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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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DA 1068/92

30.10.1992

Shri Kuldeep Kumar

...Applicant

Vs.

Union of India & Anr.

...Respondents

CORAM :

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri Sant Singh

For the Respondents

...Shri B.K. Aggarwal

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yg*
2. To be referred to the Reporter or not? *Yg*

JUDGEMENT (ORAL)

Shri Kuldeep Kumar, the applicant is the son of Shri Attar Chand, who was employed with the respondents and was also living in the allotted premises. The allotted premises, however, were got vacated during the pendency of the present application. The facts relevant for the purpose appear to be that Shri Attar Chand, who is the father of the applicant (as well as of the deceased employee) was medically decategorised and compassionate appointment was given to the deceased employee, Shri Manjit Kumar. Said Shri Manjit Kumar was unmarried, i.e., bachelor and in the common course, he got compassionate appointment on account of his father, Shri Attar Chand on the understanding that he will maintain his father in advanced age as well as his dependent members of the family. Said Shri Manjit Kumar died on 11.12.1990. He was survived by

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the retiree father Shri Attar Chand and his two other sons, i.e., the brothers of the deceased. The elder brother of the deceased is said to be handicapped and so the present applicant who happened to be the younger brother of the deceased, applied for compassionate appointment in September, 1990 with a reminder again to the same effect in February, 1991. The respondents, however, did not give a favourable or unfavourable reply to the applicant on his representations for compassionate appointment and also allotting the eligible type of residence or regularising the same residence on compassionate ground to the present applicant. The applicant has, therefore, filed the present application in April, 1992 for the reliefs that the applicant be given compassionate appointment and further that the Quarter No.53-A/1 More Sarai, Railway Colony, Delhi be allotted/regularised on compassionate ground in his favour to maintain the aged father and his family.

The respondents in their counter have opposed this application and have taken the plea that the case of the applicant is not covered under the scheme prevalent for giving compassionate appointment to the wards of dependents of the employee, who die in harness.

I have heard the learned counsel for both the parties at length. The learned counsel for the applicant argued that his case is fully covered by the Circular of the Railway Board

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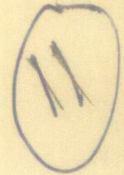
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dt.7.4.1983, a copy of which has been filed on record. This circular of the Railway Board is after the circular issued on the same subject of appointments on compassionate grounds in addition to the circular already existing of 30.4.1979, a copy of which has been annexed by the respondents to the counter as Annexure R1. Circular of 1979, of course, did not provide any scope for appointment of near relatives or dependents of an employee who die in harness, but the circular of 1983 clearly lays down that the appointment on compassionate ground is admissible to the dependents/wards of regular employees only and under II there is a note appended that near relatives would normally mean a blood relation who can be considered to be a bread winner for the family. The relevant portion of Para II is quoted below :-

"The benefit of compassionate appointments may also be extended to a 'near relative.'"

The learned counsel for the applicant has also referred to the authority, reported in ATJ 1992 (2) p-411 (Prabhakar Vs. Union of India). In this reported case, a dependent of Railway servant has been held to the entitlement of compassionate appointment irrespective of fact what relation he has with him. In this case also, circular of 1983 has been relied upon and it has been held, "According to the Railway Board's Circular dt.7.4.1983, a dependent of Railway servant is also entitled to compassionate appointment. The Tribunal in the reported case also issued a direction to the respondents to give compassionate appointment to the applicant of that case.

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The learned counsel for the respondents, however, argued that the case is not covered by the circular of the Railway Board because the applicant was not dependent on the deceased employee, i.e., Shri Manjit Kumar. This issue should not detain us longer in view of the fact that an unmarried brother who is also residing with his father and has already given an understanding when he got an employment on compassionate ground that he will maintain his father as well as his family, so it cannot be said that the applicant, Shri Kuldeep Kumar has not been dependent on the deceased employee, Shri Manjit Kumar. The learned counsel for the respondents, however, argued that there is no clear averment in the application itself, so the fact has not been specifically urged in the counter. I am not able to accept this contention of the learned counsel in view of the fact that the respondents have to take a clear stand as to why the applicant is not entitled to the relief he has prayed for administratively in the representations submitted earlier to the respondents. What is stated in the counter and has been perused thoroughly is that the case of the applicant is not covered under the relevant scheme under which the compassionate appointment is given to such applicants/wards of the deceased employee. Thus the only point that is coming in the way of compassionate appointment is whether the applicant, Shri Kuldeep Kumar is dependent on the deceased employee, Shri Manjit KJumar or not. There is a clear averment in para - 4.6 of the application that the applicant, i.e., Shri Kuldeep

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Kumar with his father, Shri Attar Chand and other members of the family has been residing in Quarter No.53A/1 More Sarai, Railway Colony, Delhi. It is further stated that Shri Attar Chand, who retired from the Railway has not sufficient financial resources to maintain the family including the applicant. The learned counsel for the respondents also stated in para-4.12 of the counter that the father and the other handicapped brother of the present applicant are wholly dependent on the present applicant, Shri Kuldeep Kumar and by this the learned counsel wants to draw an inference that earlier both of them have not been dependent on the applicant. No such inference can be drawn seeing to the circumstances of the present case. The retiree father, Shri Attar Chand has the only source of income as the pension he is getting and it is not stated in the counter that there is another source of income to rehabilitate the family who was living with the deceased employee, Shri Manjit Kumar at the time of his death. Thus a case for compassionate appointment as well as a case that the applicant has been dependent on Shri Manjit Kumar is made out.

As a consequence of this, the applicant is also entitled to out of turn allotment of Railway quarter or regularisation of the eligible type of quarter according to the Extant Railway Board Circular of January, 1990. It transpires that the premises already in possession of the deceased employee, Shri Manjit Kumar have since been got

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vacated. It appears that the Vacation Bench passed an interim order on 16.6.1992 restraining the respondents not to allot the quarter No.53A/1 More Sarai, Railway Colony, Delhi to anyone else. That interim order appears to have continued upto 29.7.1992 after which the order sheet does not show that the interim order has continued till today. In view of this, it is clear that the respondents have to allot this residence/Railway quarter No.53A/1 More Sarai, Railway Colony, Delhi to the applicant, Shri Kuldeep Kumar after giving him compassionate appointment and in case the said quarter has already been allotted to some other person, then alternative accommodation has to be provided on the same ground as he would have been entitled to the aforesaid quarter.

The application, is therefore, allowed with a direction to the respondents to give compassionate appointment to the applicant, Shri Kuldeep Kumar, s/o Shri Attar Chand and also to regularise/allot Railway Quarter No.53A/1 More Sarai, Railway Colony on compassionate ground within a period of three months from the date of receipt of a copy of this order. However, it is made clear that if the said quarter is not available, then another eligible type of quarter be allotted to the applicant on out of turn basis on the first available vacancy. In the circumstances, the parties shall bear their own costs.

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(J.P. SHARMA)
MEMBER (J)
30.10.1992

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