

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 398 of 2011

Dated the 2nd day of May, 2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Kumari Kiran Chowdhary,
D/o Shri Mana Ram Chowdhary
Aged about 42 years, R/o Plot No.50 in
Front of Bharat Bed College, Saran Nagar,
Jodhpur (Rajasthan)
Brother of Shri Rajesh Choudhary
Technical Grade II in the office
of Respondent No.3.

...Applicant

(By Advocate Mr. S.K. Malik)

Vs.

- (1) Union of India through G.M. NW Railway, Jaipur.
- (2) G.M(P), NW Railway, Jaipur (Raj).
- (3) Chief Works Manager, NWR, Workshop, Jodhpur (Raj).
- (4) Sr. DPO, NWR Workshop Jodhpur (Raj). ...Respondents

(By Advocate Mr. Vinay Jain)

ORDER

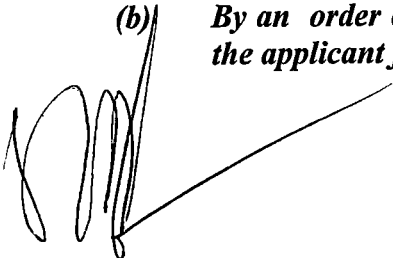
The instant OA is directed against the order of the General Manager (E) vide his communication No.740/E/R&T/2/2/JU(W)KC(2011-Misc), dated 28.06.2011 intimating rejection of the application for appointment on compassionate grounds by the applicant referred hereafter to as the impugned order.

Relief Sought

2. The applicant has sought the following reliefs:-

“(a) By an appropriate writ order or direction impugned orders dated 21.07.2011 at Annx.A/1 alongwith order dated 28.06.2011 at Annx.A/2 dated 04.02.2010 be declared illegal and be quashed and set aside as if these were never issued against the applicant.

(b) By an order or direction respondents may be directed to reconsider the case of the applicant for appointment on compassionate ground on any Group 'C' Post.



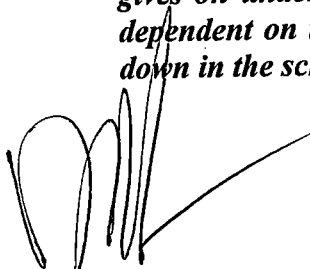
(c) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice."

Facts of the Case in Brief

3. Admittedly, the applicant's brother, Rajesh Choudhary, was a regular Railway employee, who demised on 10.10.2009 due to illness, still a bachelor. The father of the applicant retired from the post of Sub Inspector, RPF, on 31.08.2003. The case of the applicant is that after the superannuation of her father, there were disputes within the family, it was orally submitted during the course of the argument, over the issue of marriage of the daughters as a consequence of which the applicant and her sister became a dependent of the deceased Government employee and started living with him. They were issued a separate ration card and were also mentioned in the voter list to this effect. The applicant has done her MA, PhD from JNV University, Jodhpur. Following the death of her brother the applicant applied for appointment on compassionate grounds vide her application dated 19.11.2009 submitted along with the supporting documents. The respondent No.4 rejected the claim for compassionate appointment vide the impugned order dated 04.02.2010 [A-2]. The order at A-1 mentions two grounds- that the applicant was not included as a dependent in Past/PTO declaration submitted earlier by the deceased employee; and her father is alive and is a Railway Pensioner. The applicant has drawn attention towards the PS NO.11251/1996 and No.E-33/0-VII/CG dated 17.09.1996, which has been issued on the subject: **"Appointment on compassionate grounds-Dependents of Railway employee dying as bachelors."** This circular provides:

"2. Board have, however, been considering cases of dependents of Railway employee dying as bachelors/spinsters on a case to case basis, subject to the condition that the proposal has the personal approval of the General Manager of the Railway and that the candidate proposed for appointment is shown as dependent upon the late employee as per the Pass Rules.

3. The department of Personnel & Training have recently issued instructions laying down that in the cases of Government servants who at the time of their death in harness or retirement on medical grounds are unmarried, but have others dependent on them, one of the dependent brothers/sisters of the Government servants in question will be eligible for consideration for appointment on compassionate grounds if he/she gives on undertaking that he/she will look after the other family members who were dependent on the Government servants in question provided the other conditions laid down in the scheme of compassionate appointment are fulfilled."



4. A supplementary circular bearing No.23 to Master Circular No.16 issued vide No.E(NG)II/88/RC-1/1/77 Policy, dated 02.05.1997 further provides as to how the verification exercise should be done:

"2. The matter has been examined further in consultation with Department of Personnel & Training and it has been decided that in partial modification to Board's letter of even number dated 04.09.1996 (Bahri's RBO 1996, P-75), the Railway should verify the genuineness of the claim of dependency for appointment of dependents of Railway employee dying as bachelors/spinsters on the basis of documents such as inclusion of the name of the family members in the pass (as dependents) or in ration cards etc.

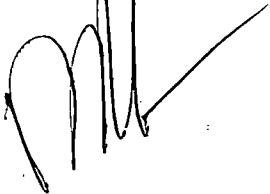
3. In the absence of any such documentary proof, the factual position regarding the extent of dependency may be verified by deputing a Welfare Inspector to inquire into the circumstances."

5. The argument of the applicant is that she is mentioned as a dependent of the deceased employee in the ration card and voter list [A-3 pt 14 & 15] and these documents entitled her to consideration for appointment on compassionate grounds.

