

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD.

Original Application Number 473 of 2003.

Allahabad this the 3rd day of December 2003.

Hon'ble Mr. A.K. Bhatnagar, Member-J.

1. Smt Bhagwan Devi
widow of late Hari Singh
Ex M. Sm M. 'A' Central Railway,
R/o H.N.O. 59/15/ Shyam Nagar
Kheria Mor, Agra (U.P.)
2. Km. Baby Kushwah D/o late Hari Singh
Ex. M.S.M. A.C. Railway.

.....Applicants.

(By Advocate Sudama Ram)

Versus.

1. Union of India/General Manager,
North Central Railway,
Head Quarters,
Allahabad.
2. Divisional Railway Manager,
North Central Railway,
Jhansi.
3. D.R.M. North Central Railway,
Agra Division,
Agra.

.....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
sought the relief for quashing the impugned order
dated 24.02.2003 (Annexure A-1) passed by respondent
No.2 and further sought a direction to the General
Manager of the Railway to consider the compassionate

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appointment of the applicant No.2 under the existing rules framed by the Railway Board.

2. The facts, in brief, are that the husband of the applicant No.1 late Hari Singh expired on 18.04.1996 during the course of his employment in the respondent's establishment, leaving behind the widow and his four minor daughters. The applicant No.1 was offered a Group 'D' post on 10.08.2000 but she could not join due to her illness and other health reasons. She, accordingly, informed the respondents vide her letter dated 30.08.2000. On 30.12.2000 applicant No.1 requested respondents to consider the appointment for her second daughter, Km. Baby Kushwah applicant No.2 who passed her High School examination in the year 2001 and became major on 08.11.2002. Applicant No.1 submitted her requests to consider the case of Km.Baby Kushwah applicant No.2 for compassionate appointment by letters dated 05.02.2003 and 14.01.2003 as there is no source of livelihood and the family is facing a great financial strain. It is also stated that respondent No.2 i.e. Divisional Railway Manager, North Central Railway, Jhansi rejected her claim for compassionate appointment vide letter dated 24.02.2003 stating therein that as the case of the applicant is more than five years old and relates to her second daughter so it is not as per rules (Annexure A-I). It is also claimed that the applicant No.1 submitted her representation to the Divisional Railway Manager,

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Central Railway, Jhansi (respondent No.2) with copies to General Manager, Central Railway Headquarter, Mumbai C.S.T., Senior D.P.O, Central Railway, Jhansi and O.S.D./ (D.R.M) Central Railway, Agra who is competent authority to consider the case of the applicant under the existing Rules framed by Railway Board but no reply was received from the respondent No.1 i.e., General Manager, Central Railway Headquarter, Mumbai C.S.T., hence this O.A.

3. Learned counsel for the applicant submitted that the eldest daughter of applicant No.1 Smt. Nirmla was already married to Shri Mukesh in the life time of her husband as such she was no more family member of deceased employee after his death. Hence, applicant No.1 requested the respondents to consider the case for compassionate appointment for his second daughter Km. Baby Kushwah (applicant No.2) on attaining majority. He also submitted that there is no other male member in the family of the deceased to help the family at the time of financial hardship and applicant No.1 alongwith her four minor daughters are in distress in absence of any bread earner in the family. Learned counsel for the applicant further submitted that respondent No.2 has failed to consider the case of the applicant in the right perspective. The learned counsel for the applicant invited my attention on Railway Board's letter No.E(NG)II/84/RC-1/26 dated 22.12.1994 and letter No.E(NG)II/98/RC-1/64 dated 28.07.2000 by which the General Manager of concerned Railway has been

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given powers to even consider the cases of appointment on compassionate ground which are 20 years old and the second child can also be considered on satisfactory reasons. It is further submitted by applicants' counsel that as per Rules contained in Master Circular No.16 it is provided that where the widow can not take an employment and sons/daughters are minor, the case will be taken for consideration after they become major and even second child can be considered for compassionate appointment if there is consent of widow of deceased employee.

4. Resisting the claim of the applicants, learned counsel for the respondents filed counter affidavit and opposed the claim of the applicant. Applicant's counsel filed his rejoinder affidavit in reply to the counter affidavit and reiterated the facts given in the O.A.

