

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1020 OF 2002

THURSDAY, THIS THE 6TH DAY OF MARCH, 2003

HON. MRS. MEERA CHHIBBER, MEMBER(J)

Nagendra Rai,
s/o Late Lalji Rai,
r/o Village Piprauli,
P.O.Sant Ramganj
Bazar,
Tahsil Zamania,
Dist:- Ghazipur. Applicant.

(By Advocate:-Shri J.P.Yadav)

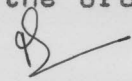
Versus

1. Union of India through General Manager
Eastern Railway,
Calcutta.
2. The Divisional Railway Manager,
Eastern Railway,
Danapur.
3. P.W.I Eastern Railway,
Danapur. Respondents.

(By Advocate:-Shri K.P.Singh)

O R D E R

This is a second round of litigation by the applicant who had earlier filed O.A 1222/00 which was decided on 7-8-2001 by the Tribunal by observing therein that the claim of applicant has not been denied but it has been mentioned that the matter is under active consideration of the Headquarters. Accordingly the O.A was disposed of by giving a direction to the respondents to expedite the process and communicate the order to the applicant within



a period of three months from the date of communication of the order (Page 19). Pursuant to the said direction respondents have issued an order on 3-12-2001 wherein it is stated that since widow, in question, has been given family pension erroneously, which was not admissible to the family of a casual labour, hence the compassionate appointment can be considered only if his mother foregoes family pension and deposits the amount whatever amount has been received by her (Annexure-1). It is this order which has been ^{Challenged} ~~submitted~~ by the applicant in the present O.A.

2. I have heard both the counsel and perused the pleadings.

3. It is seen that applicant's father had died on 1-2-1992 while he was working as a Gangman leaving behind three sons and one widow. The applicant had immediately applied for grant of compassionate appointment which was followed by number of reminders but since no reply was given by the respondents he filed O.A 1222/00. In the said O.A respondents filed their reply stating therein categorically that the claim of applicant is under active consideration before the Headquarters. Therefore, the Tribunal noted this fact that respondents are not disputing the claim of applicant but since they themselves stated that the matter is under consideration the O.A was disposed of by giving a direction to the

respondents to expedite the process at Headquarters. It is a strange reply given by the respondents to the applicant wherein once again it is not stated ^{by the respondents} that the applicant is not entitled to be given the compassionate appointment but all that is said in the order is that since his mother was given the pension erroneously, his compassionate appointment will be considered only if the mother foregoes family pension and deposits the amount which has been received by her. It goes without saying that family pension would have been sanctioned by the competent authority after looking into all the facts available before them in the records and even if they feel that she has been given the pension wrongly they can take steps in accordance with law to do the needful as far as pension is concerned. But by no stretch of imagination can force the applicant to make her mother forego the pension or return the amount already given to her for granting compassionate appointment to the applicant. This order clearly shows that respondents are trying to get over their own actions by forcing the applicant and are trying to enter into a deal which is not permissible. It goes without saying that once an application is made for grant of compassionate appointment the authorities are required to look into the financial aspect of the family, the liability left by the deceased employee as well as the financial condition

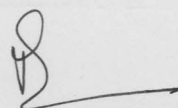


and number of family members to ascertain whether the family requires to be given assistance by way of compassionate appointment or they can survive without the grant of compassionate appointment. Therefore, in my considered view grant of family pension alone can not be a consideration for denying the appointment to applicant. Interestingly, neither in the first O.A nor in this O.A respondents have stated anywhere that after scrutiny they have found it not to be a deserving case for grant of compassionate appointment. On the contrary, they are forcing the applicant to make his mother agree to forego the pension which ^{already} has been granted to her and also to return the amount already received by her. It goes without saying that if the widow of deceased employee had been given the pension after ^{her husband's} ~~his~~ death she would have spent the said amount and under these circumstances ~~can~~ the respondents ^{cannot} ask the widow to return the amount which was already sanctioned to her by the competent authority. It is also ^{not} stated by the respondents as to what action has been taken by the authorities against the officers who had sanctioned the pension to the widow of deceased employee. ^{By the action of respondents to B} Therefore, ~~it~~ forced the applicant to forego something

which has already been sanctioned by the competent authority,
To my mind ~~it~~ is not ~~as per to be~~ sustainable in law.

Accordingly the order dated 3-12-2001 is quashed and set aside and the matter is sent back to the authorities to pass the orders for compassionate appointment since the respondents have not disputed the claim of the applicant anywhere so far. If the respondents are of the view that widow has been given the pension wrongly it would be open to them to take appropriate action in accordance with law but that can not be related to the grant of compassionate appointment. I am fully aware about the judgment given by Hon'ble Supreme Court wherein it is ~~repeatedly~~ held that Courts can not issue direction to the respondents to give appointment to an individual Therefore, keeping in view the said direction of Hon'ble Supreme Court and the peculiar facts of this case , this matter is remitted back to the respondents with a direction to pass the orders for compassionate appointment in favour of applicant if he is otherwise found fit for grant of same. Respondents may complete this exercise within two months from the date of receipt of a copy of this order.

With the above directions the O.A is disposed of.



Member (O)

Madhu/