

(10)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

**Original Application No. 941 of 2005**

Friday, this the 11<sup>th</sup> day of April 2008

**Hon'ble Mr. K.S. Menon, Member (A)**

1. Pradeep Saxena Son of Shri Shyam Mohan Saxena, Resident of 18/4 Karela Bagh Colony, Allahabad.

**Applicant**

**By Advocate Sri N.P. Singh**

**Versus**

1. Union of India through Secretary, Ministry of Railway, Government of India, New Delhi.

2. General Manager (Personnel) Central Railway Electrification Organisation, Northern Central Railway, Allahabad.

**Respondents**

**By Advocate Sri Durga Pd. Singh**

**ORDER**

**By K.S. Menon, Member (A)**

The applicant Pradeep Saxena has filed this O.A. against the Order dated 25.01.2005 passed by the respondent No. 2, rejecting his claim for appointment on compassionate grounds in place of his elder sister late Ekta Saxena, who died in harness on 05.11.2000 while she was posted as a Stenographer in the Office of Central Railway Electrification Organisation, Allahabad.

2. The late Ekta Saxena left behind her father, mother and younger brother (the applicant). On the passing away of his sister, the applicant applied and obtained a succession certificate in his name on 05.12.2001 from the Court of the Civil Judge (SD) Allahabad. By virtue of this succession certificate (Annexure CA II) the applicant was empowered to collect the debts and securities (consisting of Group Life Insurance, Provident Fund, Death relief, leave encashment and family pension and receive the interest and dividends standing in the name of his sister late Ekta Saxena. The aforesaid monies were paid to the applicant by the respondents on 20.08.2004. The applicant applied to the respondents on 03.01.2001 and again on 16.11.2004 seeking compassionate appointment, which was rejected by the respondents on 25.01.2005

92

(11)

(Annexure A-1 to the O.A.) on the ground that the deceased Km. Ekta Saxena had not disclosed the name of the applicant as a dependent in any of the official documents. Being aggrieved by this, the applicant moved a Review Application on 15.02.2005 (annexure A-5 to the O.A.) followed by a reminder on 01.03.2005. Since there was no response to the aforesaid applications, he filed this O.A. on 02.08.2005.

3. The applicant's grievance is that by rejecting his claim for grant of compassionate appointment, the respondents have violated the Railway Board's Supplementary Circular No. 36 to Master Circular No. 16 dated 05.08.1999, which stipulates that dependency may be established through documentary proof such as pass declaration, ration card etc. or otherwise by deputing a Welfare Inspector to inquire into the circumstances. The Circular further mentions that the condition of pass declaration is only a facilitating factor and not intended to be a restrictive one i.e. in case the dependency of the candidate is not covered by the pass declaration, the dependency may be established through a ration card or through the Welfare Inspector's investigations. Therefore, rejecting his claim purely on the grounds of his name not being there in the Pass declaration is illegal, erroneous and arbitrary. Besides the applicant's case is also that he is fully qualified for grant of compassionate appointment and his legal heir ship has been accepted by the respondents in the sense that his late sister's terminal benefits have been paid to him by the respondents on the basis of the succession certificate. In support of his contention, the applicant has relied on the Judgments dated 19.07.1991 and 09.12.2004 passed by this Tribunal in O.A. No. 1350 of 1988 in Chandan Pal and others Vs. Union of India and others and in O.A. No. 618 of 2001 in Hari Shankar Gupta and others Vs. Union of India and others respectively.

4. The learned counsel for the respondents Shri Durga Prasad Singh refutes the arguments of the applicant's counsel Sri N.P. Singh. He submits that it is a fact that the late Km. Etka Saxena's financial dues were paid to the applicant based on the succession certificate issued by the Civil Judge (SO) Allahabad, but the Court had not given any direction to treat the applicant as a dependent of the deceased employee because succession and dependent status are totally different. The respondents further contend that when the father of the deceased employee (bachelor/spinster) is alive, the brother cannot be treated as a dependent as per Railway Servants (Pass) Rules 1986. The applicant's case was considered as per extant rules i.e. Railway Board's

92

(P)

letters No. E (NG) II/88/RC-1/Policy dated 4.9.1996 (RB No. 79/96), E (NG) II/88/RC-III/77 Policy dated 2.5.1997 (RB No. 66/97), E (NG) II/99/RC-1/SE-19 dated 5.8.1999 (RBE No. 165/99) and the applicant was not dependent of the deceased employee as per available records of the Railways. In view of the above, they urge that the applicant is not entitled to any relief as prayed for hence the O.A. being devoid of merit is liable to be dismissed.

5. Heard, Sri N.P. Singh, learned counsel for the applicant and Sri Durga Prasad Singh, learned counsel for the respondents and perused the pleadings on record and the written submissions filed subsequently.

