

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1036 OF 2002
Allahabad this the 17th day of July, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

Km. Hema Srivastava,
daughter of Late Sri D.C. Srivastava,
Senior Clerk, Office of the Divisional
Electrical Engineer/T.R.D. Northern Railway Kanpur,
C/O H.C. Srivastava Quarter No.3 Type II
A.B. Nagar Fire Station, Unnao.Applicant

(By Advocate Sri O.P. Khare)

Versus

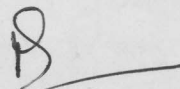
1. Union of India,
through the Chairman and
Ex- Office Secretary Railway Board,
Ministry of Railways, New Delhi.
2. Divisional Railway Manager, Northern
Railway Allahabad.
3. Smt. Pramila Srivastava, Wife of late D.C.
Srivastava, r/o 107/99 Jawahar Nagar, Kanpur.
4. Neeraj Srivastava, Son of late D.C. Srivastava,
r/o 107/99 Jawahar Nagar, Kanpur.
.....Respondents

(By Advocate Sri H.A. Kumar & Sri G.P. Srivastava
Sri B.K. Narain)

ORDER

By this O.A. applicant has sought the following
reliefs:-

"1. This Tribunal be graciously pleased to quash
the order of the respondent No.2 in his letter
dated 1.11.2001, 18.1.2002 and 11.4.2002 to the



extent it denied the Applicant's appointment on compassionate grounds under dying in harness Rules after she qualified in the examination and has been declared fit by Divisional Medical Officer Northern Railway Allahabad.

(II) The Tribunal be graciously pleased to direct the respondent No.2 commanding him to consider for appointment of the Applicant by creating a supernumerary post of class III as per law laid down in Sushma Gosain's case by the Apex Court in the case of compassionate appointment within specified time. The controversy raised by the mother of Applicant is not tenable after she was nominated by the mother of applicant for offer of appointment on compassionate grounds on the basis of undertaking to support the members of the family.

(iii) This Tribunal may grant any other and further relief to the Applicant in the facts and circumstances of the case including allowing cost to the Applicant who has been compelled to file this O.A. before this Tribunal. The whole exercise of the respondent no.2 without proper application of mind is to cause harassment to the members of family of deceased government servant in financial distress."

2. It is submitted by applicant that her father died on 7.2.2000 while in harness leaving behind his widow, Applicant the daughter aged about 26 years and two sons. The mother gave an application on 7.4.2000 requesting the authorities to give appointment to the daughter. She was called to appear in the test. Though she failed 1st time but cleared the same in 2nd attempt and passed in the interview also. But to her utter shock, instead of getting appointment letter, she got the letter dated 01.11.2001 informing her that though she was declared passed but couldn't be given appointment due to want of vacancy in class III post. Moreover her mother has requested respondent no.2 not to give appointment to applicant as she wouldn't look after them. She has requested that appointment be given to her son Neeraj Srivastava.

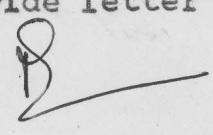
3. Being aggrieved she represented on 15.03.2002 requesting the respondent no.2 to give her compassionate appointment as she has already given undertaking that she would look after the family of her father. She, however, was again informed vide letter dated 11.04.2002 to settle the

family dispute and inform respondent no.2 about it.

4. It is submitted by applicant that her mother has lost her mental equilibrium and once she had given the affidavit in favour of her daughter. She can't change the same ~~not~~ her appointment can be denied on this ground. She has submitted that the apprehension of her mother is misconceived and she is willing to give 1/3 of her salary to the mother. She has relied on the judgment of Sushma Gosain and has prayed that a supernumery post be created for her as she needs the money for her marriage and her mother is under the influence of brothers who is not willing to spend any amount on her marriage. She is presently living with her uncle who is looking after her better than the mother. She has thus, prayed that O.A. may be allowed. Counsel for the applicant relied on the judgment dated 23.07.1999 given in O.A. No.582/95 in the case of Rohit Sahai Vs. Comptroller and Auditor General of India and Ors.

5. Respondents on the other hand have opposed the O.A. They have submitted that after the death of deceased, widow had requested the department to give compassionate appointment in favour of daughter. Accordingly department was considering the case but in the meantime her mother complained that she is not having good relations with the mother or brothers as such she apprehends that if she is given appointment she wouldn't look after the family members, therefore, she requested by giving a fresh application and affidavit to consider giving compassionate appointment to the son.

