

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION No.328/1999

DATED THIS THE 24<sup>th</sup> DAY OF MAY, 2002

HON'BLE MS. MEERA CHHIBBER .. MEMBER (J)

Sushil Kumar Singh,  
S/o late Sri Mata Prasad Singh,  
Village Pareri, P.O. Kachchwa,  
District Mirzapur, U.P. ... Applicant

(By Advocate Shri K.K. Mishra)

Versus

Divisional Railway Manager,  
Eastern Railway, Sealdah.

2. Senior Divisional Officer,  
Eastern Railway, Sealdah.

3. Assistant Personnel Officer,  
Eastern Railway, Sealdah.

4. The Union of India, through  
General Manager,  
Eastern Railway,  
Fairly Place,  
Calcutta. ... Respondents

(By Advocate Shri A.V. Srivastava)

ORDER

By this O.A., the applicant has challenged the order dated 27.2.1998 (at page 15) whereby the applicant's mother has been informed that her son has been found suitable for Group 'D' and not suitable for Group 'C' post. He has also challenged the order dated 25.3.1998 whereby the applicant has been offered provisionally a temporary post of Group 'D' category.

2. The applicant's case is that he was a minor at the time when his father had died in an accident at D.D.J. Yard on 13. Therefore, applicant's mother

...2..

submitted an application for appointment of the applicant on compassionate ground. Even though his case was forwarded for appointment as a crush in R.P.F., his mother requested the authorities that instead of crush, her son may be given any other Group 'C' post as due to her medical condition she would not be able to live with her son at far away places.

3. His grievance is that since he is qualified and educated, he should have been given preference in Group 'C' post whereas they have offered a Group 'D' post to the applicant which is a manual job not commensurate to his educational qualification. Thus, he has sought quashing of the above orders and has sought a direction to offer the applicant a job in Group 'C' post.

4. The respondents have contested the O.A. by stating that as per extant rule of compassionate appointment for Gr. 'C' the candidate appeared in written test and viva voce test on 29.01.1998 but he was found unsuitable for Gr. 'C' category but fit in Gr. 'D' category by the Divisional Screening Committee. Accordingly, he was considered in Gr. 'D' category under Sr.DSTE/SDAH vide letter No.SC/SDAH/R-3664/R-53/P.I, dated 27.02.1998. The applicant was offered the Gr. 'D' post, but he did not join. They have submitted that mere possession of qualification does not entitle a person to be appointed to a Gr. 'C' post.

5. I have heard both the counsel and perused the pleadings as well as judgments referred to by the applicant.

...3..





He has relied on 2001 Education & Service Cases Pg.1612", wherein the Hon'ble single judge has held that compassionate appointment <sup>cannot</sup> be short term or on temporary basis. The applicant further relied on 2000 (11 Education & Service Cases 291) wherein the same view is expressed by Hon'ble single judge of Allahabad High Court.

6. I would agree respectfully with the views expressed by Hon'ble High Court. However, the question is whether the appointment offered to the applicant can be termed as temporary appointment at all. A perusal of Annexure-A2 shows that the applicant was considered for Group 'C' post only after the approval was granted by the competent authority (General Manager vide his letter dated 16.6.1997). Thereafter, the applicant was considered for Group 'C' post but was not found suitable for Group 'C' and only for Group 'D' post. Accordingly, he was offered a Group 'D' post. Simply because the applicant was possessing the qualifications, it does not enable him to get appointment against Group 'C' post unless he is found to be suitable by the Screening Committee and since the Screening Committee did not find him suitable, he cannot insist for being appointed in Group 'C' post only. Coming to the second point, in the appointment letter it is clearly mentioned that he would be on probation for one year which itself shows that it is a regular appointment. The counsel for respondents had also stated that it was stated to be provisional as the applicant was required to produce the original



...4..

certificates and satisfactory proof in support of his age such as birth or matriculation certificate, etc. Therefore, it has to be treated as a regular appointment. Clauses 3 and 4 of the appointment letter, however, are liable to be quashed and set aside as the applicant has not been offered an appointment as substitute, so these clauses would have no applicability. Once the applicant is offered a regular appointment, he would be entitled to all benefits flowing from regular appointment as held by Hon'ble High Court in judgments referred to above.

7. Before parting, I would like to observe that the proper course for the applicant would have been to join the post offered under protest and then challenge the actions of respondents. The applicant did not join the post at all and challenged the offer of appointment in this O.A. The applicant's counsel however, submitted that the applicant was under the bonafide belief that if he accepts the appointment as offered to him, he would be debarred from challenging the same, therefore, not joining may not be used against him for depriving him of the benefit.

8. Keeping in view that clause 3 and 4 in the appointment letter were indeed not called for and the language used in the appointment letter did create confusion in the mind of the applicant and the same have been quashed now, this O.A. is partly allowed by directing the respondents to offer a regular appointment letter to the applicant in a Group 'D' post within a period of 4 weeks from the date




...5..



of receipt of the copy of this order so that applicant  
may join the post and feel secured.

9. With the above observations and directions,  
the O.A. is partly allowed. No order as to costs.

  
MEMBER (J)

psp.