

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.921 of 2023

1. The Union of India through the Secretary, Railways Board, Ministry of Rail, Rail Bhawan, New Delhi.
2. The General Manager, Eastern Railway, Fairly Place, Kolkata.
3. The Chief Personnel Officer, Eastern Railway, Fairly Place, Kolkata, Pin-700001
4. The Divisional Railway Manager, Eastern Railway, Malda.
5. The Senior Divisional Personnel Officer, Eastern Railway, Malda, Pin-732102.
6. The Senior Divisional Engineer (Co-ordination), Eastern Railway, Malda, Pin- 732102.

... .. Petitioner/s

Versus

Sonu Kumar Son of Late Chandradeo Mandal , Ex-Trackman Under PWI/ Jamalpur of Malda Division, Eastern Railways, Kolkata, Resident of Village- Sibdhi, P.O. Kajra, District Lahkhisarai, Pin Code- 811309.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kanak Verma (C.G.C.)
For the Respondent/s	:	Mr. Sunil Kumar, Advocate
		Mr. Anurag Kumar, Advocate
		Mr. Abhay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 10-04-2023

In the instant writ petition, petitioners-Union of India and others have assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (for short ‘CAT’) dated 22.10.2021 passed in O.A. No.050/00376 of 2020 with MA/050/00143 of 2020.

02. Late Chandradeo Mandal, Ex-Trackman under



PWI/Jamalpur of Malda Division/Eastern Railway, Kolkata, resident of Village-Sibdih, PO-Kajra, District-Lakhisarai, State of Bihar, had died on 04.07.2004. He had married two ladies, first wife was Smt. Indira Devi. She died on 08.11.2000. He married for the second time with Usha Devi @ Siya Devi (Applicant No.1 before the CAT) and second applicant is her son-Sonu Kumar. Both the applicants filed application seeking compassionate appointment to second applicant-Sonu Kumar. Such application/representation was filed before General Manager, Eastern Railway and Divisional Railway Manager, Malda Division, on 27.11.2017, on the score that Sonu Kumar attained majority. The CAT proceeded to allow the application while giving the following direction:-

“17. In view of the above, it is felt that in the interest of justice the case of applicant no.2 for compassionate appointment needs to be considered by respondents. Therefore, applicants are given liberty to submit fresh application in proper format within a month to the Respondent No.2 (General Manager, Eastern Railway) who shall consider and decide the application, so submitted, within four months from the date of receipt.”

03. Feeling aggrieved and dissatisfied with the order of the CAT dated 22.10.2021 passed in OA/050/00376 of 2020 with



MA/050/00143 of 2020, the present writ petition is filed on behalf of petitioners-Union of India and others.

04. Learned counsel for the petitioner submitted that there is a delay and laches on the part of the respondents in seeking compassionate appointment in the year 2017 with reference to death of deceased Chandradeo Mandal, Ex-Trackman, on 04.07.2004. It is further submitted that compassionate appointment was governed by the Scheme dated 02.01.1992 (Annexure-1 series). Scheme dated 02.01.1992 of compassionate appointment was in vogue till 30.12.2019, which did not provide for compassionate appointment to the children of second wife of the deceased employee. On the other hand, Scheme issued on 30.12.2019 provides for compassionate appointment to the children of second wife. The grievance of the respondent-Sonu Kumar was required to be considered with reference to the Scheme dated 02.01.1992 with reference to the fact that his father died on 04.07.2004 and the Scheme dated 02.01.1992 was existing in the eye of law till 30.12.2019. Therefore, the CAT has committed error in applying the later compassionate appointment Scheme and so also is not taking note of the delay and laches in seeking compassionate appointment.

05. *Per contra*, learned counsel for the respondents



resisted the aforesaid contentions and supported the order of the CAT dated 22.10.2021 passed in OA No. 376 of 2020. It is further submitted that as on the date of death of deceased Chandradeo Mandal, Ex-Trackman, Sonu Kumar was a minor, therefore, he could not make application for compassionate appointment and he had submitted application for compassionate appointment as and when he attained majority in the year 2017. Further, there is no infirmity in the order of the CAT, insofar as applying the later compassionate appointment Scheme issued on 30.12.2019 to the extent that children of the second wife are entitled to compassionate appointment.

