

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : Allahabad this the <sup>5<sup>th</sup></sup>.....day of Feb.1997

CORAM : Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 1292 of 1995.

Smt. Pyari Devi,  
widow of late Sri Ram Achal,  
resident of village Dighara, P.O.  
Peepiganj, Tehsil Sadar,  
District Gorakhpur. ....Applicant-petitioner.  
(By Counsel Sri Swaraj Prakash)

Versus

1. Union of India through the  
General Manager, N.E.Railway,  
Gorakhpur.
  2. The Chief Personnel Officer, N.E.Railway,  
Gorakhpur.
  3. The Chief Workshop Manager, N.E.Railway,  
Gorakhpur.
- .....Respondents.  
(By counsel Sri V. K. Goel)

O R D E R

(By Hon'ble Mr. T. L. Verma, Member-J)

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This application under Section 19 of  
the Administrative Tribunals Act, 1985 has been filed  
for issuing a direction to the respondents to appoint

Chhotey Lal son of the applicant on compassionate ground.

2. Late Sri Ram Achal, husband of the applicant is stated to have died in harness while working as Train Examiner of Carriage and Wagon Workshop, North-Eastern Railway, Gorakhpur on 15.11.1973. It is said that at the time of his death Chhotey Lal and Vinod Kumar two sons of late Ram Achal born of the applicant who was married to him after the death of his first wife, were minor. Therefore, they could not apply for appointment on compassionate ground. Chhotey Lal one of the sons of deceased Government servant became of age in 1986. He therefore, submitted a representation for his appointment on compassionate ground. He passed his High School examination in the year 1987 and thereafter he filed another application for appointment on some Group 'D' post on compassionate ground (Vide Annexure-3). When the aforesaid applications, submitted by Chhotey Lal did not yield any result, he submitted representation to higher authorities including Divisional Railway Manager. The representation of the applicant was rejected by order dated 4.5.1990 (Annexure-4). Thereafter he submitted representation to higher authorities for his appointment on compassionate ground. Subsequent representation filed by the applicant, it is stated, also ~~have~~ failed to evoke any response from the respondents.

3. The further case of the applicant is that late Sri Ram Achal have two sons from his first wife, <sup>that</sup> and both the sons are employed in the Railways. They, however, do not take care of the applicant. Therefore,



she is finding it extremely difficult to manage her day-to-day requirement with the meager amount of Rs.600/- which she is drawing as family pension. Hence, this application for the relief mentioned above.

4. Though the respondents have not filed any counter-affidavit, the learned counsel for the respondents at the time of arguments opposed the prayer on the ground that the same is barred by limitation and that the applicant is not in financial difficulties as may have entitled her to the appointment of her son on compassionate ground.

5. The learned counsel for the applicant has submitted that according to the Government Order dated 18.1.1994 issued by the President of India cases of appointment on compassionate ground have to be viewed sympathetically and where the case has been once rejected a fresh request may be examined on merit. If the cases are of more than 5 years, the same may be referred to the Board if the circumstances warrant. Relevant Govt. Order though has not been brought on record. The learned counsel for the applicant has referred to para 55 of Rly. Establishment Manual by M. L. Jand to lend support to his submissions. This book is 1986 edition. The Master Circular on Appointment on Compassionate Ground issued by the Railway Board was filed by the learned counsel for the respondents in the course of argument. I have carefully perused the Master Circular and I do not find any circular as mentioned by the learned counsel for the respondents referred in the said Master Circular. As against that according to circular dated 18.4.1990, normally all appointments on compassionate ground should

be made within a period of 5 years from the date of occurrence of the event entitling the eligible person to be appointed on that ground. This period of five years may be relaxed by the General Manager ~~xx~~ upto 10 years from the date of death. Sri Ram Achal (deceased) husband of the applicant died on 15.11.1973. The applicant, therefore, was eligible for seeking appointment on compassionate ground on the date her husband died. Admittedly she never applied for such an appointment. It was submitted by Sri Swaraj Prakash learned counsel for the applicant that as her priority lay in bringing up minor children, she did not apply for compassionate appointment. This, in my opinion is not sufficient reason for not availing the opportunity within a stipulated period.

6. The law on the subject of compassionate appointment has been settled by the Hon'ble Supreme Court in a number of cases including Unesh Nagpal Vs. State of Haryana J.T. 1994(3) S.C. 525 and Life Insurance Corporation of India Vs. Asha Ram Chandra Ambekar and another J.T. 1994(2) S. C. 183.

7. In Unesh Nagpal's case the Hon'ble Supreme Court has held :-

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.



What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that **but for** the provision of employment, the family will **not** be able to meet the crisis that a job is to be offered to the eligible member of the family."

