

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2367 of 2015

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Anindita Mukherjee W/o Late Sukant Mukherjee Resident of 'Radha Rani Villa,'
Ram Krishna Patha, Dr. B. Bhattacharya Road, West Patel Nagar, Patna - 800023 (Bihar)

.... Petitioner/s

Versus

1. The Union of India through the General Manager, South East Central Railway, Bilaspur (Chhatishgarh)
2. The Divisional Railway Manager, South East Central Railway, Raipur
3. The Senior Divisional Personnel officer, South East Central Railway, Raipur
4. The Senior Divisional Commercial Manager, South East Central Railway, Raipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Kumar Singh, Advocate
Mr. Praveen Kumar, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha, Advocate
Mr. Yash Mathur, Advocate
Mr. Ashish Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 07-02-2017

Order dated 19.12.2011, Annexure-4 to the present writ application passed by the Senior Divisional Personnel Officer, S.E.C. Railway, Raipur became subject matter of challenge before the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 29 of 2012. Vide order dated 19.12.2011, the claim of the petitioner for compassionate appointment was rejected and even the Tribunal has dismissed the O.A. application on more or less identical consideration and reason, which was the basis of the rejection of the claim for



compassionate appointment.

2. From a reading of the impugned order dated 06.01.2015, Annexure-5 passed by the Central Administrative Tribunal, the conclusion reached has been crystallized in paragraph 5 of the order of the Tribunal, which reads as under:

“5. As per settled law, compassionate appointment is not a matter of right but can only be given to enable the family to tide over the financial crisis which it faces due to sudden death of the sole breadearner. In the instant case, admittedly the respondents have rejected the case of the applicant mainly on two grounds, namely, (i) the death of the employee due to harassment caused by the applicant, (ii) The applicant is having her own profession as well as no liability. However, the learned counsel for the applicant has vehemently objected to the contention of the respondents with regard to the allegation of harassment made by the applicant and the denial of compassionate appointment on that ground, but no submission has been made with regard to having her own separate profession and no liability.”

3. Submission of the counsel representing the petitioner that the Tribunal's decision on both the counts is erroneous, merits consideration. The first ground smacks of prejudice against the



petitioner on the ground that the husband had left a suicide note that because of the harassment caused by her, he committed suicide, as if that is the parameter under which claim of compassionate appointment is required to be considered and decided. Such consideration is unheard of. Both the Senior Divisional Personnel Officer as well as the Tribunal, therefore, became biased and have taken a decision on emotionality rather than rationality. The first ground for dismissal of the claim, therefore, is set aside.

4. The next ground is that the petitioner has her own profession. The Court is informed that she is enrolled as Lawyer and presumption thereafter has been drawn by the Tribunal that she must be doing well professionally, including monetarily. Therefore, an element of distress due to death of bread earner is missing, is based on certain conjectures and surmises.

5. Even in the counter affidavit filed on behalf of Respondent nos. 1 to 4 in the present writ application, this Court does not find any material or evidence to support the finding of the Central Administrative Tribunal or to support the decision of rejection by the railway-authorities.

6. The relationship between a husband and a wife is like a relationship between a Lawyer and a litigant. Many things are exchanged between such relationship, but the truth never travels



beyond them. Therefore, getting carried away on the fact of note of suicide left by the husband could be just one part of the story. The authorities have sympathized with the late husband, so has the Central Administrative Tribunal. To treat the petitioner as the cause, if not the accused, is a clear example of bias operating in the mind of the authorities as well as the Central Administrative Tribunal.

7. The Court, therefore, is inclined to quash the order passed by the Senior Divisional Personnel Officer, which is dated 19.12.2011, Annexure-4 as well as the order of the Tribunal dated 06.01.2015, Annexure-5 with clear direction that the reason for death of the husband of this petitioner is of no consequence and the same should not weigh in the mind of the decision making authorities. The objectivity required for compassionate appointment and the principles laid down for such appointment alone should be the reason for decision making.

8. Since there is no material and evidence with regard to the financial status and liability as such of the petitioner and the decision has been arrived at on mere conjecture, something more is required to be done by the decision making authority.

9. The writ application is allowed. Order dated 19.12.2011, Annexure-4 as well as order dated 06.01.2015, Annexure-5 passed by the Central Administrative Tribunal, Patna



Bench, Patna in O.A. No. 29 of 2012 are quashed. A direction is issued upon the decision making authority to take a fresh decision in terms of what has emerged in the earlier part of the order. The decision must emerge within three months from the date of receipt/production of a copy of this order.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08 .02.2017
Transmission Date	NA

