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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2022 of 1994

New Delhi, this the 22nd day of August, 1995.

HON'BLE MR B.K. SINGH, MEMBER(A)

1. Madan Lal,  
C/O Sh. Sampat Ram Gupta,  
11/147 West Azadnagar,  
Delhi-51.
2. Bhawani Shankar,  
S/O Sh. Madan Lal,  
C/O Applicant No.1. ... .. Applicants.

( through Mr B.N. Bhargava, Advocate )

vs.

1. Union of India through the  
General Manager,  
Northern Railway,  
Baroda House, New Delhi.
2. The Divisional Railway Manager,  
Northern Railway Division,  
Bikaner (Rajasthan).
3. Sr. D.P.O.  
Northern Railway Division,  
Bikaner (Rajasthan) .. ... Respondents.

( through Mr R.L. Dhawan, Advocate ).

O R D E R

directed  
This O.A. is against order No. 069801  
dated 30.6.1993 issued by the DMO, Northern Railway  
Hospital, Rewari vide Annexure A-1 of the Paper Book.  
The applicant No.1 Madan Lal is the father and applicant  
No.2 Bhawani Shankar is his son.

The brief facts are that the applicant  
No.1 was working at Rewari Station, when he fell  
down from the brake <sup>van</sup> on 20.12.1992 and his right  
leg was fractured. He was admitted in the Railway

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Hospital, Rewari. He remained in the Hospital till 30.6.1993 on which date he superannuated from service. The grievance of the applicant is that his treatment should have been continued in the Railway Hospital, Rewari as the accident took place while he was on duty. The reliefs prayed in the O.A. are that the Court should direct the respondents to grant compensation to the applicant on account of the injury suffered by him while he was on duty and further to continue the treatment in the Railway Hospital on Railway account. It has further been prayed that the Court may direct the respondents to give appointment to applicant No.2 on compassionate grounds as per his qualifications. On notice, the respondents contested the application and the reliefs prayed for.

Heard Shri B.N.Bhargava counsel for the applicant and Shri R.L.Dhawan, counsel for the respondents and perused the records.

It is admitted that the applicant No.1, while on duty on 20.12.1992 had sustained slight injury on the right thigh and remained confined to bed from 20.12.1992 to 30.6.1993 when he attained the age of superannuation. The respondents have filed a copy of the injury report (Ann.R-1). It is evident from the said report that there was slight injury and as such no PPD has been assessed in his case and thus the question of payment of compensation does not arise. It is further stated in the counter that the applicant retired from service on attaining the age of superannuation on 30.6.1993 and he was not retired on medical grounds and as such the son is not eligible for appointment on compassionate grounds

in terms of Railway Board's instructions No.E(NG)/III/78/RC1/1 dt.7.4.1983, a copy of which is filed and marked as Annexure R-2. It is admitted by both the parties that the applicant retired from service while posted at Rewari. It was vehemently argued by the learned counsel that this Court is not competent to take any cognizance and award compensation to a person for any injury sustained by him. There is a special Act known as 'Workmen's Compensation Act, 1923' and the designated Court is the Court of Sub Divisional ~~XXXXXX~~ Magistrate of the area, in which the accident takes place and, therefore, the applicant could have claimed compensation if he so liked by filing an application before the Commissioner appointed under the Workmen's Compensation Act. The power under Section 30 of the Act was originally exercised by the High Court and the same can be exercised by the Tribunal since it has replaced the High Court. This view has been held in para 10 in a case decided by the Hon'ble CAT Bench of Chandigarh in Union of India vs. Sarup Chand Singla vide page 183 of the Full Bench decision of 1986-87.

The report of the Chief Orthopaedics Surgeon, Northern Railway, Central Hospital recorded on 23.6.1993(Annexure A-1 of OA), reads as under:

"to walk with stick; he is not yet fit for duty; to re-examination after one month".

Shri R.L.Dhawan argued vehemently that the medical report itself declares that the applicant was not disabled since he retired on superannuation on 30.6.1993, he was not entitled under the Medical

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Rules for availing medical facilities. The departmental rules have been enclosed vide Annexure R-3 to the counter-reply. The rules are clear and the applicant was expected to avail of these rules but he did not avail of the same. As regards compassionate appointment, it was vehemently argued that the applicant retired on 30.6.1993 on attaining the age of superannuation and not on medical grounds and as such is not eligible for appointment on compassionate grounds.

It was further argued that the applicant has been paid all the retiral benefits due to him. A perusal of the Workmen's Compensation Act indicates that the case could have been filed before the Commissioner for Compensation Act, 1923 under Section 15 of the Act. The High Court exercises <sup>appellate</sup> jurisdiction under Section 30 of the Act and only a Writ Petition under Articles 226/227 can be filed by the applicant before the Tribunal. According to the learned counsel for the respondents, Railway Health Scheme enjoins as per the circular enclosed that the applicant will have to deposit the last pay drawn by him with the railway authorities to avail of the medical facilities after retirement. The applicant did not do that and this has been indicated vide Annexure A-6. The applicant is entitled for treatment only if he <sup>had</sup> followed the instructions contained in the Annexures enclosed to the reply. The instructions also do not help the learned counsel for the applicant in regard to medical decategorisation ~~on~~ on medical grounds. Compassionate appointment can be made only when the retiring person dies or is permanently crippled in the course of duty. Report of the Doctor does not show that the

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applicant was permanently disabled and as such the question of compassionate appointment on the basis of medical grounds is not possible. The other category is dependents of railway employees who die in harness as a result of railway accidents when off duty. This does not apply to the applicant. The third category is of the employees who are medically incapacitated. In none of these categories the applicant fits in and as such he is not entitled to compassionate appointment. He is also not entitled to any compensation since the injury report indicates that there is only minor injury and not an injury making him permanently disabled. The law in case of compassionate appointment has been further laid down by the Hon'ble Supreme Court in the case of L.I.C. of India vs. Mr Asha Ramchandras Ambekar and State of Haryana vs. Nagpal. The learned counsel has not been able to show that the family is in indigent circumstances <sup>and that</sup> without a compassionate appointment the entire family would be on the verge of starvation. Unless this is shown there is no case of compassionate appointment since the applicant has already been paid all his retiral benefits and it is presumed that this will sustain the applicant. There is nothing in the pleadings to show that the family is facing a crisis and there is an urgency for a compassionate appointment and that the retiral benefits are not enough to sustain the family.

In view of the aforesaid facts, the reliefs prayed for cannot be granted. The O.A. fails and is dismissed leaving the parties to bear their own costs.

  
( B. K. Singh )  
Member (A)