

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No. 1306 of 2003.

Allahabad this the 09th day of November 2004.

Hon'ble Mr. D.R. Tiwari, Member-A.

Lalita Prasad S/o Late Joraver,
Resident of Khaprail Gautiya,
Post Pilibhit, District Pilibhit.

.....Applicant.

(By Advocate : Sri Saumitra Singh)

Versus.

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway, Izatnagar,
3. Divisional Railway Manager (Personnel)
North Eastern Railway, Izatnagar.

.....Respondents.

(By Advocate : Sri K.P. Singh)

O_R_D_E_R

By this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing of the order dated 04.06.2001 and order dated 18/20.09.2003 passed on behalf of Divisional Railway Manager (Personnel) and General Manager (Personnel), respectively of North Eastern Railway, Gorakhpur (Annexure Nos. 1 and 2). They have further prayed for issuance of direction to the respondents for issue of appointment letter to the applicant granting him compassionate appointment as per his educational qualification.

2. Shorn of superfluous materials, the relevant matrix

Datta

to decide the controversy is that the applicant's father who was a permanent employee in the Indian Railways, expired on 08.10.1991 (Annexure-3). Immediately after the death of his father, the applicant's mother submitted several applications from time to time to the Competent Authorities and by a letter issued on behalf of the Divisional Railway Manager (P), she was informed that she should file the application only after the applicant completes 18 years of age (Annexure-4). Applicant's mother due to financial crisis and emotional distress in the family, again submitted an application and the respondents vide letter dated 06.05.1998 (Annexure 5). She was informed that she should make application only after the attainment of 18 years of age of her son. Meanwhile she represented for her appointment on compassionate grounds and the Competent Authorities selected her in Grade IV but she was kept in waiting list as she was illiterate and there was no vacancy for illiterate at that time. After some time when she found it difficult to manage the affairs of the family with the meager resources, she again applied for appointment of her son, after he become major but unfortunately her request for appointment of her son on compassionate grounds was rejected by letter dated 04.06.2001 on two grounds, namely, that the deceased at the time of death was left with less than two months of service and she had 0.2035 Hectors of land. She was also in receipt of the family pension and was in possession of a ~~Pakka~~ ^{on} ~~Pucca~~ house. The receipt of the above order (Annexure No.1) shocked the entire family that inspite of assurance from the Competent Authority not only ones but ^{on} _{two} occasions that he should apply for appointment of her son on compassionate grounds after the son attains the majority. Even then the applicant did not lose all hopes and submitted a detailed representation dated 08.07.2003 enclosing the certificate from the Gram Pradhan and

Dhan

and enclosing the details of land. The Gram Pradhan has specifically asserted the fact that the family of the applicant is living below the poverty line and income generated from the land referred to in the impugned order is not sufficient for survival of the family. The representation so filed clarifying the objection taken in the impugned order did not evoke any response from the respondents and the applicant's mother again by her representation dated 01.03.2002 got it duly forwarded by Sri Santosh Gangwar, Minister of State for Petroleum and Natural Gas and Parliamentary Affairs, who happens to be the Member of Parliament from Bareilly (Annexure No.7). All her efforts to get some small mercy from the Competent Authorities failed and by letter dated 18/20-09-2003, she was informed that General Manager refused to make any change in the impugned order passed earlier (Annexure No.2).

3. Aggrieved by rejections in quick successions by the respondents, she filed the present O.A. Original Application has been assailed on various grounds mentioned in para 5 of the O.A. It has been contended that there was no justification for ^{the rejection of} the claim of the compassionate appointment on the ground that the father of the applicant was left with merely two months of Government service to his credit at the time he died. It has been further submitted that the family pension at the rate of Rs.700/- per month is not sufficient to sustain the family consisting of widow mother, two unmarried sisters and three dependents ~~sons~~ brothers. It has also been pleaded that to have O.2035 Hec. of land, family pension and one house to ^{live} him is of no relevance in so far as the question of appointment on compassionate grounds. Finally it has been pleaded that the representation, which has been filed giving details of land has not been taken into account. In view of this, it has been submitted that the O.A. may be allowed and

Datas

direction may be issued to the respondents for consideration of the appointment of the applicant on compassionate grounds.

4. The respondents, on the other hand, have contested the O.A. by filing a detailed counter affidavit and efforts have been made to refute the contentions made by the applicant. They have argued that the impugned orders were just and legal and the reasons given in the impugned orders were as per the rules. Financial condition of the family of the applicant was not very bad shape particularly in view of the fact that family was in receipt of regular family pension and they were in possession of three Bighas of land and there was no justification to give appointment on compassionage grounds, hence the O.A. is bereft of any merits and may be dismissed.

