

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A No. 1238/2008

, this the 3rd day of November, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

Ashok Kumar Pandey, S/o late B.K. Pandey, R/o Village & Post-Nari Pach Devara, District Ghazipur.

... Applicant

By Advocate : Shri S.S. Sharma

VERSUS

1. Union of India through General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Subedarganj, Allahabad.
3. The Divisional Railway Manager, North Central Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.
4. The Manager, Employees Credit Co-operative Society Bank, North Central Railway, Allahabad.

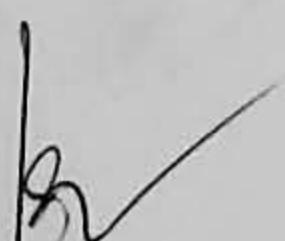
... Respondents

By Advocate : Shri Rakesh Dixit

ORDER

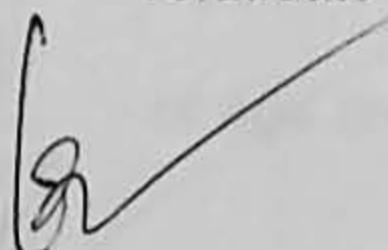
HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

This case relates to a compassionate appointment. Applicant's father, Late Brij Kishore Pandey was employed as a group D in Traffic Department of Northern Railway and had retired from Railway Service on



medical grounds on 24-03-1993. At that time, he was in a Group C post. Provision exists for grant of compassionate appointment in respect of wards of those who retired on medical grounds in advance of their date of normal date of superannuation. The applicant's father, in May 1993, made a request to the authorities for appointments of his son Sanjay Kumar Pandey but no action was taken. Other retiral benefits had also not paid by then. The applicant's father died in 1997 leaving behind his wife three sons and a daughter. At the time of his death, the eldest son was 36 years of age and the youngest 26 years while his daughter was of 24 years of age.

2. OA No 1361 of 2001 was filed by the applicant along with his two brothers and sister for payment of retiral benefits as also for compassionate appointments of their younger brother. This was disposed of by the Tribunal with a direction to the respondents to re-examine as to what amount was payable to the family as terminal benefits payable to applicant's father who took retirement on medical grounds on 24th of March 1993. Respondents also were to consider the application for compassionate appointment, if an application be duly filed by the applicant. Annexure A-3 refers. In pursuance of the aforesaid order Welfare Inspector contacted the applicant who was informed that in the place of the younger son of Late Brij Kishore Pandey, the elder son, the applicant herein be considered for appointment. Necessary no objection certificate from the members of the family was also made available.

A handwritten signature in black ink, appearing to read 'G' or 'GJ'.

3. The DRM vide letter dated 15th of March 2007 refused to consider the case of the applicant for appointment on compassionate ground in the place of his brother. No reason whatsoever was provided in the said order of refusal. Annexure A-5 refers.

4. Vide Annexure A-6 order dated 22nd of February 2007 respondents have intimated to the applicant that according to the records maintained by them a sum of Rs.21,728 is outstanding in the account of the applicant's father. This is for the first time that such a statement has been made by the respondents. According to the applicants the respondents have to pay a sum of Rs.40,000/- which is at the credit of his father's account as a shareholder in the ECCS.

5. OA 941 of 2007 was filed against the order dated 15th of March 2007 (Annexure A-5) which was disposed of with a direction to the respondents to consider the case of the applicant for compassionate appointment by passing a reasoned and speaking order. Annexure A-7 refers. The DRM vide Annexure A-9 dated 18-01-2008 informed the applicant about the balance amount due and also directed the applicants to submit papers as mentioned in the said letter. The applicant had furnished all the papers and made repeated requests but under one pretext or the other respondents are not prepared to settle the account of the applicant's father who died as early as in 1997. The case of the applicant for compassion appointments was also rejected on account of the fact that the applicant is now 44 years of age and he is seeking this compassionate appointment after 14 years

b2

of his father's death.

6. According to the applicant, the entire delay occurred not on account of the applicant but the respondents are also contributors in sufficient quantity towards the delay involved in seeking compassionate appointment. The applicant has sought the following reliefs vide Paragraph 8 of the OA which is as under:-

- (i) That the Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 29.1.2008 passed by DRM/NCR/Allahabad, respondent No.3, rejecting the request of the applicant under the pretext that the applicant is over 44 years in age and the claim is over 14 years old, though such stage has came due to the lapses and delays on the part of the respondents and there is no delay on the part of applicant.
- (ii) That the Hon'ble Tribunal may graciously be pleased to direct the DRM/NCR/Allahabad, respondent No.3 to consider case of the applicant for appointment on compassionate ground as per rules and Railway Board orders in this respect, as no age limit has been provided in the matter of compassionate appointments and also the General Manager has power to consider the case of compassionate appointment upto 20 years.
- (iii) That the Hon'ble Tribunal may graciously be pleased to direct the Manager, Employees Credit Co-operative Society Bank, N.C. Railway, Allahabad, respondent No.4 to make payment of Rs.40,000/- due to the deceased employee being member of this Bank and also give details of Rs.9,843/- alleged to have been outstanding as ECCS Loan taken by the deceased employee.
- (iv) That the Hon'ble Tribunal may graciously be pleased to direct the DRM/NCR/Allahabad, respondent No.3 to depute a Welfare Inspector/Personnel Inspector to get all the formalities completed in this case for making payment of dues to the applicant so that

there may be no controversy in this respect.

