

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.1578 of 2001

Allahabad this the 24th day of May 2002

Hon'ble Mr.A.K. Bhatnagar, Member (J)

Vishwa Kant Mishra, Son of Late Sri Munesh Dutt
Mishra, House, No.54, Holi Gate, Near Police Chauki
Garhi Laweyam, District Etah.

Applicant

By Advocate Shri Shyamji Gaur

Versus

1. Union of India, through General Manager,
Ministry of Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Allahabad.

Respondents

By Advocate Shri Prashant Mathur

O R D E R (Oral)

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

The applicant has filed this O.A.
seeking the following reliefs;

"i. issue order or direction in the nature of
certiorari quashing the order dated 18.5.2001
passed by Divisional Railway Manager, Northern
Railway, Allahabad.

ii. issue order or direction in the nature of
mandamus commanding the Divisional Railway

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Manager, Northern Railway, Manager, Allahabad to appoint the petitioner on the compassionate ground considering the educational qualification in accordance with law.

iii. issue any other suitable order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

iv. award the cost of the petition."

2. The brief facts of the case are that the father of the applicant, who was employed, expired leaving behind a widow, son (the applicant) and daughter. After the death of applicant's father, the entire burden of the family came upon the shoulder of his grand father Sri Sheo Dutt Mishra, who was working on the post of E.S.M. at Northern Railway, Tundla Junction. The applicant's grand father was also expired on 11.10.1996, during the course of employment. On 04.12.97, the applicant moved an application before the Divisional Railway Manager, Allahabad for the payment of retiring benefits and his appointment under the Dying in Harness Rules, as his grand-father executed a Will-deed in favour of the applicant on 20.07.88. As respondents have paid no heed, the applicant's mother moved an affidavit on 21.04.00 and prayed therein to provide service under the compassionate ground. Aggrieved by the action of the respondents, the applicant has preferred a Writ Petition No.14030 of 2001 before the Hon'ble High Court, which was disposed of on 16.04.2001

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with the direction to the Divisional Railway Manager, Allahabad to decide the representation of the applicant in accordance with law within six weeks of production of certified copy of the order. The Divisional Railway Manager, Northern Railway, Allahabad rejected the appointment of the applicant on compassionate ground on the main ground that the grand son is not entitled for appointment under dying in harness rules. Aggrieved by the action of the respondents, the applicant has approached this Tribunal with the abovementioned reliefs.

2. Resisting the claim of the applicant, the respondents have filed the counter-affidavit. They have justified the rejection of the claim of the applicant on the ground that there is no provision to grant compassionate appointment to the grandson. They have further mentioned that the representation of the applicant for compassionate appointment was already rejected on 29.07.1997 and the applicant has concealed this fact in his O.A. Therefore, they have claimed that the O.A. is time barred and is liable to be dismissed.

4. I have heard the counsel for the parties and perused the record.

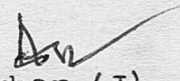
5. Taking the shelter of Hon'ble High Court's Judgment in Writ Petition No.872 of 1999, decided on 16.03.99, the applicant, who is the grandson of the deceased employee, claiming appointment on compassionate

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ground. The applicant has also mentioned in his O.A. that the deceased employee prepared a Will deed in his favour. The respondents on the other hand have mentioned in their counter-affidavit that the deceased employee again prepared a Will deed on 28-01-95 and cancel the abovementioned Will. The respondents have also stated in the counter affidavit that the applicant has concealed the fact that the representation preferred by him was already decided in 1997. The applicant has moved this O.A. in 2001. No specific explanation has been given for this delay. The applicant has also not given any rule or provision in support of his claim, for compassionate appointment to the grandson. The respondents have also mentioned about the family disputes, which the applicant has not denied. In my view, the applicant is not entitled for any relief.

6. From the above discussions, it is clear that there is no merit in the O.A., which is dismissed. No order as to costs.

/M.M./


Member (J)