



CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

O.A. No. 350/01290/2016.

Date of Hearing : 18.11.2019      Date of Order : 19-11-19

**Hon'ble Mr Swarup Kumar Mishra, Judicial Member**

Smt Mona Devi, Wife of Late Laxmi Singh,  
Ex- Safaiwala at B.R. Singh Hospital,  
Under Eastern Railway,  
Presently residing at C/o S. Dutta,  
220/A Harish Street, Kolkata - 700 009.

.....Applicant

By Advocate : Mr P.C. Das & N. Roy

-Versus -

1. The Union of India through the  
General Manager, Eastern Railway,  
17, N.S. Road,  
Kolkata-700 001.
2. The Divisional Railway Manager,  
Eastern Railway,SDAH Division,  
Sealdah, Kolkata- 700 014.
3. The Senior Divisional Personnel Officer,  
Eastern Railway,SDAH Division,  
Sealdah, Kolkata- 700 014.
4. The Senior Divisional Operating Manager,  
Eastern Railway,SDAH Division,  
Sealdah, Kolkata- 700 014.
5. The Officer-in -Charge,  
Narkeldanga, P.S. Narkeldanga  
Kolkata.

.....Respondents

6. Sri Mahendra Singh,  
Son of Late Laxmi Singh, Porter,  
E. Rly. Sealdah,  
Residing at 220/A, Harish Street,  
Kolkata-700 009.

.....Private Respondent

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By Advocate Ms T. Das  
Mr S.K.Datta, Mr C. Sinha

**ORDER**

**MR SWARUP KUMAR MISHRA, MEMBER(J)**

The applicant approached this Tribunal praying for a direction upon the respondents to give compassionate appointment to the applicant and to terminate the services of the private respondent No.6.

2. The matter was heard by Division Bench and dissenting orders were given by both the Members. To decide the issue a Third Member Bench was constituted.

3. The Hon'ble Judicial Member while deciding the issue has given her finding as under :

"10. In the aforesaid backdrop weighing the extent of injury or prejudice likely to be suffered by the employee in the event his service is terminated, as against that of the widow mother who is already earning family pension and having noticed that the employed son in terms of his assurance to maintain the family of deceased has a legal right to continue to serve the railways and to earn his livelihood and owes a legal duty towards the entire family left behind by his deceased father, we dispose of the O.A. with a direction upon the respondents to undertake the following exercise:

To continue the son on usual terms after obtaining an undertaking from him to part with 30% of his gross salary in favour of his widow mother and her dependents, which amount shall be deducted from his salary month by month and every month, and deposited in favour of his mother to her account which account details to be supplied by her, and,

(2) to allow the widow mother as dependant of deceased father and her employed son, to reside at the railway Qtr. and share the accommodation so provided or to be provided to her employed younger son by virtue of his employment on compassionate ground; as also,

(3) to ensure that the son abides by the terms of such assurance.

(4) In the event of his failure to act in terms of the assurance, the railways shall have the liberty to act in accordance with law.

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Appropriate orders be issued within 2 months from the date of receipt of a copy of this orders.  
No costs."

4. On the other hand dissenting with the order passed by Hon'ble Judicial Member, the Hon'ble Administrative Member has given her findings, separately as under :

"7. In the instant matter, the applicant complained on 01.06.2015, followed by further reminders to the Respondent authorities. The dispute culminated to the extent of F.I.R.s from both sides: Such a situation cannot be said to have evolved from any peaceful and harmonious domestic situation when Respondent No.6 was taking due care of his dependent family members, particularly when he had himself reportedly filed an FIR/complaint against his widowed mother and ailing brother on 24.05.2015 at the local Narkeldanga P.S. Such animosity controverts the claim that Respondent No.6 was suitably discharging his role of the provider of his dependent family members.

8. Official Respondents have brought to record the fact that attempts have been made to counsel the warring family members, but to no avail. It is clear that counselling has failed and the family is in disarray. In this situation, we have, on one hand, the widow of the ex-employee, the primary claimant for compassionate appointment, and her ailing elder son being deprived of basic dignity to life despite being accorded protection from penury by the Rules provided for this purpose; on the other hand, we have Respondent No.6, who proposes to dole out charity to his widowed mother in the form of occasional monetary remittances, who has taken recourse to lodging complaints and FIRs at the instance of his immediate family, who was not a dependent of his late father and ex-employee. It is conclusively established that Respondent No.6 failed to maintain the dependents of his late father on whose account he has claimed the compassionate appointment and his appointment deserves to be terminated in terms of the Circulars dated 22.08.2000 (supra) and that dated 23.11.2001 (supra).

9. Accordingly, in terms of the facts as well as law, we are of the considered view that it is the widow of the ex-employee, namely the applicant, who should be offered compassionate appointment upon termination of appointment of her son as per rules.

