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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

**Original Application No.270/2005
&
Misc. application No. 115/2005**

Date of decision: 12.09.2006

Hon'ble Mr. Kuldeep Singh, Vice Chairman

Niraj Gupta S/o Shri Ashok Krishna Ji Gupta aged about 25 years r/o D52 Pratap Nagar (UIT), Jodhpur (Rajasthan) Applicant is son of late Smt. Vineeta Gupta, staff nurse, in Railway Hospital, North Western Railway, Jodhpur, Rajasthan.

: Applicant.

Rep. By Mr. S.K. Malik &
Mr. Dayaram

: Counsel for the applicant.



VERSUS

1. Union of India through the General Manager, North Western Railway, Jaipur (Rajasthan)
2. The Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur, (Rajasthan)
3. The Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.(Rajasthan)

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

ORDER

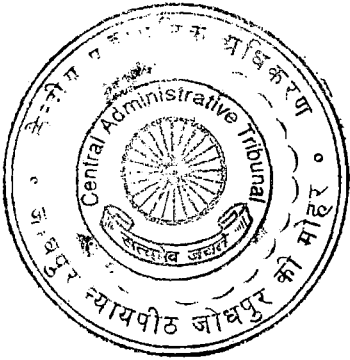
Mr. Kuldeep Singh, Vice Chairman.

The applicant has filed this O.A challenging the impugned order dated 30.08.2000 (Annex. A/1), vide which his request for compassionate appointment was turned down.

2. The facts as alleged by the applicant in brief are that the applicant's mother Smt. Vineeta Gupta died in harness on

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14.11.1983 while working on the post of Staff Nurse in Railway Hospital, Jodhpur. She has left behind her husband and two sons. At the time of death of the said Smt. Vineeta Gupta, the applicant was four years old. It is stated by the applicant that after the death of his mother, his father remarried and deserted him. Therefore he had been forced to live with his grandfather. On attaining the age of majority he applied to the respondents in January 1999 seeking appointment on compassionate grounds. Since no reply was received, his grandfather vide his letter dated 29.09.99, informed the respondents that the applicant is living with him and he only brought him up since the applicant's father did not take care in bringing him up. It is further stated that on receipt of the letter dated 29.09.99, the respondents vide their letter dated 19.05.2000, asked the applicant's grandfather as to why no application was made for compassionate appointment before 29.09.99 and as to why the elder brother of the applicant, being the first son of the deceased railway servant, has not made any application for compassionate appointment; it was also informed by the respondents that application for compassionate appointment should be made within two years of attaining the majority by the first son/daughter of the deceased railway servant. It is also stated that on receipt of the respondents letter dated 19.05.2000, the applicant vide his application dated 05.06.2000, submitted to the respondents earlier also he had applied for compassionate appointment but no action was taken



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and his elder brother was living with his father and he has no interest in railway service and therefore on attaining majority, he had applied for appointment on compassionate grounds. He also submitted reminders. As there was no reply, he sought the help of his father and on enquiry made by him, his father was informed by the respondents that the request of the applicant for compassionate appointment has been rejected on the ground of being time barred. In order to challenge the impugned order, the applicant submits that he has no source of income and since his mother had died while in service, he is entitled for appointment on compassionate grounds. It is further stated that as per the letters dated 06.10.95 & 30.11.99 issued by the Railway Board, appointment on compassionate grounds in railways is quite liberal in as much as the General Managers are empowered to consider the time barred cases which are upto 20 years but the respondents by using colourable exercise of power rejected the claim of the applicant.



3. The respondents are contesting the O.A. In the reply it is stated that as no application was received within two years from the date of attaining the majority by the eldest son of the late railway servant, and as the applicant who was the second son cannot seek appointment on compassionate grounds as there is no provision in the rules and the claim for such appointment is belated one. The respondents have stated that claim of the applicant was rejected as early as on 30.08.2000,

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and the present O.A has been filed only on 06.09.2005. It is also stated that the applicant's elder brother did not apply when he became major. Further the applicant has tampered with the document Annex. A/1, by changing the address thereon to show that he was not living on that address. It is pleaded that since the eldest son of the deceased railway servant has made no application for compassionate appointment within two years on attaining the majority, the O.A is not maintainable and liable to be dismissed.



4. I have heard the learned counsel appearing for the parties and gone through the records. The facts are not in dispute. It is admitted that the applicant's mother died in harness in the year 1983, leaving behind the applicant, his elder brother and her husband. Admittedly, the eldest son of the deceased railway servant did not submit any application for appointment on compassionate grounds on attaining the majority, when the family could be said to be in penury. Further, there is no proper explanation from the applicant's side for not applying for appointment on compassionate grounds and a vague statement is made that his elder brother is not interested in railway service. A family which is facing financial crisis because of the death of bread winner, normally there cannot be any reason from the eligible family members for not choosing career in railways. Further when the applicant's father is alive it is for him to take care of his children but in the

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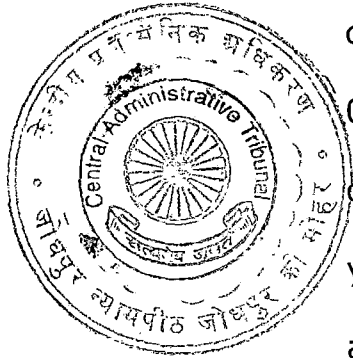
instant case, he does not show any interest in taking care of his children and see that somehow or the other, his second son, viz, the applicant gets appointment in railways on compassionate grounds. In these circumstances the only inference that could be drawn by any reasonable person is that the family of the deceased railway servant is interested in getting back door entry in railway service. Further it also cannot be believed that the elder brother of the applicant wants to work somewhere else and he does not want to help his younger brother (the applicant) who is stated to be under financial crisis.



5. As regards the Railway Board circular, wherein it has been stated that the General Managers are empowered to consider the time barred cases which were upto 20 years old from the date of death of railway employee provided the appointment is sought for the first son/first daughter of the railway employee, provided appointment is sought for the first son/first daughter and that application for appointment is submitted within 2 years of attaining the age of majority by the candidate, the same came up for consideration before a Division Bench of the Hon'ble High Court of Judicature for Rajasthan at Jodhpur in D.B (C) writ Petition 1652/2002 - decided on 07.08.2002 in the case of UOI vs. CAT and ors. The Hon'ble High Court has held that the said circular is contrary to the general provision providing appointment to the extent it

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travels beyond providing appointment to a member of the family of the deceased to tide over the sudden crisis and such appointment interferes with the right of other persons who are eligible for appointment to seek employment against the post which may be made available to them. The High Court has further stated that the said circular unduly interferes with the right of other persons who are eligible for appointment and the same is arbitrary and discriminatory to the extent indicated. In view of the above position, the submission of the learned counsel for the applicant that the respondents have not considered the case as per the Railway Board letters dated 06.10.95 and 30.11.99, has no force. In this case the mother of the applicant died in the year 1983 and now we are in the year 2006 i.e. more than 23 years, the applicant has survived and therefore it cannot be said that the applicant is in indigent circumstances. Therefore there is no merit in this O.A and it stands dismissed. In the facts and circumstances of this case, the Misc. Application for condonation of delay is also dismissed. No costs.




(Kuldip Singh)
Vice Chairman

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