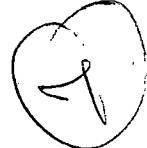


CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR



O.A.No. 32 OF 1997.
Jodhpur the 28th day of Oct., 1997.

1. Smt. Rehmat W/o Late Abdul Rehman aged about 59 years r/o Inside Nagauri Gate, Jodhpur. Her husband was last employed on the post of Daftri in Drawing Office Workshop, Jodhpur, Northern Railway.
2. Abdul Salam W/o Late Abdul Rehman, aged about 25 years r/o Inside Nagauri Gate, Jodhpur.

.....Applicants.

VERSUS

1. The Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Dy. Chief Mechanical Engineer (W), Northern Railway, Jodhpur Division, Jodhpur.

.....Respondents.

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HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER

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For the Applicants

Mr.J.K.Kaushik

For the Respondents

Mr.S.S.Vyas,

.....

BY THE COURT :

The Applicants have filed this Application with the prayer that the impugned order dated 29.3.1996 (Annex.A/1), rejecting the claim of the applicant No. 2 for compassionate appointment, be declared illegal and the same may be quashed. Further, respondents may be directed to consider the candidature of applicant No. 2 for compassionate appointment, on merits and allow all consequential benefits.

2. Notice of this Application was given to the respondents who have filed their reply in which they have alleged that application for compassionate appointment was made after lapse of almost 22 years of the death of the Railway employee. Their exists no circumstance for giving compassionate appointment to the applicant No. 2. The Application is not maintainable and applicants are not entitled to any relief.
3. The applicants have filed rejoinder to the reply and has alleged that cases of such compassionate appointment can be considered with

32

special reference to the concerned ministry.

4. I have heard the learned counsel for the parties and gone through the record. For purpose of disposal of this O.A. few facts relating to the matter in controversy, are required to be mentioned in brief.

5. The husband of applicant No. 1 and the father of applicant No. 2 Shri Abdul Rehman, was a Railway employee, who died on 19.7.1973 in an accident while he was in service. Shri Abdul Rehman was survived by his widow (Applicant No.1), Abdul Mazid, Son, aged 17 years (major at the time of death of his father as per his date of birth and was in employment of the Railways as Casual Labour), Abdul Rashid, Son, aged 5 years, Chhurmat Bano, Daughter, aged 12 years, Sayeeda Bano, Daughter, aged 7 years and Abdul Salam, aged 2 years (Applicant No.2). The deceased was a P.F. optee, hence, the amount of CPF was given to his wife after the death of her husband and thereafter she is being paid ex gratia pension as per rules from 1.1.1986. It appears from the school leaving certificate (Annex.A/5), that Abdul Salam, applicant, was borne on 1.1.1971. Applicant No. 1 for the first time applied for compassionate appointment of her son Abdul Salam on 1.5.1995 i.e. more than 6 years after the applicant No. 2 attained majority. After the death of Shri Abdul Rehman, Abdul Majid, the eldest son of the applicant, was granted temporary status after screening test and he is still in employment of the Railways. Second son Shri Abdul Rashid did not apply for appointment on compassionate ground.

6. The learned counsel for the applicants has argued that the claim of the applicants has not properly been considered by the respondents. Penurious circumstances of the family were not given any importance and the claim for compassionate appointment was rejected in a routine manner. As per the Circular of the Railway Board, such cases could be considered even after 20 years of the death of the bread winner and two years after attaining majority. Thus, in the instant case, applicant No. 2 is a fit candidate to be considered for compassionate appointment.

7. On the otherhand, the learned counsel for the respondents has argued that securing appointment on compassionate ground is not a vested right of the applicant. Such appointment can only be given to a member whose family is in penurious condition. In the instant case, the eldest son of Abdul Rehman (Deceased) was already in employment at the time of his death. Therefore, it cannot be said that family was at that time in penurious state. When second son of the deceased became major in 1986, he did not apply for appointment

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on such ground. Neither, any of the daughters applied for compassionate appointment. He has further argued that compassionate appointment is not to be provided to any one of the family members. Even, as per the assertion of the applicants and the documents submitted by them, applicant No. 2, had become major on 1.1.1989 but application for compassionate appointment was not moved for six long years. In such circumstances, applicant No. 2 is not entitled for consideration. He has also cited case laws enunciated by Hon'ble Supreme Court.

8. I have given my serious consideration to the facts and circumstances of the case. In JT 1996(2) SC 542 - Himachal State Electricity Board Versus Naresh Tanwar and Others, the Hon'ble Supreme Court has held that "compassionate employment is intended to provide immediate relief to the family on the sudden death of an earning member. The compassionate employment is not a vested right which can be exercised at any time in future. It cannot be claimed and offered whatever the lapse of time and after the crises is over." In the instant case, there was no application for employment of the second son of the deceased who became major in 1986. It is alleged by the respondents that second son of the deceased and applicant No. 2 are both working as Masons and are earning enough to maintain the entire family. Though, there is no material to support this averment but it has also not been denied in the rejoinder. Therefore, it can be inferred that applicant No. 2 and his elder brother Shri Abdul Rashid, are not absolutely un-employed. Neither, it can be said in the circumstances that the family is in penurious state. Almost after a lapse of 22 to 24 years of the death of Shri Abdul Rehman, it cannot be said that family is unable to maintain itself and incapable to survive.

9. In 1994 (27) ATC 537 - Umesh Kumar Nagpal Vs. State of Haryana and Others, the Hon'ble Supreme Court has held that "the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crises and not to provide employment. Mere death of an employee does not entitle his ward to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crises resulting from the employees death." In this respect, it was argued by the learned counsel for the applicant that the authorities have not given any such finding about the financial state of the applicants and has simply rejected the claim. Therefore, the candidature of applicant No. 2 can be ordered to be reconsidered. More so, when the elder son of the applicant No. 1 is living separately and is not financially supporting the family.

10. I have considered this aspect of the case. In absence of specific denial in respect of the allegations of the respondents that two of the sons of the applicant are working as Mason, it can be inferred that they are earning members. During the course of arguments, the learned counsel for the Railways has shown me a declaration of Shri Abdul Majid, who is a Railway employee, in which he has shown his mother and both the brothers as his dependents. This declaration was made in the year 1991 and again similar declaration was made in the year 1996. These declarations go to show that the elder son of the applicant No. 1 is not living separately from her as is alleged by her. She is also getting gratia pension. Both these facts go to show that the family is not in penurious state. The applicants have given no explanation for moving application for compassionate appointment with great delay of six years. From the School going certificate (Annex.A/5), it appears that applicant No. 2 had passed Class VIII in the year 1984. In my opinion by the time, he became major and he had earned basic education for securing employment as Class IV. Therefore, he could have applied soon after becoming major. But he failed to do so. Thus, his claim is hopelessly time barred. The Railways Circular Annex.A/6, specifically mentions that individual cases of merit could be considered even after 20 years of the death of Railway employee or two years after attaining majority by the applicant. In this case, no such merit has been shown to me which may enable me to come to the conclusion that applicant No. 2 Shri Abdul Salam's case for compassionate appointment deserves to be considered even after a lapse of 24 years.

11. In my opinion, applicants have not been able to make out a case in which direction for consideration of applicant No. 2 for compassionate appointment, can be ordered. The Original Application in my opinion has no merits and deserves to be dismissed. The Original Application is, therefore, dismissed. No order as to costs.

2/3
(A.K.MISRA)
Judicial Member

Mehta