

L13

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.

ORIGINAL APPLICATION No.211/00072/2016

Dated this Thursday, the 12th day of March, 2020

Coram: Dr. Bhagwan Sahai, Member (Administrative).

Avinash Singh Thakur, Aged about 35 years,
Plot No.9, Dr. Ambedkar Colony, Jaripatka,
Indore, Kampti Road, Nagpur - 17. . . Applicant

(By Advocate Shri C.B.Dharmadhikari)

Versus

1. The Union of India,
Through its Secretary,
Ministry of Railways,
New Delhi 110 001.
2. Divisional Railway Manager (P),
S.E.C. Railway, Nagpur 440 001.
3. The Additional Divisional Railway Manager,
Office of The Divisional Railway Manager,
SEC Railway, Kingsway,
Nagpur 440 001. . . Respondents

(By Advocate Shri N.P.Lambat)

Order reserved on 19.02.2020
Order pronounced on 12.03.2020

ORDER

Shri Avinash Singh Thakur filed this OA on 27.01.2016 seeking quashing and setting aside of order dated 04.08.2015 issued by DRM (P) South East Central Railway, Nagpur rejecting his application for appointment on compassionate grounds and settlement dues of late Shri Barkoo Singh Thakur, in pursuance to order of this Tribunal dated 01.05.2015 in OA No.280/2014, directing the respondents to decide his representations dated

23.06.2014 and 14.07.2014. He also seeks direction to the respondents to pay him the benefits of NGIS, Leave Salary, Provident Fund contribution and DGRG.

2. Summarized relevant facts:

2(a). This OA was partly allowed by the Tribunal in its order dated 23.05.2017 holding that the applicant could not make out a case for grant of compassionate appointment but the impugned order of the respondents rejecting family pension to him till he attained age of 25 years and payment of all retiral benefits of late Shri Barkoo Singh Thakur by the respondents was illegal and incorrect. That order of the Tribunal was challenged before Nagpur Bench of the Bombay High Court in Writ Petition No.2998/2018 which was allowed by order dated 30.08.2019 setting aside the finding of this Tribunal in its order dated 23.05.2017 to the effect that the applicant could not make out a case for grant of compassionate appointment and remanding the case back for adjudication on the issue of grant of compassionate appointment to the Writ Petitioner or otherwise in accordance with law. Thereafter, the respective counsels for the parties were heard on 19.02.2020 and the OA was reserved for orders.

3. Contentions of the parties:

The main contention of the applicant is that-

3(a). he is sole surviving legal heir of late Shri Barkoo Singh Thakur and therefore, is entitled for his retiral and other benefits including employment on compassionate ground by the respondents, but he has been illegally denied the benefits;

3(b). he was not given an opportunity of hearing before rejecting his case by the impugned order dated 04.08.2015 and principles of natural justice have not been complied with by the respondents. They did not consider the relevant documents submitted by the applicant; and

3(c). till date he is unemployed (wrongly typed as respondent) and works as a painter under a contractor as and when work is allotted or is available and, therefore, compassionate appointment should be given to him in additional affidavit filed by the applicant on 14.02.2020, by allowing the O.A.

In their reply and during arguments of their counsel the respondents contend that -

3(d). late Shri Barkoo Singh Thakur expired on 24.06.2000 and the present OA has been filed on 27.01.2016 i.e. after lapse of 16 years, it is not within the period of limitation and therefore, it is liable to be dismissed for delay and laches;

3(e). as provided under Establishment Circular No.141/1988, adopted sons or daughters can be

considered for appointment on compassionate grounds if there is satisfactory proof of adoption valid legally, adoption is legally recognized under the personal law governing the railway servant and legal adoption process had been completed and it become valid before the date of death/medical categorization/medical incapacitation of the ex-employee. However, late Shri Barkoo Singh Thakur did not submit any document during his lifetime to indicate that the present applicant was his adopted son, which would have enabled the respondents to process his application. As per record of the respondents, there were no family members left behind by late Shri Thakur at the time of his death;

3(f). the present applicant in his application in the year 2000 had mentioned that he was not in urgent need of employment and requested for its postponement till he passed Matriculation examination. In his application dated 11.12.2009 he had submitted that the succession issue was pending with other legal heirs of late Shri Thakur and he emphasised mainly on grant of employment assistance;

3(g). the applicant was informed by letters dated 12.07.2010 and 22.09.2010 to submit mark-sheets of Classes upto X Class which were also one of the exhibits in succession case in 2005, but he

did not submit proper certificate of his educational qualification in time and he submitted four certificates from different institutions. Out of those one was School Leaving Certificate from Kurvey's New Model School, Nagpur which was verified from the concerned school authorities who reported that the certificate claimed by the applicant was fake. Thus the applicant did not approach with clean hands and had submitted a fake certificate in support of his claim;

3(h). in M.A.2187/2017 the respondents sought extension of time to implement the order of the Tribunal dated 23.05.2017. While rejecting the claim of the applicant for appointment on compassionate grounds, in the order of the Tribunal dated 23.05.2017, for his claim to grant family pension and retiral dues of late Shri Barkoo Singh Thakur, the respondents were directed to settle the amount treating his date of birth as 14.04.1979 as per the School Leaving Certificate. Therefore, the applicant's claim for appointment on compassionate grounds should be rejected.

4. Analysis and conclusions:

4(a). I have perused the O.A. memo, rejoinder filed by the applicant, and reply filed by the respondents. I have considered the arguments advanced by the applicant's and the respondents' counsels on 19.02.2020. Based thereon, the case is

analysed as under.

