

7

O.A.No.34 OF 2002

ORDER DATED 11-12-2002.

The moot question for consideration in this Original Application, under section 19 of the Administrative Tribunals Act, 1985 is as to whether on the face of the impugned order under Annexure-6 dated 12-11-2001 the Applicant can be deprived of getting the appointment on compassionate grounds when the family is in indigent conditions.

2. Fact remains that the father of the Applicant late Hadibandhu Sahu (while working in the Railways as Key-man) expired in harness on 12-06-2000. His date of birth being 1-7-1941, he was to retire on 31-6-2001 on attaining the age of superannuation/of 60 years. He left behind his wife, 3 sons 2 daughters of which one has got married. It is the case of the Applicant that since his father was the only earning member of his family, after his death the family members are in great distress conditions, and none of his either son or daughter is in employment. After the demise, the mother of the applicant applied for compassionate appointment in favour of her son (the present Applicant) ^{and} Since the said request of the mother of the present applicant was turned down; on the ground that the ex-employee expired at the age of 59 years i.e. on the verge of his due retirement on superannuation age, this O.A. has been filed.

8

8

3. To substantiate the order of rejection dated 12-11-2001, the Respondents have come forward in the counter adding that the compassionate appointment is considered only in cases of premature retirement and death by taking into consideration the circumstances leading to such occasion and family financial condition. It has further been averred that the family of the deceased having his Rs.10,000/- income from the agricultural land; mother of the applicant is getting family pension of Rs.2,013/- plus dearness relief, besides a sum of Rs.1,56,344/- towards DCRG and Rs.99,443/- towards leave salary has been paid to the deceased family. On the above grounds, the Respondents have prayed for dismissal of this Original Application.

4. I have heard Mr. S.B.Jena, learned Counsel for the Applicant and Mr. Ashok Mohanty, learned Senior Standing Counsel for the Railways appearing for the Respondents and perused the records.

5. Mr. Jena, learned counsel for the applicant challenging the grounds urged by the Respondents, in their counter stated that the Respondents are estopped to urge anything more than ^{what they have} ~~than~~ the grounds taken in rejecting the claim of the applicant. In support of this, he has taken me through the decision of the Hon'ble Supreme Court in the case of COMMISSIONER OF POLICE, BOMBAY VRS. GORDHANDAS

778

9
BHANJI (AIR 939) 1952 SC 16), the relevant portion of which is extracted hereunder:-

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind; or what he intended to do. Public orders made by the public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself*.

6. Apart from the above, the Applicant's counsel has stated that nowhere in the instructions/rules it has been provided notto give appointment on compassionate ground one of the family members of the deceased, in case of death occurred at the fag end of service. Further it has been argued by the learned counsel for the Applicant that the terminal benefits can not be taken into account for determining the indigent conditions of the family in order to give compassionate appointment. In this connection reliance has been placed to the decision of the Hon'ble Supreme Court in the case of BALBIR KAUR AND ANOTHER VRS. STEEL AUTHORITY OF INDIA (reported in 2002(2)ATT (SC)255); of RANKANIDHI SAHU VRS. UNION OF INDIA AND OTHERS(Reported in 2002(2)1 CJD(AT 21) and of MINA KUMARI MOHANTY AND ANOTHER VRS. UNION OF INDIA AND OTHERS {reported in (1994) 2 ATT (CAT)120) and the decision of this Bench in OA No.630/2000 disposed of on 21.5.2002.

7. Mr. Ashok Mohanty, learned Senior Counsel for the Railways, appearing for the Respondents has vehemently argued

10
that claim for compassionate appointment is not a vested right and since the father of the applicant expired on the verge of his normal age of superannuation, the same was rightly rejected by the authorities.

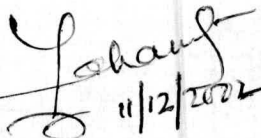
8. I have carefully considered the rival submissions of the parties and perused the materials available on record. On going through the various instructions issued by the Railways on the subject of providing compassionate appointment, ^{it appears that} no where it has been provided not to consider the cases of like nature for providing compassionate appointment. However, on going through the order of rejection under Annexure-6 dated 12-11-2001 it is crystal clear that the Respondents have not considered the case of the applicant according to the instructions issued on the subject and outrightly rejected the same on the ground that at the time of death of the father of the applicant, he was few more months to retire. The order of rejection is also a non-speaking one. Without considering the indigent condition of the family of the deceased employee ^{if the impugned order has been passed by} further, in view of the decisions of the Hon'ble Supreme Court in the case of Commissioner of Police (supra), the Respondents are estopped to come forward with new plea in the counter in order to substantiate their stand in rejecting the prayer of the applicant.

9. In the said premises, the order under Annexure-6 dated 12-11-2001 is set aside/quashed. The Respondents are

hereby directed to reconsider the case of the Applicant for providing compassionate appointment; without taking into account the terminal benefits received by the deceased family and the grounds taken in the order of rejection, under Annexure-6 dated 12-11-2001, within a period of three months from the date of receipt of a copy of this order.

10. In the result, therefore, this Original Application is allowed, leaving the parties to bear their own costs.

11. Send copies to all parties.


11/12/2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

KNM/CM.