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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 180/2003 and
Misc. Application No. 95/2003 in O.A. 180/2003
Date of Decision : this the 15th day of March, 2004.

Hon'ble Mr. J.K. Kaushik, Judicial member
Hon'ble Mr. M.K.Misra, Administrative Member

Roop Singh s/o Late Shri Bheru Singh
Aged about 28 years, R/o Vill Pipali Nagar
(Chhapra0, Via Devgarh, The. Bheem,
Distt. Rajsamand. Father of applicant Late
Bheru Singh was holding the post of Gangman
At the time of his death in respondent-department

[By Mr. Kuldeep Mathur, Advocate, for applicant]

.....Applicant

versus

1. The Union of India through
the General Manager, North-West Railways,
Opposite Railway Station, Jaipur
2. The Divisional Railway Manager (Estt.)
North West Railways, Ajmer.

[By Mr. Vineet Mathur, for the respondents]

.....Respondents



ORDER

[BY M.K.MISRA, ADMINISTRATIVE MEMBER]

This O.A. 180/2003 is of Shri Roop Singh, the applicant,
against the order dated 19.2.2003 (Annex.A/1) rejecting his
candidature for appointment on compassionate grounds
wherein, he has prayed for the following reliefs :

- (i) that the application of the applicant may kindly be allowed;
- (ii) that the order dated 19.2.2002 (Annex.A/1) may kindly be ordered to be quashed;
- (iii) that the record of the case may kindly be called for;

- (iv) the respondents may kindly be directed to provide compassionate appointment to the applicant on a Group D post in the department;
- (v) any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The Original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant;
- (vi) cost of this application be ordered to be awarded in favour of the applicant."

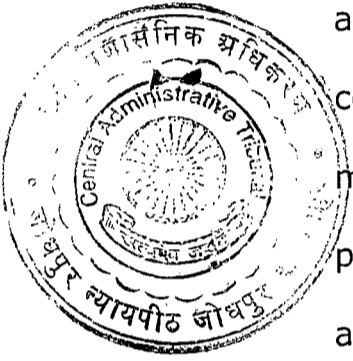
2. The case was listed for admission today and with the consent of learned counsel for both the parties, the same has been heard for final disposal at the admission stage. We have carefully perused the pleadings and the records of the case.

3. Briefly, the facts of this case are that applicant is 27 years old (date of birth 25.8.1976) and is the son of late Shri Bheru Singh, who was working as a Gangman in Gang No. 37 of the Railway Department at Railway Station Khamli Ghat, District Rajsamand who died on 25.8.2000. At the time of death applicant's father was 50 years old. The family of the Gangman consisted of his old mother Smt. Chatari Devi aged 77 years, one son (the applicant) and one daughter Ms. Vani Devi. It is worth stating that mother of the applicant died on 28.11.1997 i.e. prior to the death of his father. The sister of the applicant got married prior to the death of her mother. Thus, there was no female member in the family and hence, the father of the applicant compelled the applicant to get married which took place on 5.4.1998 to look after the family affairs. The applicant was 23 years of age at the time of his marriage.





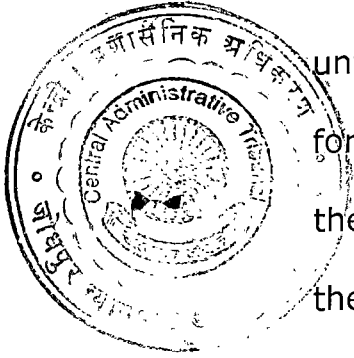
4. After the death of Shri Bheru Singh, the applicant applied for appointment on compassionate ground in Group 'D' post for which all necessary documents were furnished to the concerned authorities along with the application. The applicant received a sum of Rs. 57,000/- towards terminal benefits after death of his father from the respondents. However, the respondent No. 2 The Divisional Railway Manger (Estt.) North-West Railways, Ajmer, informed the applicant that after deep consideration, the competent authority came to the conclusion that the case of the applicant is not found fit for appointment in Group 'D' post on compassionate grounds vide letter dated 19.2.2002 as he is married and having his own family, therefore, he could not be presumed to be a dependant on his father. Aggrieved by the above decision of the competent authority, the applicant submitted a representation on 7.8.2002 to the respondent No. 2 requesting him for reconsideration of his candidature for appointment as he was facing great financial hardship because the money which he received from the respondent No. 2 was utilised in the treatment of his grand mother Smt. Chatari Devi , who was suffering from Cancer and part of the amount received was also utilised in making payments to the lenders of his late father who borrowed some amounts for the purpose of treatment of his mother (Smt. Chatari Devi). The O.A. was presented before this Tribunal on 18.8.2003 and in the M.A. [95/2003] filed by the applicant, it has been stated therein that the matter could not be presented within a year from the date of order dated 19.2.2002 because applicant submitted a



