

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, CALCUTTA

O.A. No.223 of 1997

Dated Calcutta the 10th June 2002

1. Smt. Puspa Devi, widow of Late Durgadas Bhandary, Ex-Carpenter under the PWI, Andal in Asansol Division of Eastern Railway, residing at Sukanta Pally, Andal, PO Andal, District Burdwan.
2. Smt. Kalpana Bhandari, widow of Late Sadhan Bhandari, son of late Durgadas Bhandari, residing at Sukatna Pally Andal, PO Andal, District Burdwan.

.. Applicants

-versus-

1. The Union of India, through the G.M., Eastern Railway, 17, Netaji Subhas Road, Fairlie Place, Calcutta-1.
2. The Divisional Railway Manager, Eastern Railway, Asansol Division, Asansol.
3. The Senior Divisional Personnel Officer, Eastern Railway, Asansol Division, Asansol.

.. Respondents

Counsel for the applicants ... Mr. K.Chakraborty
Counsel for the respondents ... Mr. R.K. De

PRESENT : The Hon'ble Mr. L.R.K. Prasad, Member (A)

O R D E R

L.R.K. Prasad, Member (A):

1. Heard the learned counsel for the parties on 4th and 5th June 2002.
2. The applicant no.1 is the widow of Late Durgadas Bhandary, Ex-Carpenter under P.W.I., Andal in the Asansol Division of Eastern Railway. The applicant no.2 is the widow of Late Sadhan Bhandary, who was son of Late Durgadas Bhandary. The applicant no.2 is daughter-in-law of applicant no.1.
3. The applicants have prayed for issuance of direction upon the respondents to give employment to applicant no.2 in Group 'D' category on compassionate ground.
4. The husband of applicant no.1 was a railway employee

in the Asansol Division of Eastern Railway. He died in harness on 7.11.1994. After the sad demise of Shri Durgadas Bhandary, representations were made before the appropriate authorities for appointment of his son on compassionate ground. The copy of representation dated 23.11.1994 in this regard is at Annexure-'B'. Vide letter dated 30.1.1995 (Annexure-'C'), the applicant no.1 was informed by concerned respondent that her son's case has been registered and she would be advised further after the case for appointment of her son is finalised. Unfortunately, Shri Sadhan Bhandary suddenly died on 21.10.1995, leaving behind his wife-Kalpana Bhandary(applicant no.2) with two minor daughters. Immediately after the death of Shri Sadhan Bhandary, the applicant no.1 made representation to concerned authority on 13.11.1995 praying therewith for appointment of her daughter-in-law(applicant no.2) in the Railways on compassionate ground (Annexure-'E'). The applicant no.2 has read up to Class IV and her date of birth is 13.8.1966. The applicants have stated that as per prescribed scheme relating to appointment on compassionate ground, the employment is to be given to a dependent of a railway employee, who dies in harness or has become permanently crippled or otherwise to mitigate the hardship of the family. It is stated that the respondents had given assurance for giving appointment to the late husband of applicant no.2. In view of the aforesaid position, the stand of the applicants is that applicant no.2 is entitled for being considered for appointment on compassionate ground against a suitable post in the Railways. The family is facing financial difficulties and applicant no.2 has already given undertaking that on her appointment on compassionate ground, she will look after the family. As the case is still pending before the respondents, the applicants have filed the instant O.A. with the prayer as contained in para 8 of the O.A.

5. While opposing the above application, the respondents have stated that applicant no.2 is not entitled for being considered for appointment on compassionate ground in the Railways on the grounds as stated in the W.S. It is stated that the case was registered for appointment in favour of the son of Late Durgadas Bhandary. The inquiry by Welfare Inspector revealed that Late Durgadas Bhandary had left behind him following members as his legal heirs:

- | | |
|------------------------|--------------------------------------|
| 1. Smt. Puspa Devi | ..Widow of the ex employee |
| 2. Smt. Sudha Bhandary | ..Married daughter living with |
| 3. Smt. Bela Bhandary | ..Married daughter their husband. |
| 4. Sri Sadhan Bhandary | ..Married son of the
Ex-employee. |

6. It is admitted that Shri Sadhan Bhandary, son of Late Durgadas Bhandary, whose case for compassionate appointment was under consideration, died on 21.10.1995. Subsequently, applicant no.2, widow of Late Sadhan Bhandary, and daughter-in-law of applicant no.1, submitted an application with the prayer to consider her case for appointment in the Railways on compassionate ground. According to respondents, her case is not covered under the prescribed scheme on compassionate appointment. It was pointed out on behalf of the respondents that in terms of Railway Board's No.E(NG)11-88/RC-1/1/Policy dated 13.12.1995 circulated under CPO/Eastern Railway/Calcutta's letter No.CPO/SC/SA/POL/Pt.VII dated 22.12.1995, the provision for appointment of near relative on compassionate grounds has been deleted. As the applicant no.2 is the daughter-in-law of Late Durgadas Bhandary, she is not entitled for appointment on compassionate ground. On the other hand, the learned counsel for the applicants stated that the applicants had applied for job on compassionate ground in November 1995. Therefore, the circulars, which were in existence at the relevant time, are applicable in their case

and not the circulars which were issued later on. Moreover, it is stated on behalf of the applicants that daughter-in-law cannot be said to be an outsider of the family of the deceased employee. Applicant no.2 being dependent member of the family of the deceased railway employee, and wife of late Sadhan Bhandary, her case deserves to be considered for compassionate appointment.

