

Reserved on 23.05.2011

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 27th Day Of May 2011)

Hon'ble Mr. Sanjeev Kaushik-JM

Original Application No. 414 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Amrish Kumar @ Bhola, Son of Shriram, Resident of Village-
Bichhia Juggal Tulsiram, Post Office Bichhia Camp, District
Gorakhpur.

..... Applicant

By Advocate: Shri S.K. Yadav

Versus

1. Union of India through its Mukhya Engineer Gorakhpur,
Kshetri Purvottar Railway Gorakhpur.
2. Up Mukhya Engineer/Gorakhpur Kshetra Purvottar Railway,
Gorakhpur.
3. Karya Nirishak/Madhya Railway Gorakhpur Kshetra
Gorakhpur.

..... Respondents

By Advocate: Shri P.N. Rai

ORDER

By way of this instant OA filed under Section 19 of the A.T.
Act, 1985 the applicant seeks a direction from this Tribunal to direct

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the respondents to appoint the applicant on Class-III Post under the Dying in Harness Rules.

2. The brief facts of the case are that the father of the applicant Late Ram Harakh was permanent employee under the Respondent No.3. In the year 1985, he adopted the applicant as his son. On 15.06.1985, the name of the applicant was nominated by the deceased employee in the Service Book. The deceased employee also executed a Will in favour of the applicant on 19.09.1989 (Annexure A-II). Unfortunately, on 09.01.1990, the father of the applicant died when he was in service (Annexure A-III). On 29.01.1990, the applicant submitted an application to respondent No.2 with a request to appoint him under Dying in Harness Rules (Annexure A-4). The applicant stated to have also filed Succession Suit i.e. Succession Suit No.255 of 1990 before Additional Civil Judge, Gorakhpur. Vide judgment and decree dated 23.01.1995, the Competent Authority granted Succession Certificate in favour of the applicant (Annexure A-5). On the basis of Succession Certificate granted by Competent Court the applicant, thereafter, moved an application to the respondents on 14.09.2002 to release all benefits on the demise of his father (Annexure A-6). In the month of May, 2003, the respondent Department released the terminal benefits in

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favour of the applicant on the basis of Succession Certificate. On 12.06.2003, the applicant stated to have moved another representation to respondent No.2 with the request to consider his case for appointment under the compassionate ground (Annexure A-7). On 06.05.2004, the applicant submitted another representation with the same request. It is alleged that despite the legal right the applicant has not been appointed on compassionate ground by the respondents neither his case has been rejected nor the appointment order has been issued in his favour. Hence, the original application.

3. Upon notice, the respondents appeared and contested the matter. Despite several opportunities granted to the respondents to file counter affidavit no counter affidavit has been filed and the matter was taken up for final hearing being an old matter.

4. I have heard Shri S.K. Yadav, learned counsel for the applicant and Shri P.N. Rai, learned counsel for the respondents.

5. Learned counsel for the applicant vehemently argued that the applicant is fully eligible for appointment under Dying in Harness Scheme. Though, the father of the applicant died on 09.01.1990 and his application for the appointment was made well within time



i.e. 20.01.1990 but the respondents deliberately did not consider the case of the applicant. Respondents have not rejected the case of the applicant nor did they offer appointment to the applicant. Counsel for the applicant, further, argued that faced with this situation the applicant also got the Succession Certificate by the Competent Court vide judgment and Decree dated 23.01.1995 and thereafter, again requested to the respondents on 12.06.2003 for considering his case for appointment but the respondents have not passed the order and have acted illegally against the spirit of the Scheme for appointment under Dying in Harness. The counsel for the applicant also place reliance upon the Master Circular issued by the Railway wherein power has been conferred to the General Manager to consider the case in which there is delay of 20 years.

