

RESERVED

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH,
ALLAHABAD

DATED :- ALLD. ON THIS 24th DAY OF DECEMBER, 1997

CORAM :- HON'BLE MR.D.S.BAWEJA, MEMBER(A)

ORIGINAL APPLICATION NO. 1210 OF 1995

Smt Usha aged about 28 years wife of
Late Shri Mahesh Prasad, R/o House No.
1526, Madrasi Mohalla, Near Narayan Bagh,
Jhansi(UP).

.... Applicant.

C / A :- Shri R.K.Nigam

Versus

- (1) Union of India through General Manager, Central Railway, Bombay V.T.
- (2) Divisional Railway Manager, Central Railway, Jhansi(UP).

.... Respondents.

C / R :- Shri V.K. Goel

O R D E R
(By Hon'ble Mr. D.S.Baweja, Member(A))

This application has been filed seeking relief of directing the respondents to give appointment on compassionate ground to the applicant.

(2) The husband of the applicant Shri Mahesh Prasad while working as Casual Labour in Carriage and Wagon Department, Central Railway at Gwalior was imposed the punishment of removal from service as per order dated 20.02.1989. Late Shri Mahesh Prasad challenged this order through O.A.No.1124 of 1989 - Mahesh Prasad Versus Union of India and others. This O.A. was decided on 25.02.94 quashing the impugned punishment order with the direction to re-instate the applicant in service with immediate effect.

Late Shri Mahesh Prasad was advised vide order dated 31.05.94 to join his duty and thereafter he joined the duty accordingly. However, Late Shri Mahesh Prasad died on 12.07.95. The deceased employee left behind the family comprising of widow i.e. the applicant, three sons aged 13 years, 8 years and 6 years and one daughter aged 15 years. The widow contacted the office for compassionate appointment for herself and office directed to file an affidavit to the effect that her husband had died and she is the widow of the deceased employee. This affidavit was submitted on 07.07.95. This was followed by another representation dated 28.08.95. However, on not getting any response, the present application has been filed on 16.11.95.

(3) The respondents have filed the Counter Reply opposing the application. The respondents have submitted that the application has been filed even before the expiry of six months from the date of representation and, therefore, is pre-mature. The respondents further contend that Late Shri Mahesh Prasad was not conferred temporary status and only after allowing the temporary status, the employee is entitled for benefits available to temporary Railway Servants. In view of this, the applicant is not entitled for compassionate appointment on the death of her husband as per the extant rules. Inspite of this, the respondents state that on receipt of representation from the applicant, necessary process was followed for considering the case of the applicant for compassionate appointment. The applicant did not furnish full details necessary for considering the case for compassionate appointment. A Welfare Inspector was deputed to conduct the enquiry and he went to the residence of the applicant. However, no enquiry could be conducted as the applicant was not available at the address given and the whereabouts of the applicant were not known. The respondents also submit that disciplinary action against late Shri Mahesh Prasad was also initiated as provided in the order of the Tribunal dated 25.02.94 but before the chargesheet could be served, the husband of the applicant expired. In the light of the averments made in the Counter Affidavit, the respondents plead that the applicant

is not entitled for the relief claimed for and the application deserves to be dismissed.

(4) The applicant has filed rejoinder reply controverting the submissions of the respondents. The applicant has contended that late husband of the applicant was a temporary employee as declared in the order of the Tribunal in the O.A.No.1124 of 1989. The relevant documents required by the office as per letter dated 09.01.96 have been also furnished by the applicant as per her letter dated 09.03.96. The applicant further contends that no disciplinary enquiry was pending against the late husband of the applicant at the time of death. The applicant has strongly contested the contention of the respondents that enquiry could not be conducted by the Welfare Inspector as the applicant was not available at the address given.

(5) I have heard Shri R.K.Nigam and Shri V.K.Goel, learned counsel for the applicant and respondents respectively. The material brought on record has been also perused.

