

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak
and
The Hon'ble Justice Md. Shabbar Rashidi

WPCT No. 164 of 2023

Smt. Buchi Devi and Another

Vs.

Union of India and Others.

For the Petitioner : Mr. Kedareswar Chakraborty

: Mr. Saptarshi Chakraborty

For the Union of India : Mr. Subrata Santra

Heard on : March 22, 2024

Judgment on : March 28, 2024

Md. Shabbar Rashidi, J.

1. The writ petition is in assailment of the judgement and order dated April 21, 2023 passed by the Central Administrative Tribunal in O. A. No. 350/01039/2020 dismissing the prayer of the writ petitioner for change of

nomination for the purpose of appointment of her daughter on compassionate ground.

- 2.** One Krishna @ Krishna Goala who happened to be the husband of petitioner No.1 and father of petitioner No. 2, used to work as Sr. Gangman/Trackman under Indian Railways and was lastly posted at Alipurduar Junction. The said Krishna @ Krishna Goala, after serving in such capacity for over 20 years, passed away on May 10, 2003. His normal superannuation was due on September 26, 2012.
- 3.** Upon such death in harness, Petitioner No.1 approached railway authorities seeking employment assistance on compassionate grounds on June 20, 2003. In pursuance of such prayer, petitioner No.1 appeared for physical efficiency test on July 20, 2004 for the post of Trackman. She was offered the said post on compassionate ground on July 20, 2003 and asked to join the said post. The said petitioner, however, did not accept/join the said employment.

- 4.** Subsequently, on May 4, 2005, Petitioner No.1 submitted a representation stating her inability to work as Trackman. She expressed her willingness to work as Khalasi. At the same time petitioner No.1 also applied before the authorities for change of nomination for appointment on compassionate ground, in favour of her daughter i.e. Petitioner No. 2. However, the prayer for change of nomination was turned down by the competent authority in view of the extant circular being GM/P/MLG dated July 16, 1991.
- 5.** Later on, writ petitioner No.1 again applied for change of nomination and appointment of her daughter Petitioner No. 2 on compassionate ground. Such prayer of the writ petitioner was however, turned down on the ground that a final decision in this respect was already taken on August 25, 2005.
- 6.** Aggrieved by such decision of the authorities, the writ petitioner approached the tribunal by filing Original Application No. 1318/2017. The said OA was disposed of by the tribunal on November 8, 2019 remanding the

matter to the authorities for consideration of the prayer of the writ petitioner.

7. Accordingly, in compliance with the directions of the tribunal, the competent authority, considered the prayer of the writ petitioner and disposed of the matter by a speaking order dated February 14, 2020 by which, the prayer of the writ petitioner seeking appointment of writ petitioner No. 2 on compassionate ground, was negated. It is this rejection of the prayer of writ petitioner, through the speaking order dated February 14, 2020, which was assailed in the second Original Application before the tribunal being OA No.350/01039/2020.

8. The learned tribunal by its order passed on April 21, 2023, dismissed OA No.350/01039/2020, affirming the speaking order of the competent authority dated February 14, 2020. Such dismissal of OA No.350/01039/2020 by the tribunal has been challenged in the present writ petition.

- 9.** The impugned order of the tribunal has been assailed by the writ petitioners on the ground that the learned tribunal failed to appreciate the claim of the petitioner in view of the extant rules and circulars. The tribunal in disposing of the original application, failed to appreciate that the rejection of the claim of the petitioner by the speaking order dated February 14, 2020 was unfounded, bogus and motivated.
- 10.** It is also submitted that the competent authority and the tribunal failed to appreciate that the claim of the petitioner was based on specific railway/railway board rules and circulars and dismissed the original application quite illegally and arbitrarily. The learned tribunal did not even consider the claim of the petitioner with regard to change of nomination. The learned advocate for the petitioner submitted that by impugned order, the tribunal wrongfully reopened the settled issue of appointment on compassionate ground on change of nomination which has long been settled.

11. Therefore, the case made out by the writ petition reveals that the husband of writ petitioner No.1 namely Krishna Goala used to work as Sr. Gangman/Trackman under the Indian Railways. Admittedly, the said employee died in harness on May 10, 2003. He was due to retire naturally on September 26, 2012.