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representation for reconsideration before the respondent No. 2 on 7.8.2002. Thus, the delay is not intentional which may be condoned by this Tribunal.

5. The learned counsel further contended that father of the applicant was fifty years old at the time of his death i.e. 25.8.2000 who could have served the Railway department up to the age of 60 years i.e. 10 years more, had he not expired untimely. Again, the deceased father was the only bread earner for his family and for the reasons of untimely death of his father, the applicant have been suffering great financial hardship thereby leading to the appointment on compassionate ground of the applicant in Group 'D' post. The reasons communicated by the competent authority while rejecting the application of the applicant for compassionate appointment is his marriage and a married person, as per the respondent No. 2, cannot be treated as a dependant on his late father. The applicant is only IX passed and was not able to find out any job due to lack of complete education. The learned counsel also argued that there is no rule in the Railway department that a married person cannot be appointed in Group 'D' post on compassionate ground. The representation of the applicant dated 7.8.2002 is still pending before the competent authority as no communication was sent to the applicant in respect of his representation. In the reply furnished by the respondent No. 2, it has been stated that there is a settled proposition of law that a person has only a right of consideration and not a right to the appointment so far



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as appointment on compassionate ground is concerned. Further, it has been mentioned in the reply that applicant is having a daughter aged four years as per ration card issued in 2001 and in fact, the applicant got married earlier to the death of his mother i.e. before 28.11.1997. The candidature of the applicant was rejected by the competent authority after thorough consideration of the facts and on the basis of overall assessment of the case which indicated that applicant is not an indigent one. The reply also indicated that the terminal benefits were calculated at Rs. 1,12,939/- in the case of Shri Bheru Singh and such some was divided into two parts of Rs. 56,470/- and the same was paid equally to the applicant and his sister. The communication on the representation of the applicant was not sent because the decision on the application of the applicant for appointment on compassionate ground was already communicated to him. The reply also contains the presumption of the respondent No. 2 that if a person who is married and maintaining his own family before the death of his father, is expected to earn his livelihood and is in no way depended of his father. It was, therefore, prayed that the O.A. of the applicant should be dismissed on the face of it.



6. We have carefully considered at great length the rival submissions of learned counsels of the parties.

7. As regards the M.A. 95/2003 for condonation of delay in filing the O.A. beyond the prescribed period, it is observed that

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the applicant has sent a representation on 7th August, 2002 and the O.A. was filed on 18.8.2003, therefore, the O.A. is treated as having been filed within the prescribed period under Section 21 of the Administrative Tribunals Act. Even in the interest of fair justice, the O.A. is required to be acted upon judiciously on merits. The M.A. stands accepted accordingly.

