

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NUMBER:- 1096/98

THIS THE 13th DAY OF March 2003

HON. MRS. MEERA CHHIBBER, MEMBER (J)

D

Durg Vijai Prasad Yadav,
s/o Late Sri A.P.Yadav,
r/o 721/H, DLW
Varanasi.

... Applicant.

(By Advocate:-S/ Shri B.N. Chaturvedi, D.B.Yadav)

Versus

1. Union of India, through its secretary
Ministry of Railway.

2. General Manager,
DLW, Varanasi.

3. Deputy Chief Personnel Officer
Head Quarter, Recruitment,
DLW, Varanasi.

... Respondents.

(By Advocate:- Shri A.Sthalekar)

O R D E R

By this O.A applicant has challenged the orders dated 29-4-1998 whereby he was offered a group 'D' post on compassionate ground with a prayer to direct the respondent to modify the said order and to issue appointment letter for class III post as he was called for written as well as interview for class III post.

2. It is submitted by applicant that after his father late Sh. A.P.Yadav (Machinist) died on 1-12-1997 he applied for compassionate appointment for a class III post. He was even called for written & interview for group 'C' post vide letter dated 21.2.1998 and 16-3-1998 (Annexure 2&3) He is a graduate and has technical certificate of typing (Hindi) and belongs to OBC therefore he ought to have been appointed in Group 'C' post by giving him reservation. However, he was offered class IV post which was accepted by him under protest. He also gave representation against it on 22-4-1998 and 29-4-1998 but no reply was given so he

..... *B. Chaturvedi*

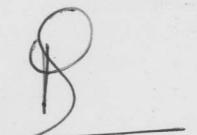
had no other option but to file this O.A. He has relied on the judgment of Naveen Kumar Upadhyay Versus Director of Education decided by this Tribunal and affirmed by Hon'ble High Court for seeking the relief.

3. Respondents have opposed the O.A and stated that applicant was called to appear for screening/suitability and viva voce on 25-3-98 test on 5-3-1998 but he was not found suitable for group 'C' so was offered group 'D' appointment vide memorandum dated 11-4-1998. The said post was accepted by the applicant (Annexure CA-3). Accordingly he was appointed as workshop Khalasi w.e.f. 30-4-1998 vide office order dated 18-5-1998 (Annexure CA-4). They have thus submitted that there is no illegality in the orders passed as he had himself requested that in case he is not found fit Group 'C' may be considered for group 'D', therefore, he is barred by estoppel to even raise this dispute now. The O.A may therefore be dismissed.

4. I have heard both the counsel and perused the pleadings as well, since applicant's counsel insisted that court may see the records, respondents were directed to produce the result. They have produced the original records for courts persual which clearly shows that a committee of three officers was constituted to see the suitability of candidates for compassionate appointment including applicant but none of the candidate was found suitable for group 'C' but they were recommended for group 'D' post. Once the candidate was declared not suitable, applicant can not insist for still being given group III post only, as compassionate appointment can not be sought as a matter of right unless candidate is found suitable. After all department would have to take work and if the candidate is not even suitable



he would not be able to perform. In AIR 1994 SC 845 state of MP Vs Ramesh Kumar Sharma Hon'ble Supreme Court has held that claimant has not right to any particular post of his choice, he can only claim to be considered for post. Reliance by applicant on (1994) 1 UPLBEC 420 is totally misplaced as in that case offer was accepted by claimant under protest and later he was found to be ^{III B} entitled to class ~~III~~ post so it was in those circumstances that court had held his case would not be barred by estoppel, whereas in the instant case, it is seen when applicant had applied for compassionate appointment he had categorically stated therein, that if it is not possible to consider him for group 'C' post or he is found unsuitable he may be considered for group 'D' post (Annexure CA-I). Thereafter, when applicant was offered group 'D' post on 11-4-1998, he simply accepted it without lodging any protest which is evident from (Annexure CA-3). The applicant has not been found suitable therefore the facts of this case are absolutely different. The judgment of Naveen Kumar is therefore not at all applicable in present case. Subsequent representations are only ~~after~~ after thought. Once he accepted group 'D' post after being declared unsuitable for class III post, applicant can not claim grade-III post as a matter of right. In view of the above discussion there is no merit in this case. D.A is accordingly dismissed with no order as to costs.



Member (J)

Madhu/