12. Upon such death of the employee, the writ petitioner approached the authorities for compassionate employment on June 20, 2003.

13. The prayer of petitioner No.1 was accepted by the authorities. She was offered the post of trackman on compassionate ground on July 20, 2003 and was asked to join the said post. The said petitioner, however, did not accept/join the said the employment. Citing certain reasons, the petitioner expressed her inability to join such post and requested the authorities to provide her the job of khalasi instead of trackman, which was granted by the authorities.

14. Petitioner No.1 instead of joining the aforesaid post offered to her on compassionate ground, and

subsequently changed as per her request applied for change of nomination in favour of her daughter i.e. writ petitioner No.2. However, the authorities did not accede to such request on the reasoning that the matter with regard to appointment on compassionate ground was settled finally, with the offer made on behalf of the competent authorities. The petitioner was asked to join as trackman on compassionate ground. Subsequently, following her request, she was offered the job of khalasi. The prayer of the writ petitioner for change of nomination for appointment on compassionate ground was accordingly refused on the ground that her prayer for appointment on compassionate ground was already settled.

- 15.** As noted above, the death of the employee occurred on May 10, 2003. The writ petitioner applied for appointment on compassionate ground which was allowed offering her a job as Trackman on July 20, 2004. By a writing dated May 4, 2005, writ petitioner No.1 expressed her inability to work as

Trackman/Gangman and advanced a prayer to be provided with a job as Khalasi. She also requested for change of nomination in favour of her daughter writ petitioner No.2, subject to attaining majority by her. Such prayer was however, disallowed by the competent authority citing circular dated July 16, 1991. Admittedly, writ petitioner No.2 was a minor at the time of making such prayer.

16. It is evident from the materials placed before us that the first prayer of the petitioner No.1 was allowed asking her to join as Safaiwala/Cleaner in medical or C&W within one month by a writing dated August 25, 2005. The petitioner never responded to such communication.

17. The writ petitioner kept silent for long six years and on May 21, 2011, she again renewed her prayer for change of nomination in favour of petitioner No.2. In the meantime, possibly two things happened. First, writ petitioner No.2 attained majority and second, the embargo on the circular dated July 16, 1991 was

cancelled by a fresh circular dated August 31, 2010 directing each case of change of nomination to be considered on its merits.

18. The competent authority, however, dismissed the prayer of the petitioner dated May 21, 2011 since, according to it the matter was already disposed of finally on August 25, 2005. The petitioner did not come forward to avail a job on compassionate ground offered to her twice.

19. As it transpires, the petitioner applied for change of nomination in 2004 which was disposed of in the year 2005. There is no explanation forthcoming as what made the petitioner to wait for six long years in approaching the authorities afresh. The embargo, if any, on the earlier circular of 1991 was lifted in the year 2010 itself. She was offered an employment of her choice in the year 2005 and there are materials on record to establish that she did not join the said employment, rather, she did not even choose to respond to such offers.

20. We are in total agreement with the views expressed in the impugned order that employment on compassionate ground is not a hereditary right. It is provided to provide for the family of an employee, who died in harness or medically incapacitated to continue with his employment, to overcome immediate financial constraints looming upon the family on the death or incapacity of the employee.

21. The impugned order also considered that the family of the employee died in harness, has already withstood the financial hardships during all these years since 2003. In fact, the petitioner has twice refused such assistance being offered the job of her choice. The circular of 1991 provided for consideration of change of nomination on a case to case basis. Such circular never ordains that the consideration has to be necessarily granted in every case. The competent authority is capable enough to take a call on the subject in consideration of facts and circumstances of each case.

22. The authorities concerned considered the case of the petitioner and arrived at a decision, taking into account all the circumstances, through the speaking order which was ultimately, upheld by the impugned order.

23. In the result, thus, we find no reason to interfere with the impugned order of the tribunal. The same is liable to be affirmed.

24. Accordingly, the instant writ petition being **WPCT 164 of 2023** is hereby dismissed, however, without any order as to costs.

[MD. SHABBAR RASHIDI, J.]

25. I agree.

[DEBANGSU BASAK, J.]