(6) From the averments made by the respondents, it is noted that the respondents have opposed the application on two grounds which are contradictory. The first ground is that the applicant is not entitled for the compassionate appointment as per the extant rules since her husband had not been given the temporary status. I have gone through the averments made to this effect by the respondents in para no.4 of the Counter Affidavit. The contention made by the respondents is not tenable. The applicant has contested the submission of the respondents stating that the findings to this effect have been already recorded in the order dated 25.02.94 in the O.A.No.1124 of 1989. On going through this order, it is noted in para no.5 of the order that the applicant would be deemed to have acquired temporary status based on having worked more than 120 days continuously. Based on this finding, it has been concluded that the procedure for termination of service required to be followed for the employee having temporary status had been not followed and, therefore, punishment order was illegal and accordingly quashed. In view of this, the respondents cannot take/plea that

the applicant had not acquired the temporary status. It is ~~alleged to~~ altogether a different matter that the applicant is ~~have got~~ appointment through a forged casual labour card. As per the order dated 25.02.94, the respondents were given liberty to conduct enquiry for the charges of having obtained appointment through forged casual labour card as per the extant rules. However, till the death of late husband of the applicant, no chargesheet ~~had~~ been issued and no disciplinary proceedings were pending against the late Shri Mahesh Prasad. In the light of these facts, the ~~therefore~~ applicant was ~~re-instated~~ in service with temporary status. The plea taken by the respondents in para no.4 that even if it is assumed that the applicant had acquired the temporary status, but he was not temporary employee as the benefits of the temporary status had been not yet allowed to the applicant. This stand of the respondents is not sustainable as it was the incumbant on the respondents to take necessary action to allow the benefits accrued to late Shri Mahesh Prasad. In consideration of these ~~not~~ facts, I am ~~inclined~~ to endorse to the stand of the respondents and the applicant case is to be dealt with taking that the Late Shri Mahesh Prasad had attained the temporary status. During the hearing, learned counsel for the respondents was wasked to indicate the relevant rules under which the compassionate appointment is admissible to the Ward/Widow of Casual Labour, who die-in-harness. The learned counsel for the respondents made available a copy of the Master Circular No.16 "Appointment on compassionate ground." On going through the Master Circular, it is noted that in para no.11(b), it is provided that Ward or Widow of a casual labour with temporary status could be considered for appointment as a fresh face casual labour or substitute on compassionate ground at the discretion of the General Manager. In view of the provisions of these rules and the fact that the applicant had acquired temporary status, the applicant becomes eligible to be considered for compassionate appointment.

(7) The second ground advocated by the respondents ~~that~~ the applicant did not furnish the full details which are required for considering the case for compassionate appointment. The applicant also did not co-operate with the enquiry which was ordered to be conducted by deputing the Welfare Inspector.

As indicated earlier, this ground of the respondents is in contrast to the stand taken by the respondents that the applicant is not eligible for compassionate appointment. If the applicant was not eligible for compassionate appointment, then the question of conducting any enquiry would have not arisen. In any way, the findings have been recorded earlier that the applicant is eligible for compassionate appointment as per the extant rules. The applicant has stongly contested the contention of the respondents that she was not available at the address given when the Welfare Inspector was deputed. In fact, she has alleged that the Welfare Inspector did not conduct the enquiry as he had demanded some gratification. I am ^{/ not} inclined to go into this issue as the allegations are very vague and the concerned Welfare Inspector has been not made a party by name as a respondent. However, it is noted that the respondents have not given any reply to the widow for her representation stating that no enquiry could be conducted when the Welfare Inspector was deputed for the same. In view of this, I am inclined to subscribe to the averment of the respondents. In fact from RA-1, it is noted that the respondents have written a letter dated 09.01.96 to the applicant for furnishing the required documents. As per RA-1, the applicant has furnished the required documents. There is no denial by the respondents for submission of the documents as per her letter dated 09.03.96.

(8) From the above facts, it could be inferred that the proposal for compassionate appointment had been not considered by the appropriate authority. Keeping the facts and circumstances of the case, it would be expedient to issue direction to the respondents to consider the case of the applicant for compassionate appointment as per the extant rules. The respondents will advise within one month from the date of receipt of copy of this order to the ^{the applicant} for any additional document, if required. The applicant shall furnish the details, as demanded, within a period of one month thereafter. The case of the applicant shall be considered for compassionate appointment within three months thereafter and final reply shall be given to the applicant within five months from the date of receipt of the order.

(9) In the result of the above, the application is allowed with the direction given in para no.(8) above. No order as to costs.

8/14/67
MEMBER (A)

/rsd/