

(2018) 01 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 210, 00742 Of 2016

Shri Avinash Mahadu Hulavale

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Citation : (2018) 01 CAT CK 0002

Hon'ble Judges : Bhagwan Sahai, J

Bench : Single Bench

Advocate : M. N. Joshi, V. D. Vadhavkar

Final Decision : Dismissed

Judgement

1. Shri Avinash Mahadu Hulavale has filed this O.A. for setting aside of the order dated 12.01.2016 passed by Divisional Personnel Officer (DPO), Central Railway, Pune and direction to the respondents to appoint him on compassionate grounds in place of deceased Shri Mahadu Bhagu Hulawale.

2. Summarized facts:

2(a). The father of the present applicant, late Shri Mahadu B. Hulawale died on 04.08.2004 at Karla, Tal. Maval, Pune while working as Sr.Mali in SSI (P/Way) Department, Dehu Road. It has been stated that late Shri Hulawale married to his first wife i.e.Smt.Suman Mahadu Hulawale and after sometime married to his second wife i.e. Respondent No.4 Smt.Tarabai Mahadu Hulawale. These are six legal heirs of late Shri Hulawale.

Sr. No.

Name

Relationship with Deceased

1.

Mrs.Suman Mahadu Hulawale

First Wife

2.

Mrs.Tarabai Mahadu Hulawale

Second Wife

3.

Mrs.Sumitra Kishor Tikone

Daughter

4.

Mrs.Alka Raju Thombare

Daughter

5.

Mr.Anant Mahadu Hulawale

Son

6.

Shri Avinash Mahadu Hulawale

Son

2(b). After the death of his father the above six persons applied for Succession Certificate in the name of first wife of the deceased i.e. Respondent No.3. The other legal representatives gave no objection to issuance of the Certificate in her name and the Succession Certificate was issued on 26.02.2013. At the time of death of their father, it is claimed that the applicant himself and his younger brother were small and had not completed their education, therefore, did not apply for appointment on compassionate grounds. After his completion of SSC in 2015, the applicant applied for appointment on compassionate grounds on 15.10.2015 (Annex-A-5). His request was rejected by DPO, DRM (P) Pune on 12.01.2016. Therefore, this O.A.

2(c). The applicant claims that since the other respondents No.3 to 6 have no objection to his appointment, they have been made formal parties to this O.A.

3. Contentions of the parties: The applicant contends that -

3(a). he is the son of late Shri Mahadu B. Hulawale from his first wife and, therefore, eligible for appointment on compassionate grounds. The rejection of his application by the authorities is contrary to rules and with no reasons and, therefore, should be set aside;

3(b). the applicant has also attempted to benefit from a Madras High Court decision in case of V. Sampath Vs. The District Collector, Thiruvannamalai district decided on 19.12.2011; and

3(c). the other caselaw cited by the applicant is a Jharkhand High Court decision in case of Dipak Kumar Yadav Vs. State of Jharkhand and others (W.P.No.5662/2014) in which a view taken was that even illegitimate child and children of a void marriage are also entitled to inherit the properties of his parents and as compassionate appointment is only by inheritance, they are also entitled to be considered.

The respondents have submitted that -

3(d). late Shri Mahadu B. Hulawale was working as Khalasi/Sr. Mali under SSE (Works), Dehu Road at the time of his death on 04.08.2004. The claim of the applicant in the O.A. that at the time of death of his father, he himself and his younger brother were small and had not completed education is a false. In fact Ananta Mahadu Hulawale is the elder brother of the present applicant and he had already requested for appointment on compassionate grounds by his application dated 09.05.2006 (Ann.R-1, p.45) with the consent of both the wives of the deceased employee, but his request was rejected vide letter dated 28.07.2006. The documents including report of the Welfare Inspector then submitted (containing affidavit submitted by the family members of late Shri Hulawale which included the present applicant) have been annexed to this reply as Ann.R-1, R-3 & R-4, p.48, 50-51 and 52-53);

3(e). in the application submitted by Shri Ananta M. Hulawale, it had been specifically mentioned that both Shri Ananta and Shri Avinash are sons of second wife of Shri Hulawale, i.e. Smt.Suman. This was also the finding in the report of the Welfare Inspector. From this it is clear that the present applicant i.e. Avinash Hulawale is the younger brother of Shri Ananta M. Hulawale whereas the present applicant is claiming otherwise;

3(f). the fact of the previous attempt of Shri Ananta for getting employment on compassionate grounds in 2006 has been completely suppressed from the Tribunal by the present applicant and a totally contradictory picture has been presented to create an impression that the applicant's mother Smt.Suman is the first wife of late Shri Mahadu Hulawale;

