

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.618 OF 2001
ALLAHABAD THIS THE 9th DAY OF December, 2004

HON'BLE MR. D. R. TIWARI, MEMBER-A

1. Hare Krishan Gupta, Son of Late Shiv
Shankar Gupta.

2. Bipin Bihari Gupta, Son of Shri Hare
Krishna Gupta.

Both resident of House No,137 E/12 B, Marg
No.3, Rajrooppur, Allahabad.

• • • • • .Applicants

(By Advocate Shri S. Ram, Shri R. Verma and
Shri C.P. Gupta)

Versus

1. Union of India,
through the General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Financial Advisor & Chief Account
Officer (Admn.), Northern Railway,
Baroda House, New Delhi.

• • • • .Respondents

(By Advocate Shri P. Mathur)

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By means of this O.A. filed under section 19 of
of the Administrative Tribunals Act 1985, the applicant
has prayed for quashing the impugned orders dated 23.10.2000

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as well as order dated 16.01.2001 (Annexure-1 & 2). He has further prayed for issuance of direction to the respondents to appoint the applicant no.2 on compassionate grounds.

2. This is the third round of litigation between the applicant and the respondents. Briefly stated, applicant no.1 is the father of applicant no.2 and the applicant no.2 is brother of one Shri Shishir Kumar Gupta who was working as Clerk Grade-I in the office of Senior Account Officer, (S&W), Northern Railway, Jagadhari Workshop. He died in harness on 30.10.1988 due to Heart Attack. The applicant no.1 is a physically infirm and a retired official. After the death of Shri Shishir Kumar Gupta on 30.10.1988, applicant no.1 made an application to the competent authority for appointment of the younger brother of the deceased i.e. applicant no.2 on compassionate grounds. He furnished necessary papers to the Senior Accounts Officer (S&W) for this purpose. Thereafter he was informed that the case of the applicant is not covered under the rules in force. Being aggrieved the applicants filed O.A. No.866/91 and it was decided on 16.02.1993 (Annexure A-3) with a direction that the applicants moved an application to the General Manager who shall consider the case in accordance with law within a period of three months. Accordingly, the applicants moved an application to the General Manager which was rejected by an order dated 16.07.1993. Applicants being again aggrieved filed another O.A. No.794/94. During the pendency of this O.A.

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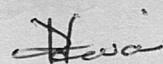
Railway Board liberalized the provisions relating to compassionate appointment and the circular dated 4.9.1996 (Annexure-6) and the clarification thereto issued vide letter dated 02.05.1997 (Annexure -7). Further liberalization was carried out by the Railway Board vide letter dated 05.08.1999 (Annexure-8). Taking into account the provisions of these circulars the O.A. was decided on 21.07.2000 and a direction was issued to the respondents to re-open the matter and pass appropriate detailed, speaking and reasoned order within a period of three months. They were further directed to take into consideration the notification issued by the Railway Board vide letter dated 04.09.1996 and 05.08.1999.

3. In view of the direction of the Tribunal the applicant no.1 made a detailed representation to the competent authority which was again rejected by the competent authority vide the impugned order dated 23.10.2000 (Annexure-1). Being aggrieved by this order applicant no.1 again approached the General Manager, Northern Railway Baroda House and filed a representation dated 14.11.2000 and this representation was again rejected by the competent authority.

4. The successive rejection of the representation/ request for compassionate appointment has forced the applicants to file the instant O.A. The impugned orders have been challenged on multiple grounds mentioned in para 5 and its sub paras. However, I will be examining only

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those grounds which has been advanced during the course of argument in the later part of this order. It has been pleaded that the present case is squarely covered by the decision of the Tribunal in the case of Chandan Nath Pal Versus Union of India and Others (O.A. No. 1358/88) in which case the deceased employee was unmarried and left behind the old father and mother as well as the younger brother. The General Manager rejected the claim of Chandan Nath Pal and he approached the Tribunal by the above stated O.A. which was allowed by this Tribunal on 19.07.1991. Accordingly, younger brother of the deceased employee was given compassionate appointment vide letter dated 13.07.1993 (Annexure nos. 4 & 5). It has been further pleaded that the report of the Welfare Inspector with regard to dependency of the applicant no.2 on the earning of the deceased is contrary to the version given orally by the neighbours of the applicant no.2. It has also been further contended that the Welfare Inspector contacted the neighbours who have also given affidavit contrary to the report of the Inspector. In addition to those neighbours who were contacted by the Welfare Inspector some more neighbours have given affidavits about the dependency of the applicant no.2 on the deceased. In addition to that one Shri Arun Kumar Choudhary has given certificate of dependency of the applicant no.2. The applicant no.1 enclosing all these affidavits made a representation to the competent authority by a letter dated 14.11.2000 (Annexure A-11). Even this representation has been



