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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

DATED: THE 12TH DAY OF OCTOBER 1998

CORAM : HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO.669 OF 1997

1. Smt. Jasoda widow of Late Kunja Halka, resident of village Gwaltoli Hasari, P.O. Hasari, District Jhansi (U.P.)
2. Rajesh Kumar S/o Late Kunja Halka aged about 22 years resident of village Gwaltoli Hasari P.O. Hasari, District Jhansi.

.... Applicants

C/A Shri M.P.Gupta, & Shri S.K.Misra
Versus

1. The Union of India through the General Manager Central Railway, C.S.T. Mumbai (Maharashtra).
2. The Divisional Railway Manager, Central Railway, Jhansi (U.P.).

.... Respondent

C/R Shri G.P.Agrawal, Advocate.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.-

This is an application under section 19 of the Administrative Tribunal Act 1985 for compassionate appointment of applicant no.2 due to death of his father Kunja Halka.

2. The material facts leading to this O.A. are that the father of the applicant no.2 and the husband of applicant no.1 was employed in the Loco shed, Central Railway, Jhansi

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as fitter^{and} while in service died on 25.7.87 after a prolonged illness. The eldest son of Kunja Halka was employed but was living separately from the family along with his own family even during the life period of Kunja Halka. The applicants were solely dependent on Kunja Halka, the date of birth of a plicant no.2 is 12.8.75. After the death of Kunja Halka applicants who were dependant on Kunja Halka having no other source of income and lively-hood rendered without any support and means of lively-hood. Applicant no.1 applied for appointment of applicant no.2 on compassionate ground, in response to the respondents letter dated 24.11.87 a further application was moved in 1993 when applicant no.2 attained the majority but no response from the respondents, hence applicant no.1 as she was told orally to go Bombay as her case would be dealt by the Head Quarters, the case being old for more than 5 years, on 3.6.96 she reached Bombay and moved the application and ~~in~~ further application 10.6.96 and in response to the said application her case was rejected on the ground that applicant no.2 is not his eldest son and the case is ~~not~~ more than five years old. The said ground is not tenable, no enquiries about the financial condition of the family was made. The applicant has been discriminated against the matter of employment which is violative of Articles 14 and 16 of the Constitution. Hence this O.A.

3. The respondents averred that the appointment on compassionate ground is not a matter of right but it is given a relief ^{to the} family who is in distress. The case was properly examined and decided accordingly to law. Hence prayed for dismissal of O.A. with cost.

4. The learned counsel for the respondents submitted that Circular No.E(NG)III/78/RCI/1, New Delhi dated 30.4.79 which clearly mentioned that where the widow cannot take

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up the employment/daughters are minor, the case may be kept pending till the first son/daughter becomes a major, that is to say attains the age of 18 years. Such cases should be kept pending after which the claim will lapse."

5. The learned counsel for the applicant submitted that the "first son" is introduced in the said circular creates hardship and the purpose of compassionate appointment is solely frustrated, the reasons being the first son may not be ~~of~~ sound mind, sound health and ~~is~~ ineligible for appointment in such cases the second son who is not eligible in view of the said circular, not entitled to appointment. The said provision comes into operation only when the widow cannot take up employment. In case where immediately after the death of the employee during the service, son, daughter or widow of the employee ~~is~~ seeking compassionate appointment, there is no bar for allowing even the second son. The provision of first son/daughter is being introduced with a view that who so ever becomes first major can seek the appointment if otherwise it is a fit case for compassionate appointment. The object of introducing "first" was to provide earliest help to the family of an employee who dies in ~~harmonious~~ ^{need}. Hence the restriction is not unjust one.

6. The cases for compassionate appointment in the above situation should be kept pending for about 5 years. His claim should be lapsed, the said provision is also not unjust or unfair. The reason is that object of appointment of dependent is to ^{hand} relieve unexpected ^{hand} immediate transfer and distress caused to the family by sudden demise of the earning member of the family (1996 (1) SIR 7 Jagdish Prasad v. State of Bihar and another.

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7. The learned counsel for the respondent relied on the proposition that the claimant has no right of compassionate appointment hence the O.A. is not maintainable. It is true that the claimant cannot claim to the particular post but he has the right for the consideration of appointment. As held in AIR 1994 Supreme Court 845 State of M.P. and others v. Ramesh Kumar Sharma. Hence there being a right of consideration the O.A. is maintainable.

8. The Railway Board circular referred above under which the respondents have passed the order s, has force of law as held in 1978 Supreme Court Cases LNS 35. The Railway Board v. P.R. Subramaniyam and others.

9. The fact cannot be overlooked that applicant no.1 is getting a pension of Rs.800/- per month as per her own allegation mentioned in para 15 of her O.A. She has also received terminal dues as mentioned in para 16 of her O.A. She has not specifically mentioned the amount received by her, ^{by} the way of terminal benefits which cannot be overlooked.

10. There is no allegation of malice or acting without jurisdiction by the respondents. The respondents have decided the claim in accordance with the circular brackets dated 30.4.79 the said decision being just one, applicants' O.A. is liable to be dismissed.

11. No case of discrimination has been brought to notice hence a question of discrimination which is violative of Article 14 and 16 of the Constitution of India is ^{not} made out.

12. In the result, O.A. is dismissed as the applicant is not entitled to any relief with no order as to cost which shall be borne by the parties ^{in the absence of themselves}.

JUDGMENT
MEMBER (J)