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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6248/2018 & C.M.No.24123/2018 (stay)

UNION OF INDIA AND ORS. Petitioners
Through Mr.Ashok Singh, Adv.

versus

AMIT KUMAR Respondent
Through Mr.M.S.Saini, Adv.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% **11.10.2018**

1. The petitioners/Northern Railways are aggrieved by the judgment dated 21.11.2017, passed by the Central Administrative Tribunal allowing O.A. No.3560/2016, filed by the respondent, son of late Shri Bani Singh, who was working on the post of a Goods Guard.

2. Under the impugned order, the Tribunal has set aside the orders dated 29.12.2015 and 10.02.2016 passed by the petitioners, rejecting the respondent's request for appointment on compassionate grounds on the demise of his father, Shri Bani Singh on 05.11.2015, on the ground that on the date of his demise, Shri Bani Singh was not an employee of the Northern Railways.

3. The plea taken by the petitioners before the Tribunal was that based on the findings of a departmental enquiry, Shri Bani Singh had been removed from service whereafter, the Appellate Authority had passed an order dated 07.07.2015, directing his reinstatement by

placing him at the bottom of the seniority in the initial grade of Goods Guard on humanitarian grounds, subject to his medical fitness. When Shri Bani Singh was still undergoing re-medical examination, he had expired on 05.11.2015. Observing that the respondent's father had not completed his medical examination as mandated in the reinstatement order on 07.07.2015, the petitioners decided that he could not be treated as an employee of the Northern Railway. Resultantly, the request of the respondent for appointment on compassionate grounds, was rejected.

4. On the last date of hearing, it was noticed from the records that Shri Bani Singh had expired on 05.11.2015 and the information about his demise had been duly communicated to the petitioners. However, the averments made in the writ petition or for that matter, the counter affidavit filed by the petitioner before the Tribunal did not throw any light on the date on which the Department was informed about the demise of Shri Bani Singh by the respondent and what was the cause of his death. Learned counsel for the petitioner was directed to produce the relevant records in this regard for our perusal on the next date.

5. Today, Mr.Ashok Singh, learned counsel for the petitioners states that the Welfare Inspector had informed the Department about the demise of Shri Bani Singh on the very next day, i.e., on 06.11.2015. A copy of the relevant document dated 06.11.2015, has been handed over by learned counsel for the petitioner and the same is taken on record.

6. Learned counsel for the petitioner submits that since Shri Bani Singh was still undergoing re-medical examination and had expired

before the said examination had concluded, the petitioners had come to a conclusion that he could not be treated as an employee of Northern Railways for granting any relief to his son, the respondent herein. He further states that the respondent's father could not be treated as being in service as he had not worked for a single day after passing of the order dated 07.07.2015, reinstating him in service.

7. Under the impugned judgment, the Tribunal has rejected the aforesaid pleas taken by the petitioner by observing that the OPD slips dated 07.08.2015 and 07.09.2015 showed that Shri Bani Singh was in the process of getting himself examined as per the directions of the Appellate Authority. Though he had unfortunately expired before a Fitness Certificate could be issued, even the OPD slip dated 07.08.2015 did not indicate that Shri. Bani Singh had been declared unfit at any stage by any of the Authorities as it only noted that he was being referred to a Cardiologist for further evaluation. Observing that no other complaint had been recorded in the OPD slip, which could lend support to the inference drawn by the petitioners that Shri Bani Singh was medically unfit, the Tribunal expressed a view that having rendered over 36 years of service with the Railways before he had expired on 05.11.2015, he was not entitled to the kind of treatment that had been meted out to him and his family members by the petitioners. As a result, the impugned orders dated 29.12.2015 and 10.02.2016 passed by the petitioners rejecting the request of the respondent for grant of service on compassionate grounds, has been quashed and set aside by the Tribunal with a direction to the petitioners to treat Shri Bani Singh as a railway employee entitled to all the benefits available under the extant rules and to consider the

request of the respondent for appointment on compassionate grounds.

8. We have carefully examined the records and find that while reinstating Shri Bani Singh in service, vide order dated 07.07.2015, the competent authority had made the following observations:-

“ After having gone through all the documents, I agree with the decisions taken by DA for remaining unauthorised absent for a long time but grant of LWP is not a correlated issue. LWP was granted by the competent authority as per merit of case. On other hand the CO remained absent due to long illness which is evident through the medical papers (submitted along with appeal), his physical conditions is also observed during personal hearing. Survival of his family is entirely depending upon him.”

9. It is not in dispute that Shri Bani Singh had reported for duty to the Station Superintendent, Jind. Thereafter, the Station Superintendent, Jind had written a letter dated 28.07.2015, to the Division Personnel Force, Northern Railways stating *inter alia* that on being taken on duty pursuant to the order dated 07.07.2015, Shri. Bani Singh was being sent for a special Medical Examination.

10. Further, the record reveals that Shri. Bani Singh had presented himself as an OPD patient in the Railway Hospital at Delhi on 07.08.2015, for a medical examination. After examining him, the attending Doctor did not record anything negative regarding his health condition, but only referred him to a Cardiologist for undergoing a 2 D ECHO for further evaluation. Subsequently, Shri Bani Singh had presented himself on 04.09.2015, at the Central Hospital, Northern Railways for further check-up, which is apparent from a perusal of the document at page 53 of the paperbook wherein, the Doctor had prescribed that he should undergo an ECG. However, on his Pre-

Medical Examination, the Doctor while noting that there was no complaint, still advised Shri. Bani Singh to undergo an ECG. Unfortunately, before Shri. Bani Singh could have undergone any further test, he had expired on 05.11.2015.

11. In view of the aforesaid facts and circumstances, we are not inclined to accept the submission made by learned counsel for the petitioners that the respondent's father was permitted to join duties subject to a Medical Fitness Certificate and he did not agree to undergo a medical examination from 07.07.2015 to 05.11.2015. In fact, the records show to the contrary as has been noted above. Moreover, fact remains that the petitioners had permitted Shri. Bani Singh to join duty, when he had presented himself before the concerned Officer on 20.07.2015. That being the position, there was no good reason for the petitioners to have declared that Shri. Bani Singh was not their employee and that he stood removed from service on the date of his death. On the contrary, there is sufficient material on the record to demonstrate that the petitioners had taken Shri. Bani Singh back on duty and he was undergoing medical tests for determining his medical fitness, which process had not been completed before his death for which no fault lay at his door. The reports of the medical test that Shri Bani Singh had undergone clearly show that there were no complaint relating to his physical parameters.

12. In view of the above, we are of the opinion that the impugned judgment does not warrant any interference. The petitioners are directed to treat Shri. Bani Singh as a railway employee in service as on 05.11.2015 and release all the benefits to which he would have

been entitled as an railway employee in favour of his legal heirs within two months from today. The petitioners shall further consider the application submitted by the respondent for appointment on compassionate grounds in accordance with law and pass an appropriate order thereon within two months, under written intimation to him.

13. The present petition is dismissed alongwith the pending application.

HIMA KOHLI, J

REKHA PALLI, J

OCTOBER 11, 2018

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