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Researved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALL AHABAD BENCH, ALL AHABAD

Dated: 13.1.1995

Original Application No: 1793 of 1992

Vinod Kumar Vyas,
S/O Shri Moti Lal Vyas,
R/O Mohalla Outside Baragaon Gate,
Near Parua Hanumanji Temple, Jhansi

..... Applicant.

By Advocate Shri M.P.Gupta,

Versus

1. The Union of India through the General Manager, Central Railway, Bombay V.T.
2. The Chief Security Commissioner, Central Railway Protection Force, Bombay V.T.

..... Respondents.

By Advocate Shri P.Mathur

C O R A M

Hon'ble Mr. T.L.Verma, Member-J

O R D E R

This application has been filed for issuing a direction to the respondents to appoint the applicant to a Class III post w.e.f. 11.12.1991 on compassionate ground with consequential benefits including arrears of pay.

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2. Shri Moti Lal Vyas, Constable No. 780 was working under PSC (R.P.F.) Jhansi during the relevant time. He was medically decategorised and declared medically unfit. As there was no suitable post available for providing alternative employment to him, the respondents decided to settle up with all dues with immediate effect by order dated 19.3.1990. Thereafter, he submitted a representation for appointment of his son, Vinod Kumar Vyas (the applicant in this case) to a Class III post on compassionate ground. The applicant is stated to have called for written examination. He appeared at the selection test held on 22.11.1990 at Bombay and upon his successfully passing the test, he has called to appear at the interview held on 24.11.1990. The applicant, however, was informed by letter dated 11.12.1990 (Annexure-1) that his case has not been recommended for appointment on compassionate ground. The father of the applicant, thereafter, sent fresh representation dated 24.2.1992 (Annexure-6) for appointment of the applicant on compassionate ground, to the General Manager, Central Railway, Bombay which was sent to the Chief Security Commissioner for disposal who has rejected the same and communicated to the applicant by letter dated 04.03.1992 (Annexure-2). It is true that the applicant had been given to understand that his case for appointment on compassionate ground was not recommended because one of his brother is already in the Railway service. It is stated that the

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brother of the applicant who is a Constable in the Railway Protection Force, is living separately and is not supporting his father who has been medically decategorised. The decision of the respondents not to appoint the applicant, has been questioned as being arbitrary and against the existing instructions/ Rules framed in that behalf and also on the ground that other similarly placed persons have been given the benefit of compassionate appointment and that the applicant has been discriminated for no sound reason.

3. The respondents have not filed any objection to the claim of the applicant although sufficient opportunity was given to file the same. Hence, this case has been heard and is being disposed of on the basis of the material available on the record. Shri P.Mathur, learned counsel for the respondents, however, has advanced oral arguments opposing the claim of the applicant.

4. The learned counsel for the respondents raised preliminary objection as to the entitlement of the applicant to claim compassionate appointment on the ground that ~~he~~ ^{applicant} is not a railway servant. This argument of the learned counsel for the respondents ~~can't be~~ ^{is} in view of the provisions of Section 10 of the Railway Protection Force Act, 1957 extracted below for convenience of reference;

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Officers and members of the Force to be deemed to
to railway servants:-

The Inspector-General and every other superior officer and every member of the force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890, other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act.

The Indian Railways Act, 1890 defines Railway Servant as follows;

Railway Servant means any person employed by a Railway Administration in connection with the service of a Railway.

From the statement of object and reasons for enacting the Railway Protection Force, 1957, it is clear that the Watch and Wards department has been re-designated as Railway Protection Force so as to effectively achieve the object of protecting railway property and all property entrusted to the Railways for transporting. The deployment of the R.P.F. therefore, is for the purpose of protecting railway property and property entrusted to the railways for transporting. That being so, a Railway Protection Force Constable shall be deemed to be a railway servant within the meaning of the definition of railway servant as given in para 3(7) of the Act. He is therefore, entitled to all the benefits as are admissible to a railway servant in the matter of compassionate appointment.

