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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

DATED ALLAHABAD THE 19th JULY, 1995.

Hon'ble Mr. S. Dayal, A. M.

O. A. No. 486 of 1993.

1. Bal Kishori Devi wife of late Radha Kishan Sharma,
Ticket No.4020, Carpenter, N. E. Railway Workshop,
R/o. village Lachhman Dumari, P. O. Raghunathpur,
District Siwan.
2. Sri Ashok Kumar Sharma, son of Sri Phulena Prasad
Sharma, R/o. village Lakshman Dumari, P. O.
Raghunathpur, District Siwan.

... . applicants.

(By Advocate Shri Anil Kumar)

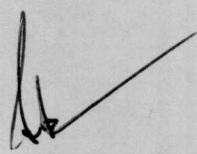
Versus

1. Union of India through General Manager, N. E. Railway
Gorakhpur.
2. General Manager(Personnel)(C.P.O.), N. E. Rly,
District Gorakhpur.

..... Respondents.

(By Advocate Shri D. C. Saxena)

(BY HON'BLE MR. S. DAYAL, A.M.)

-  1. This is an application under Section 19 of
the Administrative Tribunals Act, 1985. The
application seeks relief of quashing of the orders
dated 8.4.1991 and 9.6.1992 passed by the respondent

No. 2 as also a direction to appoint the applicant No.2 Shri Ashok Kumar Sharma on compassionate ground.

2. Grounds for seeking the relief are that the denial of appointment to the nephew of the applicant No.1 on compassionate ground was against the provisions of the Railway Board's letter dated 25-8-1980 which provides for appointment of near relatives on compassionate ground, if the widow had no son or daughter. The second ground is that Circular of Railway Board dated 12-2-1990 was not applicable in this case because the matter of appointment of the nephew had been raised in the year 1980 and the circular applies with prospective effect. The third ground is that circular dated 12-2-1990 modifies the provisions of circular dated 25-8-1980 because of increase of family pension and other terminal benefits subsequently. The circular dated 12-2-1990 was made effective with regard to those persons who had retired or died after 1991. Fourthly the applicant claims entitlement through appointment on compassionate ground based on policy decision dated 16-5-1991. Lastly the order of rejection dated 8.4.1991 is stated to be non-speaking.

3. The impugned orders at Annexure-A-1 and Annexure-A-2 are layter to applicant No.1 to the effect that case of appointment in Class IV was not under consideration and another letter to the applicant to the effect that it was not possible to consider the case of compassionate appointment of applicant No.1's nephew under the existing Rules of the Railway Board.

4. It appears from Annexure-A-3 that the applicant No.1 was asked to report for medical examination as also furnish the copy of the said certificate vide letter of Maha Prabandhak (Karmik), Gorakhpur dated 25.9.1980. Applicant No.1 vide her letter dated 10.1.1981 requested the respondents to offer requisite appointment to her nephew Sri Ashok Kumar Sharma because she could not avail of offer due to her physical ailment. The applicants claim that several reminders after ~~xxxxxx~~ registered letter dated 10.1.1981 have been sent. The General Secretary of Northern Railway Mazdoor Union also invited attention of the authorities on 20.9.1988 regarding compassionate appointment of applicant No.1's nephew Sri Ashok Kumar Sharma. It appears from Annexure-A-7 that the appointment of near relatives on compassionate ground was severely restricted by orders dated 12.2.1990 and was liberalised on 16-5-1991. The office of Maha Prabandhak (Karmik) Gorakhpur asked for details of dependents on applicant No.1 vide their letter dated 31.3.1992. Annexure-A-12 shows that there is no son or daughter of applicant No.1 and the only support is nephew Sri Ashok Kumar Sharma.

5. The respondents have stated in the written statement that the husband of the applicant No.1 was a Carpenter in the workshop in Gorakhpur and died in harness on 12.4.1978. The applicant No.1 called for appointment as Class IV which she did not accept and requested that the applicant No.2 may be appointed. They have also stated that the ~~xxxxxx~~ request of the

applicant was not considered in view of the policy laid down by Railway Board's letter dated 12.2.90, which stipulated that appointment of near relative was not permissible where the widow had no dependent son or daughter ^{to be} supported by her. With regard to the contention of the applicants, the respondents stated that her case could not be covered under Railway Board policy by letter dated 16.5.1991. The respondents have stated that the Railway Board by another letter dated 7.8.1991 has decided that the case of appointment on compassionate ground of near relative could be considered only within five years of the death of the deceased employee.

6. It is clear from the pleadings that the respondents had found the applicant eligible to be appointed as Class-IV employee vide their letter dated 25.9.1980. The respondents have admitted in para 6 of the written statement that the application of applicant No. 1 for appointment of her nephew who is applicant No.2 was received by the respondents. The applicants' claimed ~~xxxx~~ for appointment of near relative was permitted before the instructions of the Railway Board dated 12.2.1990 were issued, has not ^{been} contradicted by the respondents. This is confirmed by opening paragraph of Annexure-CA-1 which mentions that appointment on compassionate ground of near relatives of a Railway employee, dying in harness could be considered, subject to conditions stipulated therein. The respondents should have considered the appointment of applicant No.2 in accordance with the instructions of Ministry of

Railways letter No. D(NC)III/78/RC-1/1 dated 25.8.1980.

This was not done.

7. Under the circumstances, a direction is issued to the respondents to reconsider the case for appointment on compassionate ground of applicant No.2 in accordance with the instructions of the Ministry of Railways letter dated 25.8.1980. This should be done within a period of 3 months of the intimation of this order by the applicants to the respondents, alongwith a fresh application for compassionate appointment. There shall be no order as to costs.

Handwritten signature
A.M.

ABD