

20-11-14
O.A-350/619/2014
M.A-350/401/2015

LIBRARY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

OA No - 350/00/ /2014

1. Smt. Chinta Debi (Age 63 yrs.)

Wife of Late Jaynandan Ram

Ex-Bearer Railway Catering, Durgapur, E.Rly

Residing at Laxmipur Math,

Po.& Dist. Burdwan, Pin -

2. Sri Ramesh Mondal

Son of Late Jaynandan Ram

Ex Bearer, Rly Catering, Durgapur/ E. Rly

Residing at Laxmipur Math, Po. & Dt. Burdwan -

Applicants

- Versus -

1. Union of India

Service through the General Manager,

Eastern Railway, 17 N.S. Road, Kolkata - 700001

2. The Chief Commercial Manager

Eastern Railway, 3 K.G. Street, Kolkata - 700001

3. The Divisional Railway Manager,

Eastern Railway, Howrah - 712101

4. The Sr. Divisional Commercial Manager

Eastern Railway, Asansol, Pin -

Respondents

BB

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/619/2014

M.A.350/401/2015

Date of order : 20.11.19

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

1.SMT. CHINTA DEBI
2. SRI RAMESH MONDAL

VS.

UNION OF INDIA & OTHERS
(Eastern Railway)

For the applicant : Mr. A. Chakraborty, counsel
For the respondents : Mr. A.K. Guha, counsel

ORDER

Bidisha Banerjee, Judicial Member

This application has been filed by the widow and son of Late Jaynandan Ram, ex-Bearer, Railway Catering, Durgapur, Eastern Railway seeking the following reliefs:-

- "a) To pass order and or direction upon the respondent authorities as General Manager/E. Rly./Kolkata to consider the case of compassionate appointment of the applicant No.2 die in harness ground of the employee as Rly. Catering, Durgapore as per R.B's letter of instructions and guidelines dt.01.8.2000 and 18.1.2008 within a time framed;
- b) To pass such other further order/or orders as your Lordships may deem fit and proper;
- c) Leave may kindly be granted to file this case jointly under Rule 4(5)(a) of the CAT's Procedure Rule 1987."

2. Ld. counsels were heard and materials on record were perused.

3. The admitted facts that emanated from the pleadings are thus:-

Late Jaynandan Ram passed away on 10.10.1998 while in harness. The widow, namely, Chinta Devi preferred an application dated 23.04.99 for employment assistance on compassionate ground in favour of her 3rd son, Ramesh Mondal, the applicant No.2 herein which was forwarded by the Station Manager, Eastern Railway, Durgapur on 23.04.1999 for consideration. As per Board's letter dated 04.03.1999 communicated by Chief Personnel Officer, Eastern Railway, Calcutta's letter dated 18.03.1999, the minimum educational qualification for consideration of appointment on compassionate ground in Group 'D' category was fixed as Class VIII passed. Further Board's letter dated 01.08.2000 circulated by Chief Personnel Officer, Eastern Railway, Calcutta's letter dated 10.08.2000 provided that cases under scrutiny or process for compassionate appointment in Group 'D' category before issuance of Board's letter dated 04.03.1999 should be exempted from possessing the minimum educational qualification of Class VIII passed. Since the applicant No.2 Ramesh Mondal was illiterate at the material time and the application was made after issuance of Board's letter dated 04.03.1999, the prayer for employment assistance was found as not coming under the purview of rules relating to compassionate appointment due to lack of requisite educational qualification of Class VIII passed. Being aggrieved the applicants preferred O.A.No.410/2001 which was disposed of with a direction

upon the General Manager, Eastern Railway to consider the matter in the light of the instruction at para 3 of Board's letter dated 04.03.1999.

A speaking order was issued by the General Manager communicated vide letter dated 13.03.2002 where the General Manager opined that minimum educational qualification of Class VIII passed would apply in case of compassionate appointments and exemption would be available only for widows appointed against certain specified posts and, therefore, the son of the deceased (the applicant No.2 herein) was not considered suitable for exemption.

