

A F R

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

This the 11TH DAY OF DECEMBER, 2002

Original Application No. 415 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

Vineeta Lakhtakia, wife of Late Mukesh Kumar Lakhtakia(EX.Running Room Bearer/North Eastern Railway), resident of House of Ramswaroop Vidya, Near Shiv Temple(Punjabi Gali) Dataganj, district Badaun

... Applicant

(By Adv: shri K.K.Mishra)

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager (Personnel), North Eastern Railway, Izat Nagar Bareilly.
3. The Divisional Mechanical Engineer (D.M.E)(Power), North Eastern Railway, Izat Nagar, Bareilly.
4. The Assistant Mechanical Engineer (AME)(Power) Izat Nagar, Bareilly.

.. Respondents


(By Adv:Shri K.P.Singh)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this application u/s 19 of A.T.Act 1985 applicant has challenged the order dated 2/9.4.01 by which claim of the applicant for appointment on compassionate ground has been rejected.

The facts of the case are that husband of applicant late Mukesh Kumar Lakhtakia was serving as Running Room Bearer in North Eastern Railway. He was subjected to disciplinary proceedings by serving a memo of charge. He was removed from service by order dated 8.6.1998, a copy of the order has been filed as (Annexure 1). He filed appeal which was decided by order dated 18.12.1998. The appeal was allowed and the punishment of removal was set aside, he was reinstated in

  
NOTED BY THE SECRETARY TO THE TRIBUNAL  
12/12/2002



in service. However, the applicant, before he could join duty, died on 22.12.1998. After the death of her husband applicant made an application for appointment on compassionate ground. As <sup>the claim</sup> ~~no action~~ <sup>rejected</sup> ~~was taken~~, she filed OA No.242/00 in this Tribunal which was disposed of on 28.11.00 with the following direction:-

"The impugned order dated 24.8.99 of respondent no.2 is therefore, set aside. The respondent no.2 is therefore, directed to consider the representation of the applicant for compassionate appointment which is placed as (Annexure 4 to this OA)."

It was further directed that the representation shall be decided within three months from the date of receipt of the order. The impugned order has been passed in pursuance of the aforesaid order. In the impugned order dated 9.4.01 (Annexure 11) respondent no.2 has only stated that the work and conduct of the husband of the applicant was not satisfactory during his service period hence she is not entitled for appointment on compassionate ground. The concluding part of the order is as under:-

" इनकी रेल सेवा संतोषजनक नहीं होने के कारण ये रेल सेवा से बर्खास्त किये जाने के पात्र हैं । अतः श्रीमती विनिता लखटकिया पत्नी स्वः श्री मुकेश कुमार लखटकिया को अनुकम्पा के आधार पर कोई भी नौकरी देने के लिए उपयुक्त नहीं माना जाता है "

The counsel for the applicant has submitted that the aforesaid reason for rejecting the claim of the applicant is wholly arbitrary and illegal. It is submitted that though <sup>in</sup> disciplinary proceedings order of removal from service was passed but appeal filed by the husband of the applicant was allowed by order dated 18.12.1998 and he was <sup>directed to be taken back in service by order dated</sup> ~~directed to be taken back in service by order dated~~



25.1.1999(Annexure 5), but before he could join, he died. In view of the aforesaid facts the observation of respondent no.2 that husband of the applicant was liable to be dismissed from service cannot be accepted. The punishment awarded became non-existent. It is further submitted that for the unsatisfactory service record of the employee, benefit which is admissible to the applicant in law being his heir and legal representative cannot be denied after his death. The only condition for giving compassionate appointment to the applicant is that the bread earner should have been in service and he may have died in harness. These two conditions are satisfied. There is no allegation against the applicant and she entailed any disqualification against grant of appointment on compassionate ground. <sup>u Inu</sup> ~~Any~~ absence of any such fact the relief has been illegally denied to the applicant.

Shri K.P.Singh learned counsel for the respondents, on the other hand, submitted that the compassionate appointment is granted to the heirs and legal representatives of the employee in lieu of his services rendered to the employer. If his work and conduct was not satisfactory, the employer cannot be compelled to give such a relaxation in favour of his heirs and the view taken by respondent no.2 is perfectly justified.

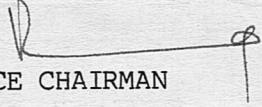
I have carefully considered the submissions made by counsel for the parties. However, I do not find that the view taken by the respondent no.2 is justified and in accordance with law. The relevant orders under which the compassionate appointment is granted to the heirs of the deceased employee, do not contain any such condition that the work and conduct of the employee should have been satisfactory during his life time. The only condition required is that he should be in service and death should occur during service. Both the conditions are satisfied. If such a view is allowed to be taken, help may be denied to the heirs of the deceased employee on slight pretext of any kind of misconduct alleged against him during





life time. For the misconduct of the deceased employee the applicant <sup>was</sup> not responsible in any manner. As clear from the order even she had raised complaints against his bad habits. The order thus is arbitrary and suffers from manifest illegality and cannot be sustained.

For the reasons stated above, the OA is allowed. The impugned order dated 2/9.4.01 is quashed. The respondent no.2 is directed to consider the claim of the applicant for appointment on compassionate ground within a period of three months from the date a copy of this order is filed. No order as to costs.

  
VICE CHAIRMAN

Dated: 11th Dec: 2002

Uv/