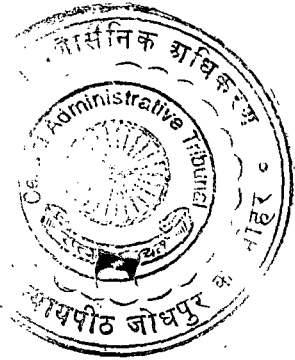


8. The averments made by the learned counsel for applicant that the reasons given in communication dated 19.2.2002 (Annex. A/1) that applicant was married having his own family, could not be presumed to be a dependant on his deceased father, is devoid of any merit and it is violative of Article 14 of the Constitution of India. We observed carefully that the contention of the learned counsel for the applicant is having substantial substance. This find support from the judgement of Hon'ble Punjab and Haryana High Court in Surinder Singh Vs. State of Haryana and others reported in 1996 (2) SLR 231 where, their Lordships held as under :-

"B. Constitution of India, Article 14 – Compassionate appointment-Dependant – Classification – Clause 2 (iv) of Government instructions dated 8.5.1995 provided that if any dependant of deceased Government employee's family is married at the time of death of the employee, he/she would not be eligible for employment under the scheme- What is to be kept in mind while considering the case of a dependant for employment on compassionate ground is the financial conditions of the family-Financial condition of the family has no direct nexus with the marriage of dependant- A married child may be dependant whereas an unmarried child may not be dependant on the deceased – Thus classification cannot be made merely on the basis of marriage – Such classification has nothing to do with the criteria of economic condition of the family of the deceased – It is wholly arbitrary and irrational – It has no nexus with the object sought to be achieved and therefore, contrary to Article 14 of the Constitution and, therefore, clause 2 (iv)

of the instructions dated 8.5.1995 struck down being unconstitutional."

9. Similarly, we find that this Tribunal in the case of Nirmala Devi Vs. UOI & Others reported in 2002 (1) ATJ 261 held as under :-



"8. It is, thus, clear from the above discussion of the scheme, as prevailing in the Railways, regarding appointments on compassionate grounds, the scheme is very liberal and no means test is required to be applied while deciding the request for appointment on compassionate grounds. The length of service put in by the employee at the time of his death also is not a relevant consideration at all. In fact, rules specifically state that this should not be the considerations while deciding the case of appointment on compassionate grounds. In the department of Railways there is no mention at all that appointment on compassionate grounds has to be offered only in cases where indigent circumstances exists. If that be the provision of the scheme, which is conceived as a welfare measure for the employees, it is not open to any authority of the Zonal Railways to deny such request on grounds which are not in conformity with the provisions contained in various letters regulating appointments on compassionate grounds. It is thus clear that the impugned orders (Ann.A/1 & A/2), by which the request of the applicant has been rejected for appointment of her son on compassionate grounds, are not sustainable."

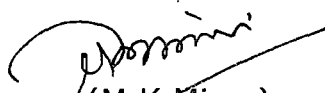
10. Further, in the case of Balveer Kaur and Anr. Vs. Steel Authority of India reported in 2000 SCC (L&S) 767, Hon'ble the Apex Court had held that while considering the case of appointment on compassionate grounds the retiral benefits received by the family shall not be taken into account. This order of Hon'ble the Supreme Court was relied upon by the Principal Bench of the Central Administrative Tribunal in the case of Smt. Anarkali and Anr. Vs. UOI & Ors. reported in 2001 (2) ATJ 387.

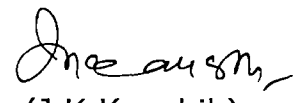
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11. The learned counsel for respondents also cited a judgement of Hon'ble the Rajasthan High Court in D.B.C.Writ Petition No. 4424/2001 dated 13.5.2002 - Balwant Singh Vs. UOI & Ors., wherein, a similar view was expressed by their lordships as quoted by the Punjab and Haryana High Court (supra).



12. After considering the above decisions and the facts on record, we allow this O.A. and direct the respondent No. 2 i.e. the Divisional Railway Manager (Estt), North West Railway, Ajmer, to reconsider the case of the applicant Shri Roop Singh S/o Late Shri Bheru Singh for appointment on compassionate ground, within a period of three months from the date of receipt of a certified copy of this order. While doing so, respondent No. 2 shall take into account the rules and the instructions governing appointment on compassionate ground in the department as discussed above. No orders as to costs.


(M.K. Misra)
Adm. Member


(J.K. Kaushik)
Judl. Member

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order dated: 18/10/2013

Section officer (Records)

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