

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHBAD BENCH.

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Registration O.A. No. 879 of 1992

Suresh Kumar Pandey ... .. Applicant.

Versus

Union of India  
and others ... .. Respondents.

...

Hon. Mr. S. Das Gupta, Member(A)  
Hon. Mr. T.L. Verma, Member(J)

( By Hon. Mr. S. Das Gupta, Member(A) )

Through this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the petitioner has approached this Tribunal praying for a direction to the respondents to appoint him on the post of Class-III on compassionate ground.

2. The admitted facts of this case are that the applicant's father died in harness on 8.4.1989 while working in the Signal Telecommunication Department, North Eastern Railway, Gorakhpur. The applicant's mother thereupon represented to the respondents for appointing the applicant on a Class-III post on compassionate ground. The applicant has passed Intermediate Examination and he possesses proficiency certificate in trade of Wireman. He was called by the respondents for a written test followed by Viva-voce for determining his suitability for a appropriate class-III post. The viva-voce was held on 29.9.1989 and since then the applicant has not been offered any appointment by the respondents.

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3. The applicant alleges that he is fully qualified for appointment to a class-III post by virtue of the Educational Qualifications which he possesses and he is being denied of such appointment due to malice on the part of the respondents. He has specifically alleged that one Sri R.R. Shashtri, SPOR demanded illegal gratification to the extent of Rs. 10,000/- from the applicant in consideration of appointing him to Class-III post. The applicant claims that he submitted a representation to the Chief Personnel Officer, North Eastern Railway (Annexure-A 5) in which he mentioned about this illegal demand made by SPOR and requested that he be given compassionate appointment. Subsequently, the applicant and his mother had submitted large number of representations for consideration of the applicant's case for appointment on compassionate ground, but so far no reply has been given to such representations.

4. The respondents, on the other hand, have averred in their written statement that the applicant appeared in suitability test for appointment to a Class-III post but he was not found suitable for a Class-III category by the selection committee comprising of three officers. He was, however, selected for Group-D category but even his empanelment for Group-D category was subsequently cancelled in view of the fact that the applicant's ~~promotion~~

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brother entered into the chamber of Senior Personnel Officer and threatened him with dire consequences should the applicant <sup>be</sup> not ~~been~~ given appointment in Class-III category. The respondents further contended that the Senior Personnel Officer lodged a report with the Senior Superintendent of Police Gorakhpur and also reported the matter to the Additional General Manager, Gorakhpur, <sup>who</sup> cancelled the empanelment of the petitioner in Group-D category.

5. It is not the case of the respondents that the applicant is not entitled to be given suitable employment on compassionate ground. Had he not been entitled to such employment which is a dispensation given by the Government to the <sup>f</sup>amilies of Government Servants who die in harness leaving the family in acute financial distress, the question of calling the applicant to judge his suitability for Class-III post would not have arisen. It is quite possible that the selection committee did not find him suitable for appointment in Class-III category. We are not prepared to accept the applicant's contention made in the rejoinder affidavit that mere possession of educational ~~entitled~~ qualification entitled him to appointment to a post in Class-III category. Suitability for the category has to be judged and no rules have been produced before us by the applicant that possession of minimum qualification in Class III post alone will entitle him to be appointed to such a post. It is, however, admitted by the respondents that he was ~~not~~ empanelled for a post in Group-D category

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and in case, the applicant ~~has~~ offered appointment in this category, he cannot challenge the same in the absence of any rule which entitles him to be appointed to a Class-III post, even he is found unsuitable for the same.

6. The position, however, in this case is that the applicant has not been offered appointment even in Group-D category. The reason for this, as stated by the Respondents is that the <sup>brother</sup> ~~promotion~~ of the applicant had threatened the Railway Officials with dire consequences, in case the applicant is not given appointment in Class-III category. ~~As~~ Such, a threat, if actually given, is not only reprehensible but even punishable as a criminal offence. We cannot, ~~however~~ appreciate the respondents' action in penalising the @ applicant, who, admittedly, was not the person who threatened the Railway Official. There is no evidence on record that the applicant's brother threatened the official at the instigations of the applicant or that this alleged mis-deed was in any way, abetted by the applicant. ~~To~~ presume that the applicant did also have a hand in this matter merely because the miscreant ~~is~~ his brother and there by to deny compassionate appointment to the applicant and ~~thus~~ <sup>u</sup> ~~provide~~ succour to the family in need of financial assistance, does not seem fair to us.

7. The bread-earner of the family died as far back as on 8.4.1989. Nearly <sup>5</sup> ~~5~~ years have elapsed

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since then. It is well settled that time is the essence of financial assistance by way of compassionate appointment. In the case of Sushma Gosain and others Vs. Union of India and others, AIR 1989 SC 1976, The Supreme Court observed;

"It can be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on Compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years."

The learned judges even went to the extent of observing in this case that if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.


8. In view of the foregoing, we are of the opinion that while the applicant has no legal right to claim <sup>appointment</sup> ~~the applicant~~ to a post in Class-III category, the respondents cannot deny him appointment to suitable group-D post. We, therefore, direct the respondents to appoint the applicant on appropriate group-D post within a period of three months from the date of communication of this order.

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9. The application is disposed of with the above directions, there will be no order as to Costs.

  
Member (J)

  
Member (A)

Dated: 5 March, 1994.

(n.u.)