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Date of Decision: 10/10/2001

OA 251/2001

Pradeep Mathur s/o Shri Banshi Lal r/o Ward No.11, Naya Bas, Churu.

... Applicant

Versus

1. Union of India through General Manager, Northern Railway, Boroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Divisional Office, Bikaner.

... Respondents

CORAM;

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.G.K.Vyas

For the Respondents

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O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

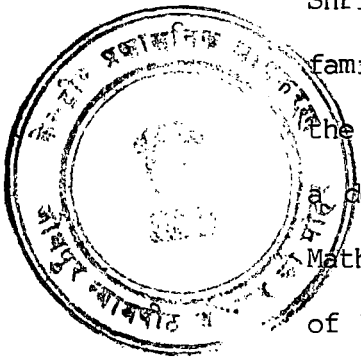


The applicant of this OA seeks a direction to the respondents to appoint him on a suitable post on compassionate grounds. His plea is that he was dependant of his brother, Late Shri Umesh Mathur, who died in harness. He submits that as per rules of the department, a dependant brother is entitled to be considered for appointment on compassionate grounds. A request was made on behalf of the applicant for appointment on compassionate grounds by his father Shri Banshi Lal Mathur. But the respondents vide letter dated 11.5.99 (Ann.A/4) have turned down his request for the reason that as per pass declaration, he was not dependant of his late brother Shri Umesh Mathur.

2. Short controversy involved in this case is whether the applicant

could claim to be a dependant of his late brother while his father is alive.

3. Before deciding whether a notice could be issued to the respondents, the learned counsel for the applicant was heard at length. As per the averments in the application and the arguments advanced by the learned counsel, the deceased brother of the applicant, late Shri Umesh Mathur, was himself appointed on compassionate grounds consequent to retirement of his father, Shri Banshi Lal Mathur, on being declared medically unfit. Rules of the department provide for making appointment on compassionate grounds in favour of dependant of the employee who retires on grounds of medical unfitness. Late Shri Umesh Mathur was appointed in 1987 and unfortunately died while in service on 26.1.1998. Applicant is seeking appointment on compassionate grounds on the plea that not only he but the entire family was depended on late Shri Umesh Mathur and since Shri Umesh Mathur was a bachelor, he had no family of his own except his own parents and the applicant-brother. On the point whether the applicant, Pradeep Mathur, could be considered as a dependant of his deceased brother, while his father Shri Banshi Lal Mathur is still alive, the learned counsel placed reliance on the case of Raj Kumar Ramdeo v. State of Rajasthan and others (S.B.Civil Writ Petition No.3446/93), decided on 7.10.93 by the Hon'ble High Court of Judicature for Rajasthan, and the case of Herald Hamilton v. State of Rajasthan (D.B. Civil Writ Petition No.524/87), decided on 22.7.87. The learned counsel submitted that as per the definition of 'family' defined by the Hon'ble High Court of Rajasthan in the case of Herald Hamilton; "a person could be a dependant of his unmarried brother or sister depending on facts and circumstances of the case." The learned counsel stated that the very fact that late Shri Umesh Mathur was appointed on compassionate grounds to look after the family, which included his father, is a ground enough to support the view that the

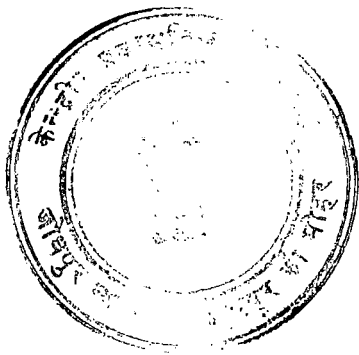


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family including the applicant were dependant on Shri Umesh Mathur. The learned counsel thus contended that action of the respondents in denying appointment to the applicant was not legally sustainable.

4. I have perused the judgement in the case of Herald Hamilton, in which Hon'ble High Court went into the definition of the word 'family' and to put a correct interpretation to the same. It was observed that the word 'family' has no wider meaning than the ordinary accepted connotation of the word, which means members of a household. In the said order the observations of the Weight J. in Price v. Gould, which was also followed in India in the case of Nanak Chand v. Tara Devi, were extracted as under :-



"...the word family was a popular, loose and flexible expression, and not a technical term. It had been laid down that the primary meaning of the word family was children, but that primary meaning was clearly susceptible of wider interpretation..."

While referring the decisions and observations made in various cases, the Hon'ble High Court held as under :-

"In view of the proposition of law laid down in the above referred cases and the context in which the word 'family' appears in the definition and the intention of the Rule makers, we are of the opinion that it is a word of loose and flexible description and not a technical term. It is also obvious that its ambit has to be determined, having regard to the habits ideas and socio-economic milieu of the parties. It is also clear that it is not to be understood in a narrow sense of being a group of persons who are recognised in law having a

right of succession or having a claim or right to a share in the property or meaning only a member of Hindu joint family. We, therefore, hold that a brother living with the unmarried sister for the purposes of the Rules of 1975 in the facts and circumstances of the case, would constitute a member of the family of the unmarried sister."

With due respect to the conclusion arrived at in respect of the definition of the word 'family' by the Hon'ble High Court, the same does not help the case of the applicant before me. In the case of Herald Hamilton, it was clearly noted by the Hon'ble High Court that the petitioner was totally dependant upon his sister for the reason that he was living with her and all expenses on his study and his day to day expenses were borne by his sister as his father was not keeping well and had retired from business. Obvious inference is that father of the petitioner in that case had no income of his own and in view of such situation the petitioner could rightfully claim to be dependant of his sister.

