

Open court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1127 of 2000

Friday, this the 2nd day of May, 2003

Hon'ble Mrs. Meera Chhibber, J.M.

1. Umakant Pandey S/o Shri Shital Prasad Pandey, aged about 58 years, resident of Village : Nepura, Post : Dumarahar District : Siwan (Bihar).
2. Vimaleshwar Kumar Pandey S/o Shri Umakant Pandey, aged about 26 years, resident of Village : Nepura, Post : Dumarahar, District : Siwan (Bihar). Applicants.

(By Advocate : Shri S.S.Sharma)

VERSUS

1. Union of India owning and representing 'North Eastern Railway' notice to be served to - The General Manager, North Eastern Railway, Headquarters Office, GORAKHPUR.
2. The Divisional Railway Manager, North Eastern Railway, D.R.M. Office, VARANASI.
3. The Divisional Operating Manager, North Eastern Railway, D.R.M. Office, VARANASI. Respondents.

(By Advocate : Shri K.P.Singh/Ashish Gopal)

ORDER (ORAL)

By this O.A., applicants have sought for quashing of the order dated 26.7.2000 (Annexure A-1) whereby their request for compassionate appointment has been rejected. They / further sought a direction to the respondents to appoint the applicant no.2 on compassionate grounds in appropriate Group 'C' post according to his educational qualification and to pay him salary for the period from 11.10.98 to 30.6.99 with bonus.

2. Since the counsel for the respondents have taken a preliminary objection with regard to multiple relief(s) sought by the applicants in the present O.A., counsel for the

applicant stated that he shall not be pressed for the relief 'C' in this O.A. Accordingly, he has been given ~~the~~ liberty to file fresh O.A. as far as relief 'C' is concerned.

3. It is submitted by the applicants that the applicant no.1 - Umakant Pandey was Gatekeeper under Station Supdt. N.E. Railway, Ekma and retired on medical grounds on 30-6-99. The applicant no.2 is the son of Sri Umakant Pandey for whom the applicant no.1 has prayed that he should be given compassionate appointment. On 4.2.99 the Divisional Medical Officer, N.E.R., Varanasi, vide memo dated 4.2.99 declared the applicant no.1 unfit in 'A-3', 'B-2' and declared fit in 'C-I & C-2' category. Ultimately the Screening Committee after holding the examination held that the applicant no.1 was not fit to continue in service on medical grounds and recommended for his retirement on medical grounds on 20.5.99. The report of the Screening Committee was approved by the competent authority on 5.6.99. Accordingly, the applicant was retired from service on medical grounds by ~~the DRM, N.E. Railway, Varanasi by office order dated 29/30.6.99 (Annexure A-5)~~. It is submitted by the applicant no.1 that since he was low paid employee and did not have any other source of income, therefore, in compelling circumstances he gave an application on 7.7.99 requesting the DRM, N.E. Railway, Varanasi for appointment of his son on compassionate grounds (Annexure A-6). The respondents deputed ~~the~~ Welfare Inspector to the home town of the applicant to verify the financial condition and other facts regarding burden of the dependent family members on the applicant no.1 after his retirement, who verified that the applicant no.2 deserves to be given compassionate appointment. The case was accordingly sent to the G.M., but the G.M. did not consider the report of the Welfare Inspector and rejected the claim of the applicant no.2 vide order dated 26.7.2000 on the ground that the applicant no.1 had already served with the department for more than 35 years of service and after retirement he was being given full pension and, therefore, there was no justification

to grant compassionate appointment. The case ~~1~~ accordingly rejected (page 9).