3(g). a gist of the entire family particulars mentioned in the enclosed documents will bring out that the information furnished by Shri Ananta Hulawale in 2006 was factually correct and that the present applicant has not approached the Tribunal with clean hands. Hence on this ground itself, the O.A. deserves to be dismissed with cost. The reasons for rejection of the application of Shri Ananta Hulawale will also equally apply to the case of the present applicant, which are as per Railway Board's letter of 02.01.1992;

3(h). the Hon.Supreme Court has consistently observed in a number of cases

that appointment on compassionate grounds is not a right of dependents of a deceased employee, it should be close to the date of death of the deceased employee and when the family of the deceased employee managed to survive for a long time after the death, there is no case for such appointment;

3(i). in the present case the ex-employee died on 04.08.2004 and the present O.A. is of 26.08.2016 i.e. after 12 years. The date of birth of the present applicant is 22.07.1989 and he became major on 22.07.2007. Therefore, he himself failed to apply for employment under compassionate grounds on attaining majorhood i.e. in 2007;

3(j). as per affidavit dated 16.06.2006 (R-3) submitted by the family members of the deceased employee, Smt.Tarabai is the first wife of late Shri Hulawale. Smt.Suman is the second wife and Shri Ananta and Shri Avinash are both her sons;

3(k). the Pension Payment Order for payment of family pension was issued as per the Succession Certificate issued on 22.02.2013 in the name of Smt.Suman Mahadu Hulawale, but it does not mention specifically as to who is the first wife and who is the second wife and it has been issued simply because the other members had no objection to issuance of this certificate in the name of Smt.Suman Mahadu Hulawale;

3(l). as per Railway Board's instructions of 02.01.1992, when the Railway employee dies in harness leaving behind more than one widow along with children, while the settlement dues may be shared by both the widows due to Court order, appointment on compassionate grounds to second widow and her children are not to be considered unless the administration had permitted the second marriage. The Competent Authority had rejected the request of Shri Ananta Hulawale on 28.07.2006 on this ground. In view of this, the request of the present applicant for compassionate appointment cannot be considered and the O.A. should be dismissed.

4. Analysis and conclusions:

I have perused the O.A. memo, reply of the respondents, the caselaws cited and heard contentions of the parties made before me. From the consideration of these, the conclusions emerge as follows:-

4(a). Death of late Shri Mahadu Hulawale took place on 04.08.2004. The present applicant filed the O.A. on 26.08.2016 i.e. after more than 12 years of death of his father. By that time the case of the applicant had already become a stale case to be eligible for appointment on compassionate grounds as an exception to the normal Recruitment Rules. A dependent person of an employee who died in harness has to seek employment in close proximity to the death. However, this is not the situation in the present case.

4(b). Late Shri Mahadu Hulawale also indulged in bigamy while in service, which was illegal and in violation of the relevant Railway Servants (Discipline & Appeal)

Rules, 1968. Whether this fact had been reported by him to the respondents or the latter came to know about this otherwise and thereafter what disciplinary action was taken against him under the Conduct Rules is not known. The disclosures made by the respondents in their reply (page 42) have totally exposed the falsehood of the applicant. They have proved that the present O.A. is a bunch of deliberate lies to mislead the Tribunal. The present applicant and his elder brother Ananta both are sons of the second wife of late Shri Mahadu Hulawale as per the contents of the affidavit submitted by Shri Ananta Hulawale in 2006 to the respondents.

4(c). Shri Ananta Hulawale had himself applied for employment on compassionate grounds on 09.05.2006 which was rejected on 28.07.2006 because being the son of second wife of late Shri Mahadu Hulawale.

4(d). The facts of the first caselaw cited by the applicant are different as in that case delay had been result of difficulties faced in obtaining the Succession Certificate whereas the present applicant has not pleaded any such reason in the O.A. and in fact his family had applied for the Succession Certificate very late i.e. on 21.11.2008.

4(e). The second caselaw cited by the applicant in support of illegitimate son is not helpful in this case and he has not even made any averment to this effect in this O.A. From this it is clear that the first attempt of the legal heir of late Shri Mahadu Hulawale i.e. Ananta failed in 2006, the present applicant again attempted to get the compassionate appointment in 2015 and when he could not succeeded in it, he has presented this O.A. as a story of total falsehood. This is a case of attempt of extreme greed to exploit public resources by suppressing the facts and articulating falsehood.

4(f). This O.A. is totally devoid of merits. Rejection of his request by the respondents is fully justified as per the applicable rules and instructions. Such repeated attempt by the applicant and his brother out of sheer greed to exploit public resources deserve not only to be deprecated but to be penalized. As a result, this O.A. deserves to be dismissed with award of cost.

5. Decision:

The O.A. is dismissed with cost of Rs.5000/- to be paid by the applicant to the respondents within three months of receipt of certified copy of this order.