

CENTRAL ADMINISTRATIVE TRIBUNAL ALIABAD BENCH

Allahabad this the 30th day of March 1995.

Original Application no. 818 of 1993.

Hon'ble Mr. S. Dayal, Administrative Member.

Mrityunjai Prasad Srivastava, S/o Late Shri R.L.L. Srivastava, R/o Village and P.O. Bhala Khurd, Distt. Ghazipur.

... Applicant

C/A Shri A.K. Sinha

Versus

- i. Union of India, through The General Manager, Rail Bhawan, New Delhi.
- ii. General Manager, Eastern Railways Calcutta.
- iii. The Divisional Railway Manager, Eastern Railway Mughalsarai Distt. Varanasi.
- iv. Senior Divisional Personal Officer, Eastern Railway Mughalsarai, Distt. Varanasi.

... Respondents

C/R Shri A.K. Gaur.

O R D E R

Hon'ble Mr. S. Dayal, Member-A

 This is an application made by deceased (on 16.2.69) Shri Ram Lakhon Lal Srivastavsson and legal heir Shri Mrityunjai Prasad Srivastava (attaining majority in 1986) for appointment under

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dying in harness rule. The relief sought is a direction to the respondents to appoint the applicant on a post commensurate with his qualifications in the North Eastern Railway. It also seeks the setting aside of the order dated 10/27.7.92 by the Divisional Railway Manager, Eastern Railway, Moghalsarai and award of costs of the application.

2. It appears that the father of the applicant who was 2nd F/Man/MGS died in a railway accident at Moghalsarai on 16.02.69 leaving three daughters and a son all of whom were minors. The applicant attained majority on 15.10.87 for his appointment. The respondents asked the applicant to submit some information on 13.02.89 which he did on 10.03.89. He was informed on 10/21.7.92 that he could not be given compassionate appointment.

3. The ground on which the relief is claimed is the right of legal heir of the deceased under Dying in Harness Rules to be appointed in the department. The respondents are under obligation to give appointment to the only legal heir of the deceased ~~to the department~~ in the Railway Department. The denial of application for appointment after attaining of majority on 15.10.86 is against provisions of law and rules and Articles 14 and 16. The applicant could not reply to letter of Divisional Superintendent dated 04.09.79 inviting application

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for appointment because he was a minor. Annexure I shows that the DRM had enquired of the applicant's grandfather Shri Sheopujan Lal as to why Smt. Saroj Srivastava had not applied for compassionate appointment. The applicant has submitted High School Certificate which shows his date of birth as 15.10.68. His mother died in January and father in February, 1969. (Annexure III).

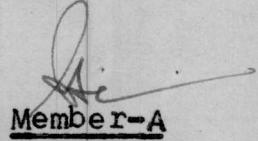
4. The respondents in their reply have raised the question of limitation. It is mentioned in paragraph 13 of the reply that the father of the deceased employee had asked for compassionate appointment of his another son and this was rejected. They have also stated that Railway Board's letter requires compassionate appointment of child other than the eldest to be made within five years of death of an employee. A copy of this letter has been annexed to the reply as Annexure I.

5. The applicant's counsel Shri A.K. Sinha was heard. He reiterated the pleadings and said that since the application for compassionate appointment was made within 10 years of attaining majority. The counsel for the Respondent Shri V.K. Goel has been heard. He invited attention to cases in JT 1994 (III) SC 126, 1993 AWC 1147, 1992 (21) ATC 675, 1994 (2) SCC 752, 1994 (III) SCC 525 to stress that laches bar the claim of the applicant ^{from} being accepted.

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6. The applicant has claimed compassionate appointment as his statutory and constitutional right but has not substantiated the manner in which any statute or constitutional provision was violated by denial of compassionate appointment to him. The fallacy that compassionate appointment for one of its dependents was a right of the family of an employee has been set at rest by the Supreme Court in the case of Shri Umesh Kumar Nagpal versus The State of Haryana in which compassionate appointment has been considered to be an exception to normal appointment at the lowest levels of class III and IV to one of the members of such family which was left in indigent circumstances due to the death of an employee in harness who was the head of the family and required immediate assistance to tide over the financial crisis in which the family found itself due to the death of its breadwinner. An application after eighteen years of the death of an employee for compassionate appointment is clearly outside this category. The case also is clearly outside the more liberal provisions of letter annexed at Annexure I to the reply because the application has been made by the fourth child of the deceased outside the stipulated period of five years.

7. The application, therefore, fails. The parties should bear their own costs.


Member-A

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