6. On the other hand, Shri P.N. Rai, Advocate stated that at this belated stage the applicant cannot be given appointment. He further urged that the appointment under the compassionate scheme cannot be claimed as a matter of right. He submitted that the father of the applicant died on 09.01.1990 and he moved his representation on 12.06.2003 i.e. approximately after 13 years from the death of deceased employee. Therefore, his claim cannot be considered. He

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placed reliance upon the following judgments passed by Hon'ble Supreme Court in support of his arguments:-

- (i) *Umesh Kumar Nagpal versus State of Haryana*, (1994) SCC 138.
- (ii) *Jagdish Prasad versus State of Bihar*, (1996) 1 SCC 38.
- (iii) *Steel Authority of India Ltd. v. Madhusudan Das and Ors.* [2008 (15) SCALE 39
- (iv) *National Hydro Electric Power Corpn. Vs. Nanak Chand*, (2004) 12 SCC 487 and *Hindustan Aeronautics Ltd.*
- (v) *State of J & K and others Vs. Sajad Ahmed Mir* (2006 (5) SCC 766
- (vi) *I.G. (Karmik) v. Prahalad Mani Tripathi* [(2007) 6 SCC162
- (vii) *The Hon'ble Supreme Court in the case of Mumtaz Yunus Mulani vs. State of Maharashtra & Ors.*, 2008 (2) S.C.T.,669
- (viii) 2006 Supreme Court Cases 766 and 2008 AIR SCW 3642.
- (ix) Civil Appeal NO. 3242 OF 2009 titled as *State of Chhatisgarh & Ors Versus Dhirjo Kumar Sengar* decided on 5.5.2010 reported as 2010(1) Recent Service Judgment 22.

7. I have considered the rival submissions and have gone through the pleadings and the judgment cited by the respective parties.



8. Admittedly, the father of the applicant was died on 09.01.1990 and after the death of the deceased employee, the applicant moved an application on 20.01.1990 and thereafter on 12.06.2003 after having the Decree of Succession Certificate in his favour but till date the respondents have not passed any order on his representation.

9. It is settled proposition of law that the compassionate appointment cannot be claimed as a matter of right. It is a beneficiary piece of legislature by which the government wanted to help those families whose bread earner died leaving behind the family in sudden penurious financial crisis. It is also admitted that Railway Board has issued a Master Circular, whereby conferring power to the General Manager to consider the claim under compassionate scheme even after the delay of 20 years. The Master Circular reads as under:-

"Attention is invited to Board's letter No.E(NG)II/84/RC-1/26 dated 6.10.1995 in terms of which the GMs are empowered to consider time barred cases which are upto 20 years old from the date of death of the Railway employee, provided appointment is sought for the first son/first daughter and that application for appointment is submitted within 2 years of attaining the age of majority by the candidate. These powers have since been redelegated to DRMs/CWMs/HODs vide Board's letter dated 30.11.1999.

2. The matter has been further considered by the Board and it has been decided that the General Managers may also be authorized to consider the requests of compassionate



appointments in respect of cases upto 20 years old in the following types of cases subject to the condition that these powers will be exercised by him personally and not to be delegated further:

- (i) Compassionate appointment of 1st son/1st daughter where request has been made after a period of 5 years from the date of medical invalidation.
- (ii) Compassionate appointment of other than 1st son/1st daughter, where requests have been made after a period of 5 years from the date of death.
- (iii) Consideration of application submitted more than 2 years after the candidate became major.

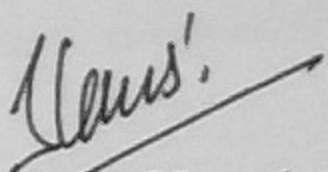
3. While considering such requests for compassionate appointment, the General Manager should satisfy himself on the basis of a balanced and objective assessment of the financial condition of the family, that the grounds for compassionate appointment in each such case is justified, having regard to the number of dependents, assets and liabilities left by the Railway employee, income of any member of the family, as also his liability, including the aspect of whether the earning member is residing with the family of the deceased employee and whether he provides any support to the other members of the family, so that the facility of appointment on compassionate grounds is not circumvented or misused by putting forward the ground that the eldest son of the employee is staying separately and not supporting the family."

10. Since, the respondents have made a provision to consider the case even after 20 years delay, therefore, I feel it is a fit case to dispose of the instant O.A. with a direction to the respondents to consider the case of the applicant under the Dying in Harness Scheme in terms of the Board's Circular as till today the respondents have not rejected the claim of the applicant.

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11. In view of the above, without going into the merits of the case, I direct the respondents to consider the case of the applicant in terms of the Master Circular (as quoted above) and to pass a speaking order within a period of three months from the date of receipt of a certified copy of this order and to convey the decision to the applicant. If the applicant is aggrieved against the decision taken by the respondents he can take legal recourse as available to him in accordance with Law.

12. Under these circumstances, O.A. stands disposed of with no order as to costs.


(Sanjeev Kaushik)
Member-J

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