Sh The Hon'ble Supreme Court has further held in the aforesaid case that mere death of employee in harness does not entitle his family to compassionate appointment. The Government or the Public authority concerned have to examine whether the family of the deceased Government employee is living in penurious condition and needs immediate help to retrieve them from such a situation. The applicant and her husband two minor sons, who according to her are not being looked after by the two sons of late Ram Achal from his first wife have sustained themselves for over 24 years, on the pension the applicant is drawing. Learned counsel for the respondents very vehemently argued that this fact alone is sufficient to indicate that the applicant and his sons are not living in penurious condition therefore, **are not** entitled to **appointment** on compassionate ground. We are inclined to accept this argument of the learned counsel for the applicant.



8. In Life Insurance Corporation of India's case the respondent, widow of late Ram Chandra Ambekar, ~~was~~ **Higher Grade Assistant** in the Sanda Branch of the Life Insurance Corporation of India died in harness. A representation of Mrs. Asha Ram Chandra Ambekar for appointment on compassionate ground was rejected on the ground that she has ~~not~~ exceeded the upper age limit of 45 years. Subsequently she made various representations seeking employment on compassionate <sup>after relaxing upper age limit.</sup> ground. These representations were also rejected by order dated 6.10.1987. The decision of the appellants Corporation was challenged by Mrs. Asha Ram Chandra Ambekar by filing writ petition in High Court. The High Court allowed the writ petition and directed the appellant to appoint the applicant on compassionate ground within four weeks. The Hon'ble Supreme Court while setting aside the judgement and order of the High Court held :-

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"Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration....Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be...The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the



case may be, it should never be done. In the very case, itself, there are Regulations and Instructions which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of Sub-Clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and instructions. They cannot be put aside and compassionate appointment be ordered. Further it is well settled in law that no mandamus will be issued directing to do a thing forbidden by law.... It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.

...For aught one knows, there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of the 2nd respondent. Thus, apart from the directions as to appointment on compassionate grounds being against statutory provisions, such decision does not take note of this fact. Whatever it may be, the Court should not have directed the appointment on compassionate grounds. The jurisdiction under mandamus cannot be exercised in that fashion. It should have merely directed consideration of the claim of the 2nd respondent. To straightway direct the appointment would only put the appellant Corporation in piquant situation. The disobedience of this



direction will entail contempt notwithstanding the fact that the appointment may not be warranted. This is yet another ground which renders the impugned judgment dated 19.10.1993 unsupportable."

9. The ratio of the decision of Hon'ble Supreme Court extracted above is that appointments on a Government posts should be made according to the recruitment rules. The relaxation in age should be in very exceptional cases and as such relaxation should be granted if none of the members of the family of the deceased Government employee is gainfully employed. In the instant case I have noticed above that two of the sons of the deceased employee are gainfully employed in the Railways. This being so and having regard to the fact, that the applicant and her sons have sustained themselves for over 22 years after the death of their bread-<sup>winner</sup>~~earner~~, is sufficient evidence to show that this is not a fit case in which appointment on compassionate ground should be made to bail out the family of the deceased employee from sudden crisis resulting from the death of the bread winner.

10. The representation of the applicant was rejected by order dated 4.5.1990. The limitation for challenging the aforesaid order was one year from the date of communication of the aforesaid order. The applicant, therefore, at best was entitled <sup>for</sup> a period of one year from June 1990 to June 1991, for challenging the order rejecting his/her request for appointment. This application, seeking compassionate appointment after the rejection of request, has, however, been filed by the applicant on 5.12.1995, more than four



years after the expiry of the period of limitation. There is no reasonable explanation for this delay on the record. The application is, thus, apparently barred by limitation.

Government order dated 18.1.1981, referred to by the learned counsel for the applicant in course of his argument and in the O.A. even if assumed to be in existence, then also the same does not advance the case of the applicant. The relevant provision as extracted in page 55 of the Railway Establishment Manual by M. L. Jang reads as follows :-

"Cases of appointment on compassionate grounds should be viewed sympathetically. Where case was once rejected, a fresh request may be re-examined on merits. Cases more than 5 years old may be referred to Board if circumstances warrant consideration."

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A plain reading of the provisions extracted above leaves no room for doubt that the provisions are not mandatory. Therefore, this does not ~~not~~ <sup>make it</sup> ~~mandatory~~ <sup>responsibility</sup> on the respondents to re-examine the request for compassionate appointment. All that it provide is that a fresh request may be re-examined. The discretion, thus, is with the competent authority. In addition to the above, the Government Order is of the year 1981. The instructions issued by the Railway

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Board in 1990 referred to in para 5 of the judgment being subsequent in point of time will, <sup>therefore,</sup> prevail.

11. On a careful consideration of the facts and circumstances of the case as discussed above, I am satisfied that the applicant has failed to make out a case for issuing a direction as prayed for in this application. This application is accordingly dismissed leaving the parties to bear their own costs.

*J. Kurina*

(Judicial Member)

(pandey)