

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No.395 of 2002.

ALLAHABAD THIS THE 22nd DAY OF MAY. 2006.

Hon'ble Mr.K. B.S. Rajan, Member-J.

Smt. Sushila Devi, W/o late Tara Chandra, R/o 89
Garhi Kalan, Leader Road, Allahabad..

.....Applicant.

By Advocate : Sri S. Dwivedi

Versus.

1. Union of India through the General Manager,
North Railway, Baroda House, New Delhi.
2. The General Manager, Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern
Railway, Allahabad.
4. The Principal Track Machines Training
Centre, Allahabad.

.....Respondents.

By Advocate : Mr. A.K. Gaur.

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The entitlement of the applicant to be considered for compassionate appointment is questioned by the Railways in this case. The Tribunal in its earlier order dated 23-07-2001 had held, "When a claim for gratuity is considered and the employee was registered under Group Insurance Scheme that cannot be termed as simple casual labour. He must be having some better service status, which entitles him to subscribe in the

G.P.F. and to be Member under Group Insurance scheme and therefore, the ground for rejection of claim for appointment on compassionate ground does not appear to be correct." The claim of the applicant is that the "better service status" of the demised individual is nothing less than a regular service while the respondents stick to their gun i.e. casual or at the most temporary status. Resolving the above issue would determine the claim of the applicant to the consideration of compassionate appointment.

2. Facts capsule as per the OA :-

The husband of the applicant, inducted into the service under handicapped quota in the year 1986 was invalidated as medically unfit in June 1989. Provision exists vide order dated 26.10.1988 for consideration for compassionate Appointment of the dependents of the such medically invalidated Govt. Servant. Invoking the said provisions, the applicant's husband made an application for compassionate appointment to his wife, i.e. the applicant. The applicant's husband expired in June, 1990. All the terminal dues were paid to the widow as no consideration was given for compassionate appointment, applicant filed O.A. no. 553 of 1990, which was disposed of 29.11.1992 with a direction to dispose of the representation. The department, in pursuance of the order, rejected the case of the applicant on the ground that compassionate

appointment is available only to the wards of those who died while in service. As the applicant's husband had already been medically invalidated the applicant is not eligible for compassionate appointment. Further, the applicant's husband was only a Casual labour. This resulted in the applicant moving O.A. no. 1365 of 1994 which was decided on 23.7.2001 holding that the applicant's husband was enjoying the status better than as a casual labour. The department in spite of the above observation rejected the claim of the applicant. Hence, this O.A.

3. The respondents have in their Counter refuted the same contentions as in the rejection order. They have elaborated the same vide para 7 of the CA which reads as under:-

"...it is stated that the circular mentioned as issued by the Railway Board and filed as Annexure A-3 has been issued by the Northern Railway/Head quarter/NDLS. It is stated that the Railway administration is not bound to give employment. It says that Wards of such employees who have been medically invalidated for all categories can be considered for appointment." This can be linked with Railway Board letters dated 31.12.1986 and 6.2.1980 wherein para 5 states that if a casual labour with temporary status dies in harness the General Manager could exercise his

discretionary power for giving appointment to eligible and suitable ward of such casual labour on compassionate ground. Accordingly, in both the circulars it is clearly evident that Railway administration is not bound to give employment to an employee who is declared medically unfit for all categories of service, but can consider and for which the sole authority is General Manager of that Railway. In this context, the General Manager, Northern Railway have carefully examined the case personally and the extract of his observations is placed as under:-


"Sri Tara Chand was declared totally unfit in medical examination for Railway service on 14.6.1989 due to paralysis. Consequently, he was discharged from service. Later on he died on 15.2.1990. At the time of death, he had already ceased to be a railway employee. As per rules, only the wards/widow of a regular railway employee who is medically incapacitated/de-categorizeed can be considered for appointment on compassionate grounds. This provision does not extend to the wards/widow of medically incapacitated/de-categorized casual labour. Notwithstanding the fact, that no vacancy is available under the Principal/Indian Railway Track Machines Training Centre, Allahabad where late Tara Chand worked as a Casual Safaiwala, the rules also do not cover such a case. Keeping in view the above facts, I do



not consider the case of Smt. Sushila Devi widow of late Sri Tara Chand, Ex-casual labour, as a fit case under the rules for her appointment on compassionate appointment. Therefore, I regret her request."

4. Arguments were heard and documents perused. The applicant has not produced any order of appointment, save the employment card initially to the deceased employee, which would be insufficient to know the nature of employment. Nevertheless, the applicability of GPF, Gratuity and Group Insurance as per the provisions of the Act would suffice to know the nature of employment that the deceased individual enjoyed.

Vide clause 1501 of IREM Vol. I temporary Railway Servant means a Railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include casual labour, including casual labour with temporary status, a contract or part time employee or as an Apprentice. Clause 1511 states that in so far as the temporary Railway servants are concerned, PF and gratuity are to be regulated as per Rules contained in Chapter IX and X of I.R.E.M. Vol. I (1985 edition) pertaining to 'State Railway P.F. and Gratuity' respectively.

 The above would show that when PF and Gratuity are affected, the character of employment of the employee concerned is either permanent or temporary,

but it cannot be casual labour or casual labour with temporary status. Thus, the applicant's husband employment could not, therefore, be either casual or casual with temporary status and it was minimum temporary though not permanent. Once the applicant's husband was holding a temporary post on medical invalidation, his family was entitled to the benefit of compassionate appointment

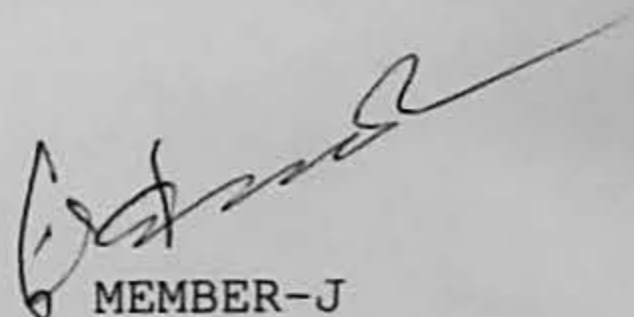
6. Hence, it is clear that rejection by the respondents, of the claim of the applicant for consideration for compassionate appointment is on a misconception that the applicant's husband was only a casual labour.

7. The deceased employee being a regular employee of the Railways, the applicant is certainly entitled to be considered for compassionate appointment.

8. The OA succeeds. It is declared (in amplification of the earlier order dated 23-07-2001) that the husband of the applicant before medical invalidation from the Railways was a regular railway employee and as such, in view of the order dated 26010-1988, provision existing for grant of compassionate appointment of the dependents of the medically invalidated railway employee, the applicant's claim shall be considered for compassionate appointment. Respondents are

accordingly directed to consider the case of the applicant and afford a suitable position, if need be by relaxation of the Rules regarding age but subject to being found fit from other provisions of relevant rules. In case for any reason, the applicant is not entitled to be so appointed, detailed justifications and reasons thereof shall be given.

9. Though the applicant is entitled to cost, this being the second round of litigation, in view of the fact that the mistake is of some official who did not properly examine the rule position, we refrain from levying cost, as for the mistake of one individual the exchequer be not burdened.



MEMBER-J

GIRISH/-