

Serial Circular No. 75 /2019

EASTERN RAILWAY

No. CPO/SC/SA/POL/Pt.XI

Kolkata, dated 29th March'2019

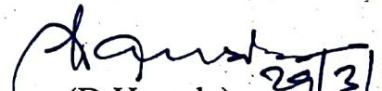
All Concerned

Sub: Appointment on compassionate grounds- Judgment dated 08.02.2019 passed by the Hon'ble High Court/ Calcutta in W.P.C.T. No. 6 of 2019 in the case of Sri Samar Kumar Das -vs- U.O.I & Others.

Copy of Hon'ble High Court / Calcutta judgment dated 08.02.2019 passed in W.P.C.T. No. 6 of 2019 in a case of Sri Samar Kumar Das -vs- U.O.I. & Others in connection with the subject matter is enclosed herewith for information, necessary guidance and compliance.

In view of the above, any action at this stage for processing / appointing requests for compassionate ground appointments in terms of RBE No. 100/94 (as further modified vide RBE No. 77/2011), may be kept pending till further orders if any of Railway Board / Apex Court are received in this matter.

DA: As above.


(D.Hansda) 29/3/19

Sr. Personnel Officer (RP)
for Principal Chief Personnel Officer

240 08.02.19
Sc

W.P.C.T. 6 OF 2019

Sri Samar Kumar Das

-vs.-

The Union of India represented
by the General Manager, Eastern
Railway & Anr.

Mr. Gopal Chandra Ghosh
Mr. Debapratim Banerjee.

....For the Petitioner.

Mr. Anirban Dutta

....For the Respondents..

Dismissal of O.A. 350/1071 of 2015 by an order dated February 14, 2018 of the Central Administrative Tribunal, Calcutta Bench (hereafter the tribunal) is the subject matter of challenge in this writ petition.

The petitioner's father was employed as a Gangman, Eastern Railway. He died on March 12, 1984. The petitioner was a year old then. Upon attaining majority, the petitioner applied for compassionate appointment in terms of a circular, viz. Supplementary Circular No.12 to M.C. No. 16 [No.E(NG)111841RC-1126 dated 21.11.1994; RBE 100] (hereafter the supplementary circular). Such application was made by him on July 27, 1999. Although the tribunal has recorded that the respondents had regretted the prayer of the petitioner by a letter dated June 28, 2005, Mr. Ghosh, learned advocate for the petitioner has submitted that no such letter was received by him. We, however, find from paragraph 3(b) of the reply filed by the respondents to the original application that vide Letter No.CPO/SC/SA/MP/69/MLDT/HWH/01 dated June 28, 2005,

the Chief Personnel Officer, Eastern Railway, Kolkata had communicated to the petitioner that his prayer had been regretted.

Be that as it may, the petitioner went on representing before the respondents claiming appointment on compassionate ground and ultimately by a letter dated June 30, 2014, the petitioner was informed of re-examination of his claim by the railway board and also that his claim was not "agreed to".

Challenging the letter dated June 30, 2014, the petitioner had approached the tribunal. The tribunal upon consideration of the decisions of the Supreme Court in *Umesh Kr. Nagpal -vs.- State of Haryana* [(1994) 4 SCC 138], *Eastern Coalfields Ltd. -vs.- Anil Badyakar* [2009 (3) SLJ 205] and *State of Manipur -vs.- Md. Rajaodin* [2004 (1) SLJ 247] held that compassionate appointment cannot be made after long lapse of time when the crisis is over. While assailing the judgement of the tribunal, Mr. Ghosh has invited our attention to the supplementary circular at page 55 of the writ petition and submitted that the policy of the railway permits a minor to apply for appointment on compassionate ground after attaining majority; in that view of the matter, non-consideration of such circular has resulted in gross failure of justice.

We have perused the supplementary circular and have no hesitation to hold that the terms of such circular are absolutely contrary to the object and purpose for which compassionate appointment is offered. Law is well settled that compassionate appointment can only be offered to help the family of a deceased employee, who dies-in-harness prematurely leaving behind his family members

in utter penury, to tide over such financial crisis and to lead a meaningful life. Admittedly, in the present case, the petitioner was one year old when his father passed away. He could not have secured public employment without attaining majority. He applied for compassionate appointment obviously because the supplementary circular permitted such course of action. However, by reason of lapse of time between the death of the petitioner's father and the application for appointment on compassionate ground, any financial crisis that might have been felt initially could no longer be in existence (the petitioner and the other heirs of the deceased employee having survived all these years); and, therefore, compassionate appointment could not have been offered as a matter of course as if the petitioner as a successor could inherit the right of appointment on the death of his father in-harness.

We declare the supplementary circular to be *ultra vires* Articles 14 and 16 of the Constitution as well as the object and purpose for which compassionate appointment is offered.

We hope and trust that the railway, taking note of this judgment, shall immediately take steps to withdraw the same and those applications that are pending may be disposed of in the light of the observations made above.

The writ petition stands dismissed, without any order for costs.

(Dipankar Datta, J.)

(Bibek Chaudhuri, J.)