

Re served

CENTRAL ADMINISTRATIVE TRIBUNAL
ALAHABAD BENCH
ALLAHABAD

Original Application No. 1483 of 1993

Allahabad this the 26th day of March 1997

Hon'ble Dr. R.K. Saxena, Member Judicial

1. Smt. Sura Devi, W/o Late Sri Ram Pratap.
2. Sri Shiv Nath, S/o Late Sri Ram Pratap.
Both r/o village Damuan Khamharia, Post Office
Vijai Pur, District Mirzapur.

Applicants

By Advocate Sri Anand Kumar.

Versus

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

Respondents

By Advocate Sri S.K. Jaiswal

O R D E R

By Hon'ble Dr. R.K. Saxena, J.M.

This is an application moved under Section 19 of the Administrative Tribunals Act, 1985 by Smt. Sura Devi and Shiv Nath who are the widow and son respectively of Late Ram Pratap who died in harness. It is stated that Ram Pratap was a Gangman under the Public Works Inspector, Northern Railway Chunar. When he was on active duty on 29.12.1970, he was knocked down by Goods Train between Dagmag Pur and Pahara Railway station. As a result of the same, he died leaving behind the applicant no.1 as his wife, two sons and two daughters. The applicant no.2 is

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the second son of the deceased Ram Pratap. The appointment on compassionate ground is being sought by the applicant no.2. The ground for the claim of the said appointment are that the father of the applicant had died while discharging his duties; that the respondents had failed to give the compensation; that there had been instructions of the Railway Board to give appointment to one ^{of the} ~~one~~ children of the employee who died on duty; that the eldest son of Late Ram Pratap had separated himself and thus, there was ^{no} ~~was~~ means of subsistence left. It is also contended that the applicant no.2 is without any job. Hence this O.A. has been filed with the prayer that the respondents be directed to give appointment to the applicant no.2.

2. The respondents have contested the case. It is averred that the O.A. has been filed beyond the period of limitation; that the applicant no.1 was granted family pension, compensation and the amount of death-cum-retirement gratuity. It is also stated that the applicants never approached the respondents prior to filing the O.A. and that the applicant no.1 was of 37 years of age, two daughters were of 14 and 12 years of age and 2 sons were of 7 and 5 years in the year 1971 when the applicant no.1 had filed the declaration for family pension and payment of other dues. It is, therefore, contended that the applicant no.2 - Shiv Nath had got majority of age in the year 1984. It is denied that the applicant no.2 was only six months old at

the time of the death of the employee. It is also contended that the financial position of the applicant is sound because they were paid an amount of Rs. 1300/- as death-cum-retirement gratuity, Rs. 2000/- as compensation and family pension which comes to Rs. 375/- ⁸ besides the D.A. Thus, it is claimed that the O.A. be dismissed.

3. The applicants have filed the rejoinder, reiterating the facts which were mentioned in the O.A.

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

5. There is no dispute that Late Ram Pratap had worked as Gangman under the respondents and he had died on 29.12.70 because of the accident wherein he was knocked down by the Goods train. It is also not in dispute that Late Ram Pratap left behind his widow - applicant no. 1, two sons of whom applicant no. 2 is second son and two daughters. It appears from the pleadings of the applicants that both the daughters were married and first son namely Ram Jatan was also employed. The fact that the applicant no. 1 had applied or not for appointment soon after the death of the Ram Pratap is not clear. It is nowhere mentioned in the representation that the applicant no. 1 had ever applied for appointment. What she stated is that she had applied for family pension, compensation etc. In O.A. she, however, stated that she had also applied for appointment as well.

The respondents have denied the contention of any

application having been given by her for appointment. The applicants themselves have brought the copy of one application annexure R.A.1 attached to the rejoinder which was given to the Divisional Superintendent, Northern Railway, Allahabad on 13.4.1971. This application too does not contain any prayer for appointment. On the other hand, it was mentioned that some arrangement should be made for education of the children and for giving them suitable employment in future. Thus, it emerges that the applicant no.1 never desired any employment soon after the death of her husband.