5. I have heard very carefully, considered the rival contentions of the parties and perused the records.

6. During the course of arguments, the learned counsel for the applicant submitted that the issue of compassionate appointment has been taken up by the Railways and they have issued a Circular on the subject which is dated 15.02.2000 which is at Annexure No.9. Learned counsel for the applicant has submitted that this circular does not make a mention that if an employee at the time of his death is left with less then two months of service, dependants will not be considered for appointment on compassionate grounds. He has also argued forcefully that the certificate of the Gram Pradhan to the effect that the family was living below the poverty line did not evoke any compassion to the respondents to acquire a house in which applicant's share was only one room and land of three bighas in which the share of the applicant was only

Dinesh

one Bighas and on this basis to deny the appointment on compassionate grounds, does not appeal to reason. The respondents, on the other hand, have reiterated the stand taken in their counter affidavit and have opposed the contention of the applicant.

7. Learned counsel for the applicant has placed reliance on the following case laws:

- "1- Balbir Kaur and another Vs. Steel Authority of India Ltd. and others, 2000 Supreme Court Cases (L&S) 767.
- 2- Smt. Sitara Begum and another Vs. Union of India in O.A. No.1292/01 decided by this Tribunal dated 30th July 2004.
- 3- Santosh Kumar Dubey Vs. Union of India and others in O.A. 1296/02 decided by this Tribunal on 30th September 2004."

8. Learned counsel for the respondents, on the other hand, has submitted that it is a settled position of law that the compassionate appointment is granted to provide relief to the bereave family to tide over the immediate financial crisis and it has to be restricted to 5% of the vacancies occurring during the course of the year. In view of this, they have submitted that his case is devoid of any merits and it should be dismissed.

9. The core question for decision, in view of the facts and circumstances mentioned above, is the validity of orders at Annexures No.1 and 2 by which the request for compassionate appointment of the applicant has been rejected. The first ground taken by the respondents is that the deceased was left with less than two months of service when he expired. In support of this contention, the respondents have not submitted any documents that the employee dying in harness should have particular years of service at his credit. During the course of arguments also they have failed to demonstrate that less than two months of service at the time of death would dis-entitle the applicant for compassionate appointment hence this

Dinesh

contention of the applicant is negatived. The another ground for rejection of the case of compassionate appointment is that the mother of the applicant is in receipt of family pension and is in possession of 0.2035 Hectare of land alongwith a house, thus, the respondents have concluded that her financial condition is not bad to warrant the need of compassionate appointment. I am constrained to disagree with this contention and the Authorities cannot be taken into consideration the retirement, terminal benefits given to the family of the deceased. I am supported, in my view by following judgments :

- "(1) Sabita Majumdar & Another Vs. The Union of India & Others (2001 (i) ATJ 386, C.A.T. Calcutta Bench.
- (2) Smt. Anar Kali & Another Vs. Union of India & Ors. (2001 (2) ATJ 387 (PB).
- (3) Nirmala Devi Vs. Union of India & Ors. (2002 (1) ATJ 261 (Jaipur Bench).

Thus the grant of pension for rejection the appointment of compassionate appointment cannot be countenanced and is rejected.

7. The second ground taken by the respondents that family has own house and agriculture land measuring 0.2035 Hec. is somethings which is unusual ground. The mother of the applicant is very clearly stated this land is to be shared between the three Members and is not possible to sustained the family on its produce. The respondents have, however, failed to advert to all the points while rejecting the request for compassionate appointment. In the letter written by the applicant's mother to the Competent Authority, she has clearly stated that she had only one room in the house. and it was difficult for them to accommodate all the Members of the family. This thing also has not been taken into account by the respondents. I would like to mention in this connection that the rejection of the request of the applicant on this technical ground is not

Defence

proper and on humanitarian ground keeping in view the provisions contained in the Railway Board's circulars should have been the proper course of action. I get support for my view by observation of the Hon'ble Apex Court in the case of Balbir Kaur and others (Supra) which is as under:

"The concept of social justice is the yardstick to the justice administration system or the legal justice. The greatest virtue of law is in its adaptability and flexibility. The Court ought to apply law depending upon the situation because law is made for the society, Whatever is beneficial for the society the endeavour of the law court would be to administer justice having due regard to it".

8. I may say the callous and casual approach of the respondents are evident from the contradiction in their statement made in para 10 of the counter affidavit where they have stated that the applicant's mother was wait listed as there was no vacancy for her for illiterate lady and she was bereaved with four other illiterate lady. This is contradicted by their statement in para 18 of the C.A. wherein it has been mentioned that the family of the deceased employee does not need any compassion, it further gave strengthen by the fact that the mother of the applicant did not take up her job when it was offered and the family has been liable to carry out for their livelihood for last 8 years. This, I find apparent contradiction between the statement of para 10 and para 18 of the C.A. It is also not proper for the respondents to arose hope in the mind of the applicant that applicant will get appointment when he attains the age of majority and finally when he comes of age. All of sudden he is told that he is not liable for appointment on compassionate ground. It is very callous attitude on the part of the applicant.

Dhruv

9. In the result, the O.A succeeds and is allowed. The impugned orders dated 04.06.2001 and 18/20.09.2003 are quashed. The respondents are directed to consider the case of the applicant for appointment on a suitable post on compassionate grounds.

No costs.

Dhoni
Member-A.

Manish/-