5. Learned counsel for the respondents contended that widow of the deceased late Hari Singh i.e., applicant No.1 applied for appointment on compassionate grounds on 29.06.1996 and she was considered and issued a call letter No.P/161/Daya/Bharti dated 13.01.1997 for appointment as Khalasi. She was medically examined and found fit for the post but the applicant No.1 did not join the post to the reasons best know to her. Her application call letter and medical certificates are annexed as Annexure Nos.1, 2 and 3 of the counter affidavit. It is also submitted by respondent's counsel that the applicant No.1 has stated in the affidavit filed by her that date of birth of her daughter Km. Baby Kushwah

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is 08.11.1982 while the date of birth given in the High School certificate is 08.11.1984. The respondents' counsel further submitted that once the compassionate appointment was considered by Competent Authority and was given to applicant No.1 which she herself did not accept, thus the question of appointment of her second daughter on compassionate grounds does not arise hence the order passed by respondent No.2 on 24.02.2003 is perfectly legal and has correctly been issued. Learned counsel for the respondents finally submitted that when the applicant was not in need of appointment for more than five years then there is no need to be given compassionate appointment to the applicants. As the compassionate appointment is given to the dependent of the deceased for immediate financial relief. But in the present case 07 years have already passed so applicant is not at all entitled for appointment on compassionate grounds.

6. I have heard counsel for the parties and closely perused the records.

7. Admittedly the widow of deceased was offered the compassionate appointment on group 'D' post after the death of her husband but she did not join the post. I have perused Annexure 4 dated 30.08.2000 by which the applicant No.1 requested the respondents for considering the case of her daughter Km. Baby Kushwah as she was not in a position to join the post offered to her due to ill health and mentally depressed condition.

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The applicant No.1 again sent a letter dated 30.12.2000 to Divisional Railway Manager, Central Railway, Jhansi informing her inability to join the appointment made to her and requested for considering the case of her daughter in place of her. Finally she sent a representation dated 05.02.2003 to Divisional Railway Manager, Jhansi which was considered and rejected stating therein that as the matter is more than 05 years old from the death of deceased employee and applicant No.2 is the second daughter of the deceased so applicant No.2 is not eligible for compassionate appointment as per extent Rules.

8. I have gone through the Railway Board's order dated 22.12.1994 filed by applicant alongwith O.A.(page 19) as R.B.E No.100/94 (Supplementary Circular No.12 to Master Circular No.16). In para 4(a) of this circular the Board made some modifications regarding the case for compassionate appointment which empowers the General Manager of concerned Railways to consider the cases for compassionate appointment which are 15 years old from the date of death and further to relax period of maximum of two years after attaining majority by the candidate. I have perused supplementary circular No.3 to Master Circular No.16 filed on page 20. In Sub Para (ii) of para 1, by which time limit for submitting application within one year of attaining majority by the candidate, ^{has been} ~~may be~~ raised to ~~at~~ three years.

I have perused supplementary Circular No.44 to Master Circular No.16. In para 2 of the Circular, it is mentioned that General Manager of concerned Railway is competent to

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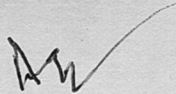
decide the application submitted more than 02 years after the candidate has become major.

9. I have perused the representation sent to the Divisional Railway Manager, Central Railway, Jhansi by the applicant No.1 regarding request for compassionate appointment of her daughter Km. Baby Kushwah alongwith postal receipt filed by applicant.

10. Under the facts and circumstances and in view of the aforesaid discussion, I am of the view that the ends of justice will better be served if the representation filed by the applicant dated 25.03.2001 is considered and decided by respondent No.1 in the light of instructions given in the Railway Board Circular mentioned above within specified period.

11. In view of this, the O.A. is disposed of with direction to respondent No.1 to consider and decide the representation dated 25.03.2003 as per Rules, considering all aspects given in the representation filed by the applicant within a period of three months from the date of receipt of this order. The applicant may file a fresh representation to respondent No.1 to facilitate the process of deciding the representation alongwith the copy of the order.

No costs.


Member (J)

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