of each case admittedly and irrefutably permitting reopening of all post cases.

12. We note that the applicant, vide letter dt. 15.7.11 was informed as under:

"To,

Smt. Buchi Debi
W/o Lt. Krishna, Ex. Trackman/
SSE (P. Way)/FKM
Vill. & PO. Fakiragram,
Dist. Kokrajhar (Assam).

Sub :- Change of nomination for comp. ground appointment.

Ref:- Your application dt. 21.5.2011.

In your application dated 04.3.2005 the name of daughter has been furnished by you as Lilabati Kumari U/M daughter of Lt. Krishna, Ex. Gangman/FKM under SSE (P. Way)/FKM but your present application dated 21.5.2011, the name of your daughter has been mentioned as Lila Gowa which is different and confusing.

In view of the above, you are hereby asked to submit your clarification regarding the above discrepancy.

Sd/-
For DIVULG. MANAGER (P),
ALIPURDUAR JUCTION

The consideration therefore was kept alive until July 2011, when circular dated 31.8.2010 was already in force.

13. She duly replied on 30.1.13 enclosing an affidavit sworn in by her daughter on 28.1.13 that

" With due respect and humble submission I have the honour to inform you the Sir I had applied for appointment of my daughter named Miss Lila Gwala on dt 21-05-2011, but at that time my daughter name was recorded as Lilaboti Kumari in the previous application of 04-03-2005 for this reason I was asked to submit a clarification regarding mismatching of my daughter's name.

But after that appointment on compassionate ground on class VIII pass was closed for this reason I was failed to submit my clarification regarding mismatching of my daughter's name. now I have come to know that the appointment on compassionate ground on class VIII pass to give my clarification regarding mismatching of my daughter's name, that Sir I am sorry to say that my daughter name is recorded as Lilaboti Goala in the record but her actual name is Miss Lila Gwala as per her school record & document. In this regard an affidavit is enclosed herewith. That Sir, I want to inform for your kind perusal that, I have no other children except my only one daughter Lila Gwala.

So, therefore request you kind honour to grant my application of Dt. 21/05/11 for appointment of my daughter name Miss Lila Gwala on compassionate ground.

For this act of kindness I shall ever be remain grateful to you."

The request was followed by several reminders.

14. Finally vide communication dt. 5.9.13 she was informed as under:

"Smt Buchi Devi

*W/o Lt. Krishna
Sr. Trackman under SSE/PW/FKM
Vill.+ PO. Fakiragram,
Dist. Kokrajhar (Assam).*

*Sub: Compassionate ground appointment of Miss Lila Gwala
D/o.Lt.Krishna, ex-sr TrackMan/SSE/PW/FKM.*

Ref: your application dated 30.01.2013.

The prayer for change of nomination for compassionate ground appointment of your daughter is here by regretted by the competent authority.

This is for your information

*Sd/-
T. Kisen, APO/III/APD
For Divisional Railway Manager (P)
N.E. Railway/Alipurduar Junction"*

The respondents in their reply have categorically asserted and averred that the rejection was

"In terms of Rly Boards circular No.E(NG)II//98/RC-I/64.dated:31.05.2011(RBE-77/2011) para 4 in the order states that all those cases which have already been decided need not be re-opened further. Based on the above circular decision of the competent authority was communicated to the widow of the deceased railway employee vide office Letter No.WB/A/16/Gr'D'/Regn/BD/771 dated 05.09.2013 (Copy Annexed as R-3)."

Where as, as enumerated supra, until July 2011 the prayer for change of nomination was under active consideration, until July 2011 it was not a closed case.

15. In the aforesaid backdrop, when circular dated 31.8.10 permitted reopening matters of with request for change of nomination, respondents very

callously rejected the claim applying a subsequent circular which was bad. The circular has however not been furnished.

16. Under such circumstances we find it fit to remand the matter back to the authorities to reconsider the prayer for change of nomination as per Rules and to convey their decision to the applicant in the form of a reasoned and speaking order.

Let appropriate reasoned and speaking order be issued and communicated to the applicant by three months from the date of communication of this order.

No costs.

(Dr. N. Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

drh