06. Heard learned counsel for the respective parties.

07. Undisputed facts are that the deceased-Chandradeo Mandal, who was Ex-Trackman, died on 04.07.2004 while he was in service. He had married Smt. Indira Devi and she was issueless and died on 08.11.2000. Consequently, the deceased married for the second time with Usha Devi @ Siya Devi. She gave birth to two sons, one of the sons is Sonu Kumar-respondent No.2. The deceased employee died on 04.07.2004 and on that date, Sonu Kumar (respondent No.2) and another son were minors. Therefore, they waited till attainment of majority, so far as Sonu Kumar is concerned. It is learnt that he has attained majority in the year 2017. In the result, representation



was submitted on 27.11.2017, seeking compassionate appointment. Thereafter, certain correspondences have been made with the petitioners/officials in not extending relief sought by the respondents. They were compelled to approach the CAT in filing O.A. No. 376 of 2020. Their O.A. with M.A. were allowed on 22.10.2021. Thus, the petitioners-Union of India and others presented this writ petition.

08. Core issue involved in the present *lis* is whether the second respondent-Sonu Kumar is entitled to compassionate appointment or not?

09. Sonu Kumar's father Late Chandradeo Mandal, Ex-Trackman, died on 04.07.2004 and for the first time application was submitted for compassionate appointment on 27.11.2017, obviously, for the reasons that Sonu Kumar was minor as on 04.07.2004. Right to claim for compassionate appointment is not a Fundamental Right as held by the Hon'ble Apex Court in umpteen number of cases. It is only a social obligation to meet immediate hardship in the family. In the present case, respondents' family survived from 04.07.2004 to 27.11.2017, therefore, the concept of hardship in the family is not attracted as on 27.11.2017, the date on which the representation has been made for compassionate appointment.

10. The CAT has committed error in applying



subsequent scheme issued on 30.12.2019 in respect of application dated 27.11.2017 read with the deceased employee died on 04.07.2004. On both the dates, the existing Schemes of compassionate appointment is of the year 1992. The Scheme dated 02.01.1992 of compassionate appointment, does not provide for compassionate appointment to children of second wife. For the first time, children of the second wife were permitted to claim compassionate appointment which was introduced on 30.12.2019. Thereafter, subsequent Scheme for compassionate appointment is not attracted insofar as Sonu Kumar case is concerned, with reference to date of death of his father on 04.07.2004 read with the date of representation for compassionate appointment on 27.11.2017.

11. The Apex Court in a recent decision elaborately considered how compassionate appointment is required to be provided in the case of *State of West Bengal Vs. Debabrata Tiwari and Others*, reported in, *2023 SCC OnLine SC 219* (Para-32 & 42).

12. Similarly, the Apex Court in the case of *Shreejita L. Vs. Deputy Director (Education) Kerala and Ors.*, reported in, *(2012) 7 SCC 248* (Para 14 to 19), held that Scheme of compassionate appointment is required to be invoked with reference to date of cause of action like date of death of



employee read with application for compassionate appointment, in which, it is held that as on the date of death read with date of application is relevant for the purpose of invoking relevant Scheme. Therefore, the CAT has committed error in not noticing the aforementioned judicial pronouncement.

13. In view of these facts and circumstances, the petitioners have made out a *prima facie* case, so as to interfere with the order of the CAT dated 22.10.2021 passed in O.A. No.050/00376 of 2020 with MA/050/00143 of 2020 and it is set aside.

14. Accordingly, the writ petition stands allowed.

15. In the result, O.A. No.050/00376 of 2020 with MA/050/00143 of 2020 filed by the respondents Usha Devi @ Siya Devi and Sonu Kumar stands rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-
Himanshu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.04.2023
Transmission Date	NA