6. Since only one compassionate appointment could have been given to the family they were directed to settle the issue and till such time matter was deferred. Mother and daughter were accordingly advised vide letter dated 01.11.2001.



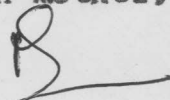
7. In spite of advice to settle the inter-se dispute, since applicant couldn't reconcile the issue her case for compassionate appointment was cancelled as per the request of mother. They have referred to the Railway Board's letter dated 22.08.2000.

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

9. The object of granting compassionate appointment is to tide over the crisis in the family due to sudden death of sole bread earner. This is a beneficial scheme for all the members of the family, therefore, it is necessary that all members give their no objection in favour of one person who, they feel would take care of all the family members.

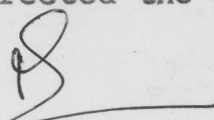
10. However, in the present case even before the applicant could be offered appointment there were differences between the daughter whose case was being considered for compassionate appointment and rest of the family members as others got a feeling that daughter wouldn't look after them, when authorities were apprised about it, naturally they advised them to settle the dispute amongst them because no one wants to buy headache and objections while the case for compassionate appointment was still under consideration. If dispute has arisen even before the appointment is granted naturally after it is granted, the department would be faced with unnecessary and uncalled for grievances. Naturally it was decided that parties should first settle the issue, Even otherwise if they cannot help themselves, they cannot expect the department to help them.

11. From the perusal of petition counter and rejoinder it is clear that the relations between mother, daughter and



sons are absolutely strained without any chance of reconciliation. The tenor of language used by daughter shows as or if, she can demand the appointment as a matter of right and would be doing some kind of favour to the mother by offering 1/3rd of her salary. She seems to be more worried about her own marriage. There seems to be no respect for the mother or brothers. She is offering only 1/3rd salary to the other members when the deceased had left behind four members in his family three are on one side, while daughter is on other side. She wants to keep 2/3 share to herself and give 1/3 for three members. This by no stretch of imagination is fair or just one could understand, if at least in the petition she would have said that she would look after the other family members but she has made it clear that she would need the money for her marriage which shows she is self centred and is offering 1/3rd of salary also, only in order to get the appointment as otherwise she knows she can't even get it. Simply because she passed the test, it doesn't give her a right to claim compassionate appointment as a matter of right specially when the notice has given in writing that she doesn't have confidence on her daughter that she would look after them. The attitude shown by applicant in petition itself corroborates the apprehension of mother. Therefore, I am not inclined to accept the offer made by applicant that she is willing to pay 1/3rd salary to the mother. That will not at all be in conformity with the object of granting compassionate appointment.

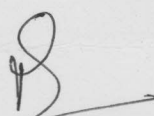
12. It goes without saying that each case has to be decided on the given facts. The judgment cited by applicant has absolutely different facts. In that case compassionate appointment was given to the widow which was challenged by the minor son who was living with his grand mother. It was in those circumstances that court had directed the mother to



give 1/3 salary to the child for his upkeep and education, therefore, that case would have no hearing in the present facts of case.

13. There is yet another aspect of the matter that applicant couldn't be offered appointment for want of vacancy. It is now too well settled that compassionate appointment can be given only to the extent of 5% of direct recruitment in a year and no direction can be given by the Tribunal to appoint a person by creating a supernumary post. It has been held by Hon'ble Supreme Court in J.T. 1996(5) S.C. 319 compassionate appointment can be made only if vacancy is available. No post should be created to offer compassionate appointment. Similarly in 1995 SCC(L&S) 1427 it has been held that appointment on compassionate grounds can be made only if the vacancy is available. If no vacancy is available, no duty is cast to appoint a person. In J.T. 2002(7) SC 425 in the case of U.O.I. Vs. Joginder Sharma, Tribunal had directed to consider the respondents by relaxing the limit of 5% ceiling. High Court dismissed the writ petition. Hon'ble Supreme Court however held that it was not open to the Tribunal or court to compel the authority to grant any such relaxation. Such a direction cannot be sustained.

14. In view of the above judgments, the relief as prayed by applicant cannot be given otherwise also, as she has prayed that direction be given to the respondents to create a supernumery post for her. Therefore, I find no merit in the O.A. The same is accordingly dismissed with no order as to costs.


Member-J

/Neelam/