6. The short point that needs to be resolved in this case is whether the applicant can be considered as eligible for grant of compassionate appointment on the ground that he is the legal heir to the monies arising out of the estate of his deceased sister. This has to be seen in the light of the fact that the father and mother of the deceased employee are still alive. The Railway Board Circular No. RBE No. 165/99 (Supplementary Circular No. 36 to Master Circular No. 16) issued on 05.08.1999 in which clarifications have been issued on the subject of appointment on compassionate ground of dependent of Railway employee dying as bachelor/spinster inter alia states: -

"2. One of the Zonal Railway has raised the following points: -

(i) As per Railway Servants Pass Rules, every employee has to submit a family declaration for the purpose of Pass/PTO, showing the composition of his family. In case of employees whose father is not alive, such declaration may also inter-alia contain names of dependents in the declaration. The names of the dependents may not be reflected in such declarations where father is alive or where the dependent brother has crossed 21 years of age by the time the declaration is submitted. Cases are not uncommon that even though the father is alive, the entire family consisting of father, mother, brothers are solely dependent on the earnings of the bachelor son/daughter, due to the fact that the father is either invalid or non-pensioner. Hence, it would be unjustified to link the pass declaration for considering the dependency before extending the employment assistance on the death of the bachelor employee. Dependency should be verified by deputing a Welfare Inspector to inquire into the circumstances of the case.

3. The above points have been considered by the Board and the clarifications thereon are as under: -

(i) It has already been provided for in Board's letter dated 4.9.1996 read with its letters dated 4.5.97 and 2.6.97 that dependency may be established through documentary proof such as Pass Declaration, Ration Card, etc., or otherwise by deputing a Welfare Inspector to inquire into the circumstances. The condition of inclusion in the pass declaration is only a facilitating factor and

9

(13)

not intended to be a restrictive one i.e. in case the dependency of the candidate is not covered by the pass declaration, the dependency may be established through Ration Card or through Welfare Inspector's investigations."

7. In the present case as per the respondents, there is no official document with the Railways to show that the applicant was dependent on his deceased sister. The applicant on his part has also not annexed any document to prove that he was dependent on his deceased sister. He is on the other hand relying purely on the ground that monies arising out of the estate of his deceased sister have been paid to him as the legal heir based on the succession certificate. He urges that the respondents cannot deny him compassionate appointment purely on the grounds that dependency has not been established, especially since the Railway Board Circular No. RBE No. 165/99 stipulates that entries in the pass declaration are only intended to be a facilitating factor and not a restrictive one. While this may be so, the fact of the matter is that in no other admissible documents available with the Railways has it been established that the applicant or the entire family was dependent on the deceased employee. Mere declaration by the applicant that he was living with his sister separately and that she was funding his education does not conclusively prove the applicant's dependency.

8. It has also been mentioned that the father of the deceased employee is employed in Kamla Nehru Hospital, Allahabad (Paragraph No. 9 of the Supplementary Counter Affidavit). In view of this matter, the applicant should rightfully be dependent on his father and not on his deceased sister. It is a different matter that the applicant's deceased sister may have helped out the family in connection with the applicant's studies etc. which is generally expected of any earning member in the family. In the normal course the father of the deceased employee should have applied and obtained the succession certificate. It is therefore not apparent why the applicant obtained the said certificate while the parents of the deceased employee were still alive. Regarding grant of compassionate appointment apart from the need for the applicant to establish dependency it must be observed that the Railway Board's Rules/instructions on the subject and the settled case law on the subject is that compassionate appointment is to be given as an exception to tide over immediate financial hardship to the family on the sudden demise of the sole bread winner. In this case the deceased employee was not the sole bread winner in the family as her father was also employed and the family was in receipt of Rs.1,06,316/- as terminal dues of the late Ekta Saxena as per para 9 of the C.A.. The

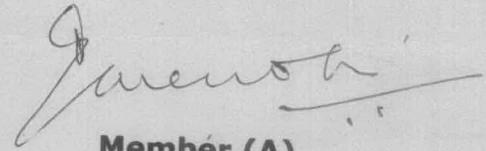


(14)

figure shown in the succession certificate is Rs.96,167 inclusive of family pension of Rs.1290/- per month. The Judgments relied on by the applicant mentioned at paragraph No. 3 above are totally different in respect of facts and circumstances as compared to the facts and circumstances in this O.A. and cannot be applied here. The whole issue would however depend on the establishment of dependency of the applicant on the deceased Ekta Saxena. In this connection it is observed that both the applicants and respondents have not annexed copies of the ration card and the Welfare Inspector's report which are considered essential to conclusively prove the dependency of the applicant.

9. The impugned order dated 25.01.2005 is a cryptic order and does not elucidate the main reasons for rejection of the applicant's claim for compassionate appointment especially with reference to their own circular No. 36 to Master Circular No. 16.

10. In view of the foregoing the impugned order dated 25.01.2005 is quashed and set aside. The respondents are directed to reconsider the applicant's application for compassionate appointment and his subsequent representations with reference to the report of the Welfare Officer, latest circular instructions of the Railway Board and Supreme Court Judgments on the subject and pass a reasoned and speaking order within a period of three months from the date of receipt of a copy of this Order. No costs.



Member (A)

/M.M/