Case of the Respondents

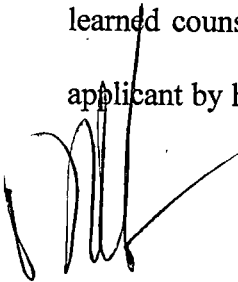
6. The respondents have filed a Counter Affidavit contesting the case. The argument of the respondents is that the case of the applicant has been rightly considered and denied. The applicant is not mentioned in the claim made by the deceased employee for issue of Pass or in nomination for PF of the deceased employee. Had she been a dependant of the deceased employee she would have been definitely mentioned in the nominations made by the deceased employee. It is the mother of the applicant who has been declared the nominee for the PF of the deceased employee. The mother of the deceased is also a nominee for the PF of Mana Ram, the father of the applicant. Further, the Ld Counsel for the respondents submits that applicant has been mentioned as a nominee after her mother. These documents indicate that the issue of living in separately from her father is just a convenient ploy to wrangle an appointment on compassionate grounds. On the basis of these documents, the respondents have resisted the claim of the applicant.

Facts-in-issue



7. The only fact-in-issue is that whether on the basis of the above documentary evidence, the applicant can claim to have to be living in a State of separateness from her father and was a dependent of her brother. This matter has to be examined within the framework of the guidelines provided by the Railway as have been cited above. The legal position is clear that appointment on compassionate grounds is available to the dependents of the deceased employee but in the case of death of an employee dying as a bachelor the genuineness of the claim of the pendency for appointment is to be examined on the basis of the nominations given for issue of Pass or as a ration card etc.. There is also an alternative provided. The circular No.36 of the Railway Board's provides: ***"1. It has already been provided for in Board's letter dated 04.09.1996 read with its letters dated 04.05.1997 and 02.06.1997 that dependency may be established through documentary proof such as Pass Declaration, Ration Card, etc., or otherwise by deputing a Welfare Inspector to inquire into the circumstances. The condition of inclusion in the pass declaration is only a facilitating factor and not intended to be a restrictive one, i.e. in case the dependency of the candidate is not covered by the pass declaration, the dependency may be established through Ration Card or through Welfare Inspector's investigations."*** It emerges from the above guidelines that the issue of pass is not the sole deciding factor but is only a facilitating factor. The other collateral evidence and the circumstance will have to be taken into account before deciding on the issue of dependency.

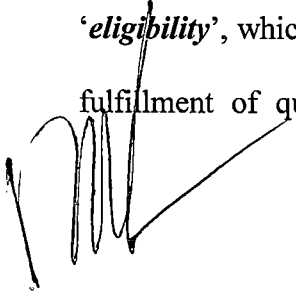
8. The respondents have relied principally upon the three major documents- lack of mention in the pass, secondary nomination in the PF of the father, and lack of nomination in the PF of the deceased employee. The learned Counsel for the applicant had argued that the father of the applicant wanted to get the daughters married off even prior to their completion of education. This was resisted by the daughters and when the situation could not get reconciled, the sisters moved to stay with their brother. It was during this period that the applicant completed her education and obtained a Ph.D. which she would not have been able to do otherwise. The learned counsel for the applicant admitted that there had been no formal disinheritance of the applicant by her father but she continued to reside with her brother and was dependent upon him



for all practical purposes. The lack of mention in the Pass is an admitted fact but as discussed it has to be seen in totality in relation to other documents. The mentioned of the applicant in ration card and in the voters list are also by documents. However, it is well admitted that both of them do not constitute clinching evidence by themselves. They are indication of the ordinary residence and the drawl of ration from the PDS for the applicant and her sister. It is significant to note that the name of the father or mother of the applicant does not find mention in the ration card indicating that they were not living with the deceased employee.

9. Now, coming to the issue of nomination in the PF form it is admitted that this nomination is made for the drawl of PF amount in the case of death of the employee. It is not that the nominee to a PF account is necessarily locked in dependency relationship with the employee making the nominations. The nominee could well be a person not even related to the employee by blood. Hence, it represents once set of relationship but does not necessarily denotes dependency. The same is the case of nominations in the Family Pension in the declaration of the father at the time of his retirement. This nomination was made prior to his retirement where admittedly the family was still living together. Here, I find substance in the argument of the learned counsel for the applicant that the difference cropped up over the issue of marriage and the daughters started living with their brother over this issue. Hence, nomination in the PF and the statement of family members for the purpose of Family Pension, I again do not find a clinching proof but they are not to be rejected off hand. They have to be viewed as a part of a chain of evidence leading to a conclusive probability.

10. Here, the Tribunal is faced with a difficult task- the documentary evidence on both sides are evenly arrayed. Sending a Welfare Inspector for enquiry at this point of time would serve no purpose as the deceased employee has been dead for more than 2 years now. Decision could be taken on the basis of the evidence on record for either side. However, it has to be kept in mind that what the applicant seeks is a right to be considered. Consideration is not the same thing as '*eligibility*', which is based upon a combination of other multiple factors- indigence, immediacy, fulfillment of qualification subject to relaxations etc. Again, '*eligibility*' is different from



'competitive eligibility'. An applicant may be eligible but he or she may not get appointment for the entire period of consideration as others may be more indigent/destitute and therefore in greater need for employment. Here, I feel that I have scope for discretion which I choose to exercise in favour of the applicant.

11. In consideration of the facts above, the following reliefs are granted:

- i. *the impugned orders [A-1 and A-2] are set aside for the reasons recorded above as not being in full consideration of the facts.*
- ii. *the case of the applicant will be considered along with those of the others claimants as per the existing Guidelines and Rules.*

12. With this, the O.A. is disposed of without there being any order to the costs.


(B. K. SINHA)
ADMINISTRATIVE MEMBER

RS

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