4. The respondents have stated that although the employee expired before 04.03.1999, the application submitted after 04.03.1999 was considered as "not under process" as on 04.03.1999 and, therefore, not ~~deserving an~~ entitled to exemption in terms of Board's letter dated 01.08.2000. The educational qualification of standard VIII was required to be possessed for compassionate appointment and although the General Manager was empowered to consider relaxation of minimum educational qualification, it was a discretionary power to be invoked only when considered absolutely necessary. The respondents have further stated that the family was paid all settlement dues and the widow was paid family pension, her two elder sons are employed and they should support the family. The applicants once again challenged the speaking order before this Tribunal in O.A. No.980/2002 which was dismissed for default on 28.09.2005. No application for restoration could be gathered from the records.

5. According to the respondents, the Railway Board's letter dated 28.02.1995 issued in the wake of Hon'ble Apex Court's judgment emphasizes that "only ground which can justify compassionate ground employment is the penurious condition of the deceased family. Compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. Compassionate ground appointment is not a vested right which can be exercised any time in the 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 lapse of time and after the crisis is over."

The respondents have averred that after a lapse of more than eight years from the decision in O.A.No.980/2002, this application, preferred by the applicants, was not maintainable.

6. At hearing, Id. counsel for the applicants would submit that the original application was preferred in 2014 after the applicant No.2 acquired the required qualification in 2011 and, therefore, it merited consideration, while on the other hand, Id. counsel for the respondents would submit that the application was hopelessly time barred and compassionate appointment was not a vested right which could be exercised any time in the future.

7. The learned counsel for the applicants would further submit that the speaking order which mentions of two sons of the deceased who are employed, were not maintaining the widow and the applicant No.2. They were living separately with their own family members and the

family pension of the widow was never sufficient to maintain herself and her unemployed 3rd son.

8. We considered the rival contentions. We would discern the following:-

- (i) The employee expired in the year 1998.
- (ii) His widow approached the authorities for employment assistance in 2001. The General Manager had rejected the prayer in 2002.
- (iii) In 2002, O.A.No.980 of 2002 was preferred assailing the General Manager's order.
- (iv) The O.A.No.980/2002 was dismissed by the Tribunal for default in 2005, no restoration application was preferred by the applicant. The applicants did not act until 2014.
- (v) The applicant No.2 acquired Class VIIIth standard qualification in 2011 i.e. long after introduction of the circular of 2000, but preferred an application only in 2014. There are umpteen no. of decisions of Hon'ble Apex Court that "Compassionate ground appointment is not a vested right which can be exercised any time in the 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 lapse of time and after the crisis is over." [Umesh Kumar Nagpal Vs. State of Haryana, 1994(4)SCC 138]
- (vi) Board's order No.E(NG)II/99/RC-1/SC/8 dated 01.08.2000 as contained in Annexure A/11 specifies as under(emphasis added for clarity):-

"Sub : Appointment on compassionate grounds in Group 'D' posts- Minimum educational qualification.

Attention is invited to Board's letter No.E(NG)II-/98/RC-1/139 dated 04.03.1999 laying down that the educational qualification of class VIIIth pass for appointment to Group 'D' will also apply to appointments on compassionate grounds. It had been further clarified vide Board's letter of even number dtd. 29.07.99, that candidates who have been approved for appointment on compassionate grounds prior to 4.3.99, could be exempted from possessing qualification of class VIIIth pass.

A demand has been tabled by the Staff Side in the JCM/DC(No.19/2000) seeking to exempt those persons, whose cases were under scrutiny or under process for compassionate appointment prior to 04.03.99 from possessing the minimum qualification of Eighth class.

The matter has been considered by the Board and it has been decided that further to Board's Letter dated 29.7.99 the cases which were under scrutiny or under process for compassionate appointment in Group 'D' before the issue of Board's letter of 04.03.99 should be exempted from possessing the minimum qualification of eighth pass."

(VII) The case of the applicant was indubitably not under consideration or scrutiny as on 04.03.1999.

(VIII) Since the widow had applied after 04.03.1999 she cannot seek an exemption due to the specific bar imposed by the Board's order dated 01.08.2000 as the matter was neither under scrutiny nor under process before issuance of Board's letter dated 04.03.1999.

9. In the aforesaid backdrop, the claim fails and the O.A. is dismissed. Consequently the M.A. also stands dismissed. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

sb

(Bidisha Banerjee)
Judicial Member