4. The counsel for the applicant has challenged this order on the ground that the decision taken by the respondents in the impugned order is contrary to the Railway Board's letter dated 3.2.1981 whereby a specific clarification was sought whether the benefit of compassionate appointment to sons or daughters could be extended in cases where the employee is medically incapacitated a few months/days before superannuation. The Board had clarified that no general prescription of any specific period is contemplated by the Board. He has also relied on Railway Board's letter dated 27.5.1983 wherein it was held that dependents of employee who die in service or are totally incapacitated while in service irrespective of the period of service left to reach the age of superannuation or of earning retirement benefits in full or are medically decategorised with less than 30 years of qualifying service for pensionary benefits/30 years of service for SC to PF, such people ~~should be considered~~ in the order of priorities to be observed in making appointments on compassionate grounds. He has also relied on the judgment given by Jaipur Bench of the Tribunal in the case of Nirmala Devi vs. Union of India & ors. (2002 (1) ATJ 261). In the ~~inherent~~ case, it was held by Division Bench as follows :

"Appointment- on compassionate ground-Scheme for Compassionate appointment in the railways is very liberal and no means test is required to be applied while deciding the request for appointment on compassionate ground-Length of service put in by the employee at the time of his death also is not a relevant consideration at all.

Appointment- on compassionate ground- in Railways there is no mention at all that appointment on compassionate ground has to be offered only cases where indigent circumstances exist-Denial of compassionate appointment on the ground that deceased employee had completed more than 32 years of service and the applicant had received all consequential benefits not justified."

5. The counsel for the respondents, on the other hand, have opposed this O.A. on the ground that compassionate appointment cannot be sought as a matter of right and it can be

given only an extreme hardships, whereas in the instant case the applicant no.1 had been given all the retiral benefits apart from monthly pension. More-over, he has a pakka house consisting of 4 rooms and two bigha of cultivated land, therefore, due to satisfactory financial condition of the applicant no.1, applicant no.2 is not entitled to get the claim for compassionate appointment. They have further explained that the applicant no.1 had been paid an amount of Rs.30354/- as PF, DCRG Rs.75307/-, Commutation of pension Rs. 78397/- which comes to around Rs.192716/-, therefore, it cannot be said that the applicant no.1 was in ^{an} an indigent condition. They have, therefore, submitted that the O.A. may be dismissed with costs.

6. I have heard both the counsel and perused the pleadings as well.

7. The only ground taken by the respondents while rejecting the claim of the applicant no.1 ^{is} is that he had completed 35 years of service when he was retired on medical grounds and he had got all the retiral benefits alongwith pension. Though in the Counter, the respondents have taken other grounds to show that the applicant no.2 is not entitled for grant of compassionate appointment, but in the impugned order which has been communicated to the applicant, they have taken only two grounds namely completion of 35 years of service and payment of all retiral benefits alongwith pension. Now it ^{is} is settled, that in the matter of compassionate appointment, the basic thing, ^{is} is to be seen by the authority ^{is} is ^{is} is the financial condition of the family vis-a-vis family members left by the employee or who are dependents on the retired employee on medical grounds. The grounds taken by the respondents in the impugned order are not sustainable in view of the decision given by the Hon'ble Supreme Court in the case of Balbir Kaur as far as pensionary benefits are concerned. In the case of Balbir Kaur (supra) the

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Hon'ble Supreme Court has held that ~~every~~ employee ~~who~~ retires or dies in harness it is a natural consequence that the family should get terminal benefits or retirement benefits. Therefore, this cannot be ~~the~~ sole criteria to reject the request of compassionate appointment. As far as the first ground is concerned, that the applicant no.1 had put in 35 years of service, I have seen both the circulars as referred to above and annexed with the O.A/ and also the judgment given by Jaipur Bench of the Tribunal wherein it has been held that the Scheme for compassionate appointment in the railways is very liberal and length of service put in by the employee at the time of his death is not a relevant consideration at all. This judgment was given by Division Bench of the Tribunal, therefore, I am bound by the same and since both these points have already been decided by the Court, the impugned order in the present case is not sustainable at all. Accordingly, the order dated 26.7.2000 is quashed and set-aside. The matter is remitted back to the authorities to re-consider the case of the applicant no.2 for compassionate appointment in the light of the various decisions given by Hon'ble Supreme Court wherein the principle has been laid down for deciding compassionate appointment. It goes without saying that while considering the case of the applicant no.2, the respondents shall keep their own Railway Board's letters/circulars in mind and pass a reasoned and speaking order within a period of three months from the date of communication of this order, under intimation to the applicants.

8. With the above direction, this O.A. stands disposed off without any order as to costs.

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MEMBER (J)

GIRISH/-