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5. Railway Board has issued circular from time to time for appointment on compassionate ground. According to the circular No. E(NG) II/90/RC-I/117 dated 12.12.1990, a dependant of a railway employee who has been medically declassified and no alternative job can be offered to him, may be appointed on compassionate ground. There is nothing on the record to controvert the averment made in the application that no alternative appointment was offered to the father of the applicant on his being medically declassified. This being the position, it was submitted his dependant, that is the applicant, should have been considered for appointment on compassionate ground. There is material on the record to show that the case of the applicant was considered for such an appointment but he was found not entitled to. The impugned letter whereby the decision of the respondents was communicated to the applicant, however, does not disclose the reason for rejecting the claim of the applicant. The applicant has, averred, in para 4.9 of the application, ~~stated~~ that his claim for compassionate appointment was rejected because one of his brothers is already in railway service.

6. The question that needs our consideration is whether the respondents could have rejected the claim of the applicant on that ground. The learned counsel for the applicant has referred to the instructions contained in circular No. E9NG) II/84/CM/88 dated 4.5.1984, 31.12.1986, 13.3.1987 and 6.12.1989 and has urged that refusal to appoint the applicant on the ground that his brother was already working with

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the respondents from before, is contrary to the above instructions. The instructions referred to by the learned counsel for the applicant provides that while offering appointment on compassionate to a widow, son, daughter etc., it need not be checked whether another son, daughter is already working. The counsel for the applicant has also placed reliance on the decision of the Karnataka Bench of the Administrative Tribunal in K.Raja Vs. Karnataka Electricity Board & Ors. reported in 1991 LAB I.C. page 778. The Tribunal, in this case has held that if the son of the deceased employee is in employment from before the date of his death, other dependants is not rendered in-eligible for compassionate appointment.

The law on compassionate appointment has been considerably changed since passing of the decision by the Karnataka Bench of the Administrative Tribunal referred to above.

The Supreme Court in Umesh Kumar Negpal Vs. State of Haryana & Ors. reported in Judgements Today 1994 page 525 has held;

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The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.

We are also dismayed to find that the decision of this Court in Sushma Gosain & Ors. Vs. Union of India & Ors. (1989) 4 SLR 327 has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgement that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech, etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

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7. The Supreme Court in L.I.C. of India Vs. Mrs. Asha Ramchhandra Ambekar & Anr. reported in Judgements Today 1994 (2) SC page 183 has held;

Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. ... Yielding to instinct will then to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as they find it, however, inconvenient it may be. ... The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

8. From the principles of law laid down by the Supreme Court in the above cases, it emerges that mere death in harness of Government employee or medical de categorisation, does not entitle his family members to employment on compassionate ground as a matter of course. The Government or the appropriate authority concerned has to examine the financial conditions of the deceased employee in order to determine whether the deceased family is in penurious condition, the only ground which can justify compassionate employment. The impugned order by which the father of the applicant has been informed that the case of the applicant has not been considered fit for compassionate appointment, does not disclose the reason for the said decision. The applicant was expected to have given details as to his present

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financial condition such as the terminal benefits received by the father of the applicant in final settlement of his claim, the rate at which he is drawing the pension and details of the property such as agricultural land etc. / It is an admitted fact that the elder brother of the applicant is gainfully employed. In the normal course, the son will be deemed to be discharging his obligation towards his parents. Except the bald statement in the application that the elder brother of the applicant is not maintaining his father, there is no tangible material on the record to justify such a conclusion. It would thus, appear that there is hardly any material to show that the financial condition of the father of the applicant, who has been medically decategorised on his being found unsuitable for any job, is miserable and that the ^{the} applicant is living in abject poverty so as to justify appointment of the applicant on compassionate ground to tide over the financial distress caused by the sudden medical decategorisation of the applicant's father.

9. The appropriate authority is required to consider the above financial aspect of the family of the Government employee who dies in harness or is medically decategorised and made to retire while considering the case for compassionate appointment. We have no reason to believe, in absence of tangible material, that the appropriate authority did not take into account the financial condition of the family of the Government employee. That being so,

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the impugned order, informing the father of the applicant that the applicant has not been recommended for compassionate appointment, cannot be faulted as not being objective.

10. On a carefully consideration of the facts and circumstances discussed above, I find and hold that the applicant has failed to make out a case for his appointment on compassionate ground. There is thus, no merit in this application and the same is dismissed leaving the parties to bear their own costs.

J. H. Mun

Member-J

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