The applicant will be responsible for maintaining the family of younger son until the latter finds his feet. The Respondents will strictly proceed according to their rules/administrative instructions in this regard, namely,

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administrative instructions dated 22.08.2000, 23.11.2001 and 08.04.2002 respectively.

10. With the above directions, the O.A. is allowed. There will be no orders on costs."

5. To resolve the differences of opinion between Hon'ble Members, the Hon'ble Chairman under Section 26 of Administrative Tribunals Act, 1985 referred the matter before the Third Member Bench. Accordingly the matter was heard today.

6. The private respondent No.6 i.e. the son of the deceased employee was given compassionate appointment vide order dated 03.09.2012. At the time of giving the said appointment one undertaking was given on 02.02.2012 by private respondent No.6 that he would suitably maintain the dependent family members. The said undertaking was taken in accordance with the Railway Circular No.CPO/SC/SA/Pol/Pt.IX dated 23.11.2001. The widow of the deceased employee is the mother of the private respondent No.6, who is the applicant in this case. She has made a complaint before the respondent that her younger son i.e. private respondent No.6 had neglected and tortured her and not maintaining the dependents properly. On the basis of such complaint show cause notice dated 19.07.2017 was issued by the respondent No.3 to the private respondent No.6. The respondent No.6 has submitted his reply on 15.11.2017. It was inter alia mentioned that it is case of the applicant that the respondents sat over the matter and did not take any action on the basis of her complaint after simply issuing the

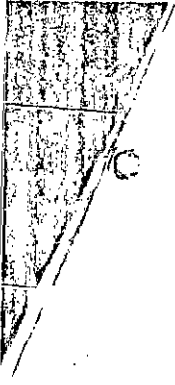
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show cause notice to him. Hence she approached the Tribunal in this case.


7. During pendency of the O.A steps were taken by the respondents for reconciliation of the matter. During the said process the matter was examined and she refused to take any monetary assistance from her son, private respondent No.6, as he failed to maintain her. A sum of Rs.2500/- was given by respondent No.6 to the applicant which was not accepted by her. It is also a point for determination whether the services of private respondent No.6 should be terminated on the ground that he is not properly maintaining the applicant i.e. his mother as well as other dependents. The applicant is now receiving monthly pension of Rs.8470/- and the private respondent No.6 is receiving gross salary of Rs. 26193/-.

8. The learned counsel for the private respondent No.6 has also placed emphasis on the answer given by the applicant to question No.13 and other answers to show that mother is not willing to take any financial assistance from her younger son. The detail background and circumstances in which the mother expressed that she is not willing to take any financial assistance from her younger son, have to be looked into. May be being sentimental or being aggrieved by the inaction of the private respondent No.6 in not maintaining her, she has stated during the steps taken for reconciliation that she is not willing to take any financial assistance.

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But that by itself will not show that she has given up her claim when she has come up with a prayer that services of her younger son should be terminated for not maintaining her properly. Whether the private respondent No.6 has failed to maintain her mother properly and other dependents of the deceased railway employee was to be decided by the respondents. After receiving show cause notice, reply from the younger son and after filing of this case and on reconciliation the private respondent No.6 agreed to pay 30% of his gross salary to his mother. In that view of the matter this Tribunal is of the opinion that stage did not come for the respondent to give any final finding on the basis of the show cause filed by the private respondent No.6 to decide as to whether it is proved that he has failed to properly maintain the mother and other dependents of the deceased employee and if by the said action or inaction of the private respondent No.6 he should be terminated from service. Since the reconciliation step was taken and the private respondent has agreed to pay 30% of his gross salary to his mother, therefore, I fully agree with the findings and directions given by the Hon'ble Judicial Member that to continue the son with an undertaking to pay 30% of his gross salary to his widow mother and other dependents and to allow the widow mother and other dependents to reside at the railway quarter and in the event of his failure to act in terms of the assurance, the railway shall have the liberty to act in accordance with law. With due respect, I am unable to concur with the directions given by Hon'ble Administrative Member that the

  
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services of the private respondent No.6 should be terminated as the finding in this regard was to be given by the concerned authorities i.e. the department of the respondents, only after it is proved that respondent No.6 has failed to properly maintain the applicant and other dependents of the family of deceased railway employee.

9. The Railway respondents being a model employer is naturally expected to see and ensure that the private respondent No.6 performs his legal and moral obligations by maintaining his mother i.e. applicant and other dependents of the deceased railway employee. They cannot sit silent over the matter and has to remain alert about the same from time to time.

10. In the above circumstances, I fully concur with the findings and directions given by Hon'ble Judicial Member.

The O.A is accordingly disposed of. No order as to costs.

( SWARUP KUMAR MISHRA ) 19-11-18  
JUDICIAL MEMBER

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