

Court No. - 29

Case :- WRIT - A No. - 9140 of 2020

Petitioner :- Akanchha Mishra

Respondent :- Union Of India Thorough Its General Manager North Central Railway And Another

Counsel for Petitioner :- Ankita Singhal, Saurabh Srivastava

Counsel for Respondent :- Vivek Kumar Rai

Hon'ble Munishwar Nath Bhandari, J.

Hon'ble Ravi Nath Tilhari, J.

By this writ petition, a challenge has been made to the judgment dated 03.02.2020 passed by the Central Administrative Tribunal, Allahabad Bench.

An Original Application was preferred by the petitioner to seek compassionate appointment. The Tribunal found Original Application to be time barred. The Original Application was however dismissed even on merit. The judgment holding Original Application to be time barred can not be endorsed thus the writ petition was taken up for consideration on merit.

The facts relevant to case are that erstwhile Railway employee Anand Prakash Mishra, died while in service on 06.07.2012. After his death, an application was preferred for compassionate appointment of his son. Application was considered and Railway offered compassionate appointment to deceased son Abhinav Mishra. The compassionate appointment was not accepted by the son on the ground that he is now in service. After refusal of the appointment, matter could not have been taken up by another family member for compassionate appointment that too after expiry of considerable period. The family otherwise can not be said to be in financial crunches as son, Abhinav Mishra was serving, thus could support the family. It so happened that the petitioner, married much before the death of her father, divorced on 14.12.2015. After the divorce, she made an application for compassionate appointment taken it to be source of recruitment. The respondent rejected the application vide the order dated 04.10.2016.

The applicant filed a representation and appeal followed by an Original Application to seek a direction for a decision on appeal though no appeal is provided against

refusal of compassionate appointment.

The Original Application was dismissed by the Tribunal. It was firstly on the ground that compassionate appointment cannot be sought after undue delay and for that reference of judgment of the Apex Court in the case of **Bhawani Prasad Sankar Vs. Union of India and others (2011) 4 SCC 209** was given. The judgment in the case of **Umesh Kumar Nagpal Vs. State of Haryana and others, 1994 SCC (4) 138** and **Punjab State Power Corporation Vs. Nirval Singh, (2019) 6 SCC 774** have also been cited.

The Original Application was dismissed even on the ground of limitation in reference to Section 21 of the Central Administrative Tribunal Act, 1985 though we have already recorded our opinion about the correctness of finding in that regard. We would not subscribe view of the Tribunal on that issue thus considering the case on merit as to whether petitioner was entitle to compassionate appointment in a case where it was offered to her brother. It is not a case where the family was not offered compassionate appointment but is making choice as to who should be given appointment.

The married daughter can be considered for compassionate appointment provided Rules permit. The learned counsel for the petitioner has failed to refer any provision which permits appointment of a married daughter who was not dependent of the deceased at the time of death. The aforesaid fact has not been disputed because erstwhile Railway employee died in the year 2012 whereas divorce of the petitioner took place in the year 2015 i.e. almost after more than three years. At the time of death, petitioner was dependent on her husband.

The purpose of compassionate appointment is to support the family whose sole bread-earner dies in harness. In this case, deceased son is serving thus refused compassionate appointment offered to him. In these circumstances it remains no more case for compassionate appointment. The Tribunal was thus justified in dismissing the Original Application on merit.

The delay in seeking compassionate is also coming in the way. In the light of the judgment of the Apex Court in the case of **Umesh Kumar Nagpal (Supra)** and also **Punjab State Power Corporation (Supra)**, thus we are unable to cause interference in the finding of the Tribunal dismissing the Original Application even on merit.

It is not a case where family was not offered appointment on the compassionate basis but a case where the family is making choice as to who should be given appointment. It is not permissible. The first application was to seek appointment of the son was accepted but he refused to join the service. The second application was delayed by more than three years.

In the light of the aforesaid., we find no reason to cause interference in the impugned order of the Tribunal on merit. We have already made our observation in regard to dismissal of the Original Application on the ground of limitation, which cannot be said to be proper but final outcome would remain the same because we have subscribed the judgment on merit and accordingly the writ petition is **dismissed**.

Order Date :- 18.11.2020

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