4(b). The undisputed facts of the case are that date of birth of the applicant is 14.04.1979, and now he is 41 years old. The ex-employee of the South East Central Railway, late Shri Barkoo Singh Thakur expired on 24.06.2000 while in service. The applicant works as a Painter under a Contractor. His application for Succession Certificate was allowed by Civil Judge, Sr. Division Gondia under Section 383 of Indian Succession Act, 1925 by which Succession Certificate issued earlier on 04.05.2002 was revoked. He also got a Succession Certificate for Rs.2 lakhs of retiral/death benefits of late Shri Barkoo Singh Thakur dated 11.04.2014 issued by 5th Joint Civil Judge, Jr. Division, Nagpur. During his lifetime late Shri Barkoo Singh Thakur did not submit any details of the applicant as the adopted son.

As per Railway Board Circular dated 07.06.1988, adopted son/daughter has also been made eligible to be considered for appointment on compassionate grounds subject to fulfilment of certain conditions specified therein.

4(c). In the context of compassionate appointments, a gist of DOPT guidelines in different OMs on this subject and guiding principles highlighted in following Apex Court decisions is summarized here.

(i) Auditor General of India and others Vs.

G.Ananta Rajeswara Rao, (1994) 1 SCC 192.

(ii) Umesh Kumar Nagpal Vs. State of Haryana and others, JT 1994 (3) SC 525.

(iii) Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambedkar and others, JT 1994 (2) SC 183.

(iv) Himachal Road Transport Corporation Vs. Dinesh Kumar, JT 1996 (5) SC 319.

(v) State of Haryana and others Vs. Rani Devi and others, JT 1996 (6) SC 646.

(vi) Local Administration Department Vs. M. Selvanayagam @ Kumaravelu, Civil Appeal No.2206/2006 dated 05.04.2011.

(vii) The Govt. of India & Anr. Vs. P. Venkatesh, Civil Appeal No.2425/2019 dated 01.03.2019.

(viii) Sanjay Kumar Vs. State of Bihar and others {(2000) 7 SCC 192}.

(ix). Manager, State Bank of India and others Vs. Anju Jain (2008) 8 SCC 475.

(x). MGB Gramin Bank Vs. Chakrawarti Singh {(2014) 13 SCC 583}.

(xi). Haryana State Electricity Board and another Vs. Hakim Singh, reported in 1997(8) SCC 85.

(xii). The Hon'ble Supreme Court in W.P. No.8773/2015 dated 27.07.2017.

(i). The object of granting compassionate appointment is to enable the family of the deceased

employee to tide over the sudden crisis after death of the bread earner.

(ii). The object is not to give post to a member of such family.

(iii). Mere death of an employee in harness does not entitle his family to such source of livelihood by employment on compassionate grounds. The Government or the public authority concerned has to examine the financial condition of the family of the deceased and only if it is satisfied that without providing employment, the family will not be able to meet the crisis that a job should be offered to eligible member of the family.

(iv). Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds. Offering of an appointment on compassionate ground as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v). Appointment on grounds of descent is clearly violative of Article 16(2) of the Constitution and only immediate appointment in the event of there being no other earning member in the family to supplement the loss of income and to relieve economic distress of the family members, exceptions can be made for appointment on

compassionate ground.

(vi). An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and, therefore, bad and illegal.

(vii). Compassionate appointment cannot be granted after lapse of reasonable period of time, it is not a vested right which can be exercised at any time.

(viii). Compassionate appointment cannot be offered by an individual functionary on adhoc basis. Extending of the scheme for appointment on compassionate grounds to all sorts of casual and adhoc employees, including those who are working as Apprentices, cannot be justified on Constitutional grounds.

(ix). The consequences, impacts and the denial of rights to other citizens are also to be considered while extending relief under such an exceptional scheme of compassionate appointment. Scope of the compassionate appointment should not be based on an unwarranted sympathy or leniency. However, any such sympathy or leniency shown to a

particular person should not have any adverse effect of affecting the rights of other eligible citizens, who are waiting and longing for public employment in this great Nation.

(x). Compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood.

(xi). Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the normal rule of recruitment to public service posts. It is a concession, not a right.

(xii). Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution.

(xiii). The Government is certainly justified in directing that no claim for compassionate appointment should be entertained beyond a reasonable period of say three years or five years, as the case may be. If a family of the deceased civil servant can survive for long periods entirely on their own, it presupposes that the surviving members have the necessary wherewithal to survive, notwithstanding the departure of the breadwinner.

4 (d) . On testing of the present case in terms of the above norms, it is revealed that the applicant has failed to make out a justified case for compassionate appointment is an exception to rules of public service recruitment viz.

(i) . death of ex-employee Shri Barkoo Singh Thakur took place on 24.06.2000;

(ii) . the application of the present applicant dated 11.12.2009 was also belated as it was not in close proximity to the time of death;

(iii) . as submitted by the applicant himself, he is now 41 years old and he works as a painter with the contractor thereby already having a source of income;

(iv) . after death of late Shri Barkoo Singh Thakur he has managed himself and his family for the last 20 years;

(v) . so his claim for employment on compassionate ground has became stale and cannot be considered many years after the death;

(vi) . as per decision of this Tribunal dated 23.05.2017, the applicable retiral benefits of late Shri Barkoo Singh Thakur have also been allowed to be paid to the applicant;

(vii) . as mentioned by the respondents, in his earlier application the applicant himself also seems to have submitted that he was not in urgent need of employment and wanted the retiral benefits

of late Shri Barkoo Singh Thakur to be released to him; and

(viii). the applicant submitted fake School Leaving Certificate to the respondents.

4 (e). In view these reasons, I find no merit in the present O.A. for grant of employment to the applicant on compassionate grounds, and therefore, it deserves dismissal.

5. Decision:

The O.A. is dismissed. No costs.

(Dr. Bhagwan Sahai) *13/03/20*
Member (A).

H.

*SD
13/03/2020*