rejected by a very cryptic order dated 16.01.2001 (Annexure -2). It has been stated that the decision communicated earlier vide Headquarters letter dated 23.10.2000 still holds good. It has been argued that (Annexure-2) does not show that the competent authority has taken into account the affidavits of the neighbours about the dependency of the applicant on the deceased. In view of this it has been pleaded that the O.A. succeeds on merit and may be allowed.

5. Respondents on the other hand, have contested the O.A. by filing a detailed counter affidavit. They have refuted almost all the claims made by the applicant in the O.A. They have submitted that in pursuance of the direction in O.A. No.794/94 the competent authority have taken into account the instructions dated 04.09.1996 and the circular dated 05.08.1999 before rejecting the claim of the applicant for compassionate appointment. It has been submitted that a Welfare Inspector was deputed to ascertain the factual position regarding the extent of dependency of the family. Copy of the report given by the Welfare Inspector has been attached as Annexure CA-3. The inspector has reported that he contacted the neighbours namely Shri N.B. Srivastava, Shri Kewal Singh and Shri Ramesh Chandra Dwivedi who have stated that they knew the family of Shri B.B. Gupta. Shri R.E. Dwivedi could not explain about the dependency of Shri B.B. Gupta whereas Shri N.B. Srivastava stated that Late Shishir Kumar Gupta was supported

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his family. As regards the documentary proof, he could not say anything. Shri Kewal Singh stated that he knew this family for last 20 years and stated that Shri Shishir Kumar Gupta supported the family but he could not say about any documentary proof. They have submitted that the report would reveal that the father of deceased employee i.e. applicant no.1 is a retired Account Officer and he is getting pension. The applicant no.2 Shri Bipin Binari Gupta is already working and no documentary certificate or document to this effect as a proof was produced by the individual. It has been further argued by the respondents that the Hon'ble Supreme Court in number of decisions has repeatedly stressed on the financial condition of the bereaved family for providing compassionate appointment. They have relied on the case reported in 1994(4) SCC (L&S) Page 930 - Umesh Kumar Nagpal Versus State of Haryana wherein it has been held that "the object underlying the provisions for grant of compassionate appointment is to assist the family of the deceased employee to tide over sudden crisis, resulting the death of bread earner where the family has been left in penury and have no means of livelihood. It has been submitted that in view of the decisions of the Hon'ble Supreme Court on the subject, relevant instructions issued by the Railway Board and the report of the Welfare Inspector, it is not possible to appoint him on Compassionate ground.

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6. I have heard very carefully the argument advanced by the counsel for the parties and perused the pleadings.

7. During the course of the argument, the learned counsel for the applicant submitted that the impugned orders are illegal and arbitrary and they deserves to be quashed. He stated that the report of the Welfare Inspector does not lead to the conclusion that the family was not dependant on the deceased. The report nowhere gives any documentary proof for the purposes. He has further submitted that the neighbours who told the Welfare Inspector about the family members of H.K. Gupta never stated positively about the dependency of the family members on the earning of the deceased. They have expressed the view that they were not in position of any documentary proof for that purpose. He also contended that the Welfare Inspector has talked to them and given his report to the Railway Administration according to his interpretation of the statement made by the neighbours. He has emphasis the fact that the same neighbours has given sworn affidavits to the effect that the family members were depend on the earning of the deceased. The counsel for the respondents on the other hand have contended that the report of the Welfare Inspector cannot be faulted because it also speaks of the fact that Shri B.B. Gupta is working in a private firm and he is in receipt of Rs. 1800/-P.M. This would indicate that

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applicant no.2 is employed in Private firm and the applicant no.1 is a retired person who is in receipt of monthly pension. He submits that the O.A. had no merit and it deserves to be dismissed.

