

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. O.A.1340 of 1996

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

AJIT KUMAR RAI

... Applicant

vs.

1. Union of India, through the  
General Manager, C.L.W.,  
Chittaranjan-713 33.

2. Smt.Suraj Kumari, widow of  
Late Kesho Rai, 33/B, Chittaranjan.

(Proforma Respondent)

... Respondents

For the applicant : Mr.Balai Chatterjee, counsel.  
Ms.B.Mondal, counsel.

For the respondents: Mr.S.N.Jas, counsel.

Heard on : 19.3.1997

Judgment on : 19.3.1997

JUDGMENT

This is a case for compassionate appointment of the applicant, praying for a direction upon the respondents to appoint him in a suitable vacancy.

2. The applicant applied for appointment on compassionate ground in the year 1992 before the respondents under whom the applicant's father was an employee and who died on 15.9.1975, while he was in service. The case of the applicant is that on the death of the deceased employee, the following survivors were left behind by him, namely, widow wife, 1 minor son and 3 minor daughters. It is stated that the son i.e. the applicant, became major in the year 1989. Thereafter, in the year 1992, the widow of the deceased employee as also the present

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applicant, applied for appointment of the applicant on compassionate ground and that matter has been forwarded to the Secretary, Ministry of Railways, Railway Board, for consideration. But since no reply has been made by the respondents regarding appointment of the applicant on compassionate ground, the applicant has approached this Tribunal for having a direction upon the respondents to consider his case for appointment on compassionate ground against any suitable vacancy, according to the qualification of the applicant.

3. The case of the applicant has not been resisted by the respondents by filing any written statement or reply till the date of hearing. Accordingly, the case was fixed for hearing today.

4. During arguments, 1d.counsel, Mr.S.N.Jas, appearing on behalf of the respondents, submits that the matter has been disposed of by the competent authority and the rejection of appointment on compassionate ground in respect of the applicant, has been communicated to the applicant. 1d.counsel, Mr.Balai Chatterjee, appearing on behalf of the applicant, submits that the statement of Mr.S.N.Jas should not be accepted in the absence of any reply filed before this Tribunal rebutting or controverting the averments made in the application. He also submits that the averments made in the application should be accepted by the court as correct for proper adjudication of this case.

5. I have considered the submissions made by Mr.Balai Chatterjee on this score, but I am unable to accept the same. When the legal representative of the respondents appears at the time of hearing and furnishes any factual facts on record regarding the subject matter of the case, the same has to be accepted and cannot be ignored. Besides, the 1d.counsel is also entitled to argue the case on the point of law even though the respondents have not

filed any reply to the application. Question of admissibility of evidence is a different matter which would depend on the facts and circumstances of the case. So I accept the submission of the 1d.counsel for the respondents, Mr.S.N.Jas that the matter for compassionate appointment of the applicant was considered and disposed of by the competent authority expressing their regret to give appointment to the applicant on compassionate ground on 14.10.1996, which was sent under registered cover with AD, though Mr.Balai Chatterjee, appearing for the applicant, has denied receipt of the said letter today.

6. The question before me for consideration is whether the applicant is entitled to the right of appointment on compassionate ground under the peculiar circumstances and whether the prayer of the applicant was rightly refused or not by the respondent-authorities. In the instant case, admittedly the fact before me is that the deceased employee died in the year 1975, leaving behind his widow, 1 minor son and 3 daughters and the widow did not apply for any appointment on compassionate ground till the attaining of majority of the minor son in 1989. Admittedly, after the minor son became major in 1989, they applied for appointment on compassionate ground for the said son, after three years of attaining of majority of the son as per the own averments made in the application. I have gone through the letter of rejection dated 14.10.1996 produced before me by the 1d.counsel for the respondents. But the said letter does not indicate nor states the reason as to why the prayer of the applicant for appointment on compassionate ground was not accepted by the authorities, when the same was recommended by the appointing authority for the purpose of appointment.

 The 1d.counsel, Mr.Balai Chatterjee, has also drawn my attention to the memorandum dated 6.10.1995 issued by the Railway Board

regarding appointment on compassionate ground and the time limit for such appointment, which indicates that the time limit of 15 years stipulated in para 4(a) of the Board's letter dated 22.12.1994 ibid has been modified to 20 years. On the strength of the said memorandum, Mr. Chatterjee submits that the case of the applicant even after 20 years can be considered by the Railway Board though the applicant did not apply for appointment on compassionate ground before the year 1992. Ld. counsel for the respondents, Mr. S. N. Das, submits that the memorandum dated 6.10.1995 had no retrospective effect, thereby the applicant is not entitled to get benefit of that circular for the purpose of appointment on compassionate ground.

7. However, in the case of Umesh Chandra vs. UOI (AIR 1994 Vol 4 SCC 448), it has been held by the Hon'ble Apex Court that the matter of compassionate appointment should be done strictly in exceptional circumstances in order to meet the hardship or mitigate the hardship due to the death of the bread-earner of the family. Also in the case of Jagadish Prasad vs. State of Bihar, their Lordships considered a similar question of fact before me. In that case at the time of death of the deceased employee, the son was four years old and he applied for compassionate appointment after 20 years after attaining majority. Their Lordship held that since the death occurred way back in 1971 in which year the applicant was four years old, it cannot be said that he is entitled to the appointment after attaining of majority. Another judgment of the Hon'ble Apex Court reported in 1996 SCC (L&S) 33 UOI vs. Bhagwan Singh, it has been held that compassionate appointment made after twenty years of the death of the employee, should not be encouraged.

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8. In view of the aforesaid circumstances, the decisions of the Hon'ble Apex Court is no doubt binding upon me, where their Lordships have specifically stated that in such circumstances, Tribunal has no jurisdiction to direct appointment. In view of the aforesaid circumstances, I do not find any merit in the case and the application is found devoid of merit.

9. Accordingly, application is dismissed, without any costs.

  
(D.Purkayastha)  
Judicial Member