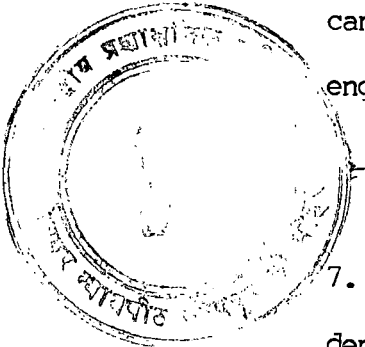
5. In the case of Raj Kumar Ramdeo, there is no mention whether the petitioner claiming as dependant of his brother had his father living. In that case, the petitioner was considered to be dependant of his brother as at the time of his brother's death he was only a minor being 13 years of age and was living with him. The facts in this case do not advance the cause of the applicant before me either as it is not his case that he was a minor at the time of his brother's death and that he was living with him.

6. As per rules of the department, appointment on compassionate grounds can be given to a dependant of the ex-employee. Rules have also been relaxed to cover giving appointment to the dependant brother but in that case it is required to be proved that the person seeking appointment on compassionate grounds was actually dependant on the ex-





employee. Late Shri Umesh Mathur had been appointed as TTE in the Railway and it is not the case of the applicant that during his service of about 10 years he ever declared the applicant as his dependant. In the Department of Railways the employees are entitled to the facility of railway passes. As per rules, dependant relatives can also avail the facility of railway pass. The very definition of dependant relatives in Rule 2(c) of the Railway Servants (Pass) Rules, 1986, lays down as to who are the dependant relatives but the precedent condition is that the dependant relatives in relation to a railway servant is a person whose father is not alive. The term 'dependent relative' also includes a brother whose father is not alive and provided he resides with and is wholly dependent on the railway servant. In the instant case, father of the applicant is alive and he only (i.e. the father) submitted an application on behalf of the applicant for appointment on compassionate grounds. The same Pass Rules also define the 'family' and say that even a son of the railway servant above the age of 21 cannot avail of the facility of pass unless he is a banafide student or engaged in any research work and does not get any scholarship/stipend.



7. The learned counsel vehemently stressed the point that dependence of the family on late Shri Umesh Mathur were accepted by the department by the very fact of appointing him on compassionate grounds to look after the family with full knowledge that the father was alive. With the death of Shri Umesh Mathur, the family has been reduced to the same circumstances under which he was appointed on compassionate grounds. In this background, the applicant cannot be denied appointment as now the burden to look after the family rests on him.

8. I do not find any force in this argument of the learned counsel. Though it is true that the departmental rules provide for giving appointment on compassionate grounds to one of the dependants of an employee who is declared medically unfit and retires on that ground but the instant case is whether in the event of death of an employee, who is unmarried, can his brother rightfully claim to be appointed on compassionate grounds. As I mentioned earlier that the departmental rules do provide for considering such a case provided the applicant is able to establish that he is dependant on the ex-employee who was his unmarried brother. It has already been accepted by the applicant himself, as seen from Ann.A/5, submitted by the applicant's father, that in view of the fact that the father was alive and the applicant, Pradeep Mathur, was above 21 years of age, the applicant was not entitled to avail of the facility of railway passes. This statement in itself is a proof enough that the applicant cannot be treated as dependant of his late brother. On the plea of the learned counsel that the entire family, including the father, was dependant on late Shri Umesh Mathur is also not tenable for the reason that even as per Medical Attendance Rules, the members of the family including parents can be considered as dependants provided their income is less than Rs.500/- p.m. Father of the applicant retired as Head Clerk, as per the facts available on record, and he cannot claim his income to be less than Rs.500/- p.m. Obviously, father of the applicant cannot be considered as a dependant of late Shri Umesh Mathur. He can only be considered a dependent of his father. Of course, if the father was a dependent of late Shri Umesh Mathur by virtue of reason of his (father's) own income being less than Rs. 500/- per month, then a case in favour of the applicant could be made. The fact that Late Sh. Umesh



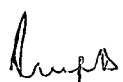
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Mathur was given appointment on compassionate grounds because of his father having retired on medical decategorisation does not make the father, a dependent of the son, so appointed. This appointment is a result of the departmental rules on the subject and has no effect on the status of the father so as to render him a a dependent of the son.

9. Another noticable fact in the case is that applicant's date of birth is 23.8.68, which means that on the date of filing of the application he was about 33 years of age and on the date of death of his late brother he was about 30 years of age. By no stretch of imagination or under the provisions of any rules, a healthy normal male of 30 years of age can claim to be the dependant of his father, much less the dependant of his brother. As observed by Hon'ble the Supreme Court in a number of cases, to cite one the case, in the case of Haryana State Electricity Board & Anr. v. Hakim Singh, 1997 (8) Supreme To-Day 518, the object of providing appointment on compassionate grounds is not holding an alternate mode of recruitment but to provide immediate sustenance to the bereaved family. Obviously, this can be done only by providing appointment to a person who is actually a dependant of the late employee. In the facts and circumstances of this case, it cannot even be remotely suggested that the applicant could be considered as a dependant of his brother late Shri Umesh Mathur. Hence I do not find any merit, whatsoever, in this case and the application is liable to be rejected.



9. I, therefore, dismiss this OA in limine as having no merits.


(A.P. NAGRATH)

MEMBER (A)

Cody Dwyer along with OA Rits

Phone one sent to R-1 & R-2

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