(v) That the Hon'ble Tribunal may graciously be pleased to allow cost and legal expenses to the applicant in this case.

7. Respondents have contested the OA. According to them, the younger brother of the applicant informed the welfare inspector that he is doing business in Maharashtra and hence he had withdrawn the candidate for compassionate appointment being a businessman. CR 1 refers. No member of the family can be stated to be dependent and hence no compassionate appointment can be granted to the applicant or anybody in the family. Respondents have also annexed a copy of the Railway Board circular dated 6 January 1997 wherein it has been stated that in the cases of wards of medically de-categorized employees where the applications for compassionate appointment as distinct from the request for review of cases already decided, have been received within the stipulation time period of five years and the cases have not been finalised within five years due to administrative reasons, the same may be dealt with at the General Managers level and need not be referred to the Railway board. All the other contentions raised in the OA have all been denied.

8. Counsel for the applicant submitted that the authority competent to decide the application of the applicant for compassionate appointments is the General Manager who alone has the power to waive the delay involved in filing the application for compassionate appointments whereas the rejection order has emanated from a lower level and hence the same is liable to be quashed and set aside.

b

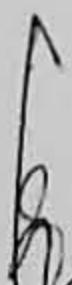
9. Counsel for the respondents submitted that the rule is clear that the powers of the GM also are restricted to deal with a case which is over 15 years old. In the instant case, it is not the date of death that will be reckoned to work out the 15 years, rather it is the date when the Railway servants retired on medical grounds that would be reckoned. From this point of view, since the father of the applicant retired on medical grounds in March 1993, before March 2008 the application should have been filed. In the instant case, the application was filed on time but on account of the over age of the applicant the appointment was not given.

10. Arguments were heard and documents perused. Compared to the policy of compassionate appointment in other government departments, compassionate appointment scheme under the Railways is certainly more liberal. It provides for consideration for compassionate appointment even in those cases where if the person seeking compassionate appointments is a minor at the time of demise of the Railway servant, he could very well apply after he became major but within a period of two years from the date of attaining majority. In no other departments, such a stipulation that the highest authority is empowered to consider cases of compassionate appointments even if it is 15 years old appears to exist. The benevolent approach of the Railways in grant of compassionate appointments is very well manifests with such scheme. The Railways being the biggest employer in this largest peninsula, a massive organisation, has thus been found to be interested in the welfare of the family of the Railway servants.

[Handwritten mark: a checkmark with a diagonal line through it]

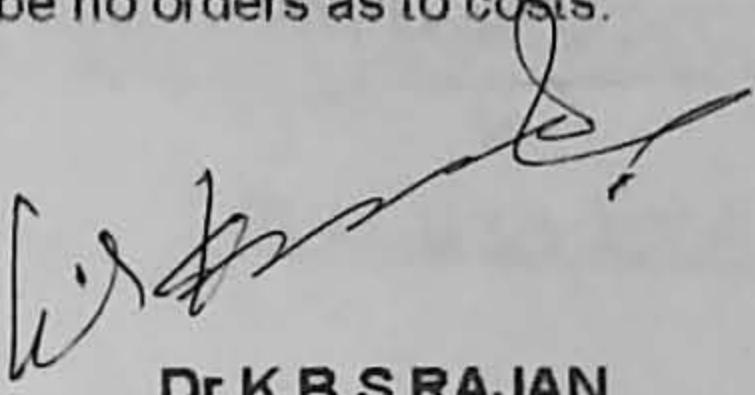
The General Manager of the Zonal Railway is the authority competent to decide the service conditions of Group C in Group B employees. Grant of compassionate appointments is available only for Group C and Group D posts. When an application is received for compassionate appointment by virtue of the time lag, has to be considered by the General Manager of the Zonal Railway, it is incumbent upon the Divisional Railway Manager to forward the application along with his recommendations. He is free to reflect in the covering letter the details of family as well as the financial circumstances of the applicant. His recommendation should be based on the relevant rules and regulations so that the General Manager is in a position to deal with the case dispassionately. In the instant case however the rejection letter came only from the Divisional Railway Manager level. In our considered view, the Divisional Railway Manager cannot usurp upon the powers General Manager. As stated earlier, he may make out a case indicating the plus and minus points to the General Manager. It is purely for General Manager to consider the case and decide as to whether the applicant is entitled to grant of compassionate appointment.

11. Accordingly this **Original Application is disposed of** with a direction to the respondent No. 3 to make out a statement of case and refer the matter to the General Manager with his recommendations. This part of the order shall be complied with within three months from the date of communication this order. The General Manager, ^{North Central} ~~Northern~~ ^{Jaswinder Singh} ~~Alw~~ ^{Office, Subedanganj, Allahabad} ~~Headquarters, New Delhi~~ thereafter, within two months, shall consider the case of the applicants and communicates his decision directly to the



applicant with copy to the Divisional Railway Manager.

12. Under the circumstances, there shall be no orders as to costs.



**Dr K.B.S.RAJAN
JUDICIAL MEMBER**

trs