6. The purpose of giving appointment on compassionate ground is to help the family tide over the unexpected and immediate hardship and distress caused by the death of the bread-winner. In this case, Ram Pratap who was the husband of the applicant no.1 and father of the applicant no.2, had died on 29.12.1970. To tide over the financial hardship, the applicant no.1 should have sought appointment then and there. As is discussed above, I find that no attempt was made to seek appointment by the applicant no.1. The appointment is now sought for the applicant no.2 on the ground that he was minor at the time of the death of his father. What is stated in annexure A-1 is that Shiv Nath - the applicant no.2 was only 6 months old at the time of death of his father. This fact is contradicted when I go through the annexure R.A.-1 dated 13.4.1971 in which it was written that two daughters were of 10 and 12 years old and two sons of 8 and 6 years old. It means that applicant no.2 was six years old on 13.4.71. If it

is so, the averment in the O.A. and annexure A-1 that the applicant no.2 was six months old at the time of the death of his father, is falsified. It is claimed that the applicant no.2 became major only in the year 1992 and, therefore, he had moved for appointment. I do not find truth in this contention because the majority of age is gained when one becomes 18 years old. Since the applicant no.2 was six years old in 1971, he became major in the year 1983 or in any case in the year 1984. There is no justification for having waited to move the respondents only in the year 1992. Their Lordships of Supreme Court in "Jagdish Prasad Vs. State of Bihar and Others 1996 (1) S.L.R. 7", held that the object of appointment of dependent was to relieve unexpected hardship by the sudden demise of the earning member of the family. The son of the deceased employee in the said case was 4 years old at the time of death and claimed appointment after attaining the majority in the year 1994. Their Lordships did not accede to the contention of the applicant that the circumstances for appointment on compassionate ground continued to subsist till the date of majority of the applicant. Thus, the applicant in the said case was not found entitled to be appointed after attaining the majority. On application of ration^t of the said judgment, it is deduced that the applicants have no right to claim the appointment of applicant no.2 on compassionate ground.

7. The learned counsel for the applicant has also relied on the circular dated 06.10.1995 of the

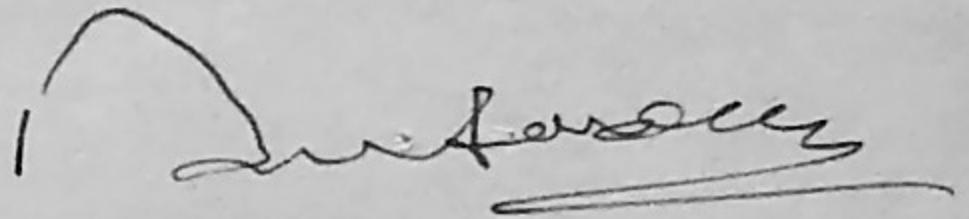
Railway Board in which the period of seeking appointment on compassionate ground in the case of minority of the deceased children, was extended upto 20 years. It is already observed as was deduced from the pleadings and different documents that the applicant no.2 was of 6 years of age in the year 1971. This fact was written by the applicant no.1 in her application annexure R.A-1. If counted the date of birth from this fact, it comes to the year of 1965. 20 years age is attained by the applicant no.2 in the year 1985 and even if ^{allowance} of 2 years more given, the applicants should have been moved by 1987 whereas the representation was made only in the year 1992 as is clear from annexure A-1. The present O.A. was filed on 27.9.93. Thus, the plea taken by the respondents that the O.A. was filed beyond the period of limitation, is established. Consequently, it remains no more maintainable.

8. As regards the financial position, the respondents have disclosed that the applicant no.1 was paid the amounts towards Death-cum-Retirement Gratuity, Compensation and family pension. The applicant no.1 was getting an amount of Rs.375/- ^{100/-} as pension besides the D.A. She had not applied for the job. The eldest son of the deceased Ram Pratap was also engaged in job. In this way, by no standard the applicant no.1 can be said to be an indigent person. What appears is that because applicant no.2 could not get job anywhere, an attempt is being made to seek entry in the service through this procedure. At the cost of repetition, it would be mentioned that the appointment on compassionate ground is

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allowed in rare circumstances and that too so that the family of the deceased employee may not suffer. In this case, the applicants sought this kind of appointment on compassionate ground after 22 years of the death of Ram Pratap. Thus, there remains no legal justification for the same.

9. On the consideration of the facts and circumstances in there entirity, I come to the conclusion that there is no merit in the O.A., the same is dismissed. No order as to cost.


(Dr. R.K. Saxena)
Member Judicial

/ M.M. /