8. The basic question which falls for consideration is whether the respondents are justified in passing the impugned orders rejecting the claim of the applicant for his appointment on the compassionate ground. In order to decide this controversy it is necessary to examine whether the applicants were dependent on the earning of the deceased. It is well settled by a number of decisions of the Hon'ble Supreme Court that the Comapssionate appointment is given to a member of family for tiding over the financial crises which is caused due to sudden death of the bread earner. It is also well settled that the facility of compassionate appointment is limited to 5% of the vacancies occurring in a particular year. Keeping in view, these well settled principles I have to examine whether the impugned orders are legal and valid or not. In the peculiar fact situation of this case the general proposition of law may not be applicable in this case. It may be noticed that the question of dependency and the eligibility of the applicant to fall in the category of Blood relation etc have been examined by this Tribunal in O.A. No.866/91 filed by this applicant. In para 9 and 10 of the said order dated 16.02.1993 may be referred in this connection. Secondly the additional affidavits filed by the applicant no.1 in its representation dated 14.11.2000, though has

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been rejected, but no reasons have been given for that. In this connection, I would like to refer to the report of the Welfare Inspector who has examined as many as four neighbours of the applicant. Out of the four Shri Ramesh Chandra Dwivedi could not explain about the dependency of applicant no.2. Shri N.B. Srivastava also stated that Late Shishir Kumar Gupta supported his family and Shri Kewal Singh also stated that Late Shishir Kumar Gupta supported the family. Only Shri C.M. Bhargava owner of the Bhargava Engineering Works stated that Shri B.B. Gupta was working their and was getting salary @ of Rs.1800/-P.M. It is surprising that the conclusion arrived at by the Welfare Inspector can be said to be arbitrary and may be said to be his own conclusion not based on the statements orally made to the inspector. In his report he himself has stated that the neighbours have stated that Late Shishir Kumar Gupta supported the family and with thus he concludes that the applicants were not depend on Late Shri Shishir Kumar Gupta. The statement of Shri C.M. Bhargava to the effect that Shri B.B. Gupta was working in private firm does not indicate that the applicant no.2 was not dependent on the earning of the Late Shishir Kumar Gupta.

9. In view of this the conclusion drawn by the Welfare Inspector/ is wrong and arbitrary and cannot be relied on by the competent authotity. To rely on the conclusion of the report without going into detail of the report amounts to non-application of mind by the

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competent authority. The impugned order dated 23.10.2000 (Annexure A-1) is thus based on no evidence. This order also did not take into account the finding of the Tribunal particularly para 9 and 10 of the order in respect of O.A. No.866/91. It may be stated that it did not even refer to that so the impugned order Annexure-1 is liable to be quashed. The impugned order Annexure A-2 is very cryptic and does not give any reason for the rejection of detailed representation dated 14.11.2000 addressed to the General Manager, Northern Railway. The applicant no. in his representation has referred to the sworn affidavit of the neighbours and when the order was passed it appears the competent authority has not taken into account the contents of those affidavit which are to the effect that the applicants were dependent Late Shishir Kumar Gupta. This non-speaking order is also liable to be dismissed as it is very cryptic and the Hon'ble Supreme Court in the case of S.N. Mukherjee Versus Union of India, AIR 1990 SC 1984, has clearly stated that an important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of superior courts. The other consideration which have also weighed with the court in taking this view are that the requirement of recording reasons would (i) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise

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chances of arbitrariness in decision-making.

10. Keeping in view the decision of the Hon'ble Supreme Court cited supra would apply to the impugned order Annexure A-2 which is very cryptic one and gives no reason. In view of this both the impugned orders are liable to be quashed.

11. In view of the facts and circumstances mentioned above and the discussion made the O.A. succeeds on merit and is accordingly allowed-. The impugned orders Annexure A-1 and A-2 are quashed and set aside. The respondents are directed to consider the case of applicant no.2 for appointment on compassionate grounds. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

12. There shall be no order as to costs.

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Member-A

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