7. During the course of hearing, the learned counsel for the applicants drew my attention to para 3(i) of Supplementary Circular No. 36 to Master Circular No.16 (No.E(NG)-II/99/RC-1/SE-19, dated 5.8.1999), which is reproduced below:

"3. The above points have been considered by the Board and the clarifications thereon are as under:-

- (i) It has already been provided for in Board's letter dated 4.9.1996 read with its letters dated 4.5.97 and 2.6.97. 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."

8. While drawing my attention to the Mater Circular No.E(NG)11/90/RC-1/117 dated 12.12.1990 on the subject of appointment on compassionate grounds, the learned counsel for the respondents categorically stated that the case of applicant no.2 is not covered under the heading "Persons eligible to be appointed on compassionate grounds". The said circular specifically prescribes that son/daughter/widow/widower of the employees are eligible to be appointed on compassionate grounds in the circumstances in which such appointments are permissible. It further prescribes that the benefit of compassionate appointment

may also be extended to a near relative/adopted son/daughter. ~~The eligibility of a~~ near relative/adopted son/daughter to such appointments will be subject to the following conditions:

(a) NEAR RELATIVE:

- (i) Such appointment is not permissible where the railway employee who has died in harness has left behind only the widow, with no son/daughter to be supported by her.
- (ii) The son or daughter of the employee or ex-employee is a minor one and the widow cannot take up employment.
- (iii) A clear certificate should be forthcoming from the widow that the "near relative" will act as the bread-winner of the family.
- (iv) If the family certifies at a later date that the "near relative", who was appointed on compassionate grounds, refuses to support the family, the services of that employee are liable to be terminated.
- (v) Once a "near relative" is appointed on compassionate grounds, no further appointment shall be given later to a son, or daughter or the widow of the employee, on compassionate grounds.
- (vi) The appointment of the "near relative" shall not be considered, if a son or daughter, or the widow herself is already working and is earning.

A blood relation who is concerned to be a bread-winner of the family can be

in Civil Appeal No.9998 of 1993 on 8th April 1993
in the matter of Auditor General of India and others vs.
G.Ananta Rajeswara Rao (1994) 26 ATC 580). In the aforesaid
case, the Hon'ble Supreme Court held as follows:

"Appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting it to relieve the members of the deceased employee who died in harness from economic distress."

(para 5)

"But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. The provision in the OM that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative was vague or undefined. All possible eventualities have been enumerated to become a rule to avoid regular recruitment. These enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be constitutionally valid and permissible grounds. The appointment on grounds of descent clearly violates Article 16(2) of the Constitution. Therefore, in other respects the OM attracts Art.16(2)."

(para 5)

9. I have considered the matter in the light of submissions made on behalf of the parties and materials on record. It is admitted ^{fact} that applicant no.1 is the widow of Late Durgadas Bhandary, who was working as a Carpenter under PWI, Andal, in the Asansol Division of Eastern Railway. Applicant no.2 is the daughter-in-law of applicant no.1 as well as late Durgadas Bhandary, as she was married to their son (Sadhan Bhandary). Late Durgadas Bhandary died in harness on 7.11.1994. Thereafter, representations were made before appropriate authority for appointment of Shri Sadhan Bhandary, son of applicant no.1 and Late Durgadas Bhandary, on compassionate ground. While the case of Shri Sadhan Bhandary was being

processed, he died all of a sudden on 21.10.1995. Thereafter, the applicants made representation on 13.11.1995 before the concerned authority for appointment of applicant no.2 on compassionate ground. The said representation is still pending in the hands of the respondent-concerned. It is the stand of the applicants that applicant no.2 is entitled for appointment in the Railways on compassionate ground in view of the fact that she was a dependant of Late Durgadas Bhandary and the case of her husband (Sadhan Bhandary) was being considered by the respondents for appointment on compassionate ground, which did not ultimately materialise due to premature death of Shri Sadhan Bhandary on 21.10.1995. It is further the stand of the applicants that being dependant of the deceased employee, the case of applicant no.2 is fully covered under the guidelines prescribed by the Railways for such appointment. On the other hand, the respondents have categorically stated that applicant no.2, being daughter-in-law of the deceased employee (Late Durgadas Bhandary), is not entitled for such appointment, as her case is not covered by the guidelines prescribed by the relevant circulars of Railways for appointment on compassionate ground and specially in the light of the judgment of the Hon'ble Supreme Court, as referred to above. The daughter-in-law is not included in the definition of "Near relative". The position has also changed with the issue of Railway Board's letter dated 13.12.1995, as referred to above. There is substance in the argument advanced on behalf of the respondents. Nevertheless, the fact remains that case of Late husband (Sadhan Bhandary) of applicant no.2 was under active consideration, but, unfortunately, Shri Sadhan

Bhandary died on 21.10.1995, and the matter got held up at that stage. It also appears that applicant no.1 is in financial difficulty and the case is hard. However, the case of compassionate appointment is required to be examined for passing necessary order by concerned respondent in the light of prescribed guidelines and scheme on the subject. It is also noted that the representation of the applicants dated 13.11.1995 (Annexure-'E') has not yet been disposed of by concerned respondent.

10. While going through the Master Circular No.16 (Railway Board's Compendium of Master Circulars Vol.II 1995, published by Bahri Brothers), I find that there is a relaxation clause mentioned at Item XIII, which prescribes as follows:

"XIII. Relaxation:

Wherever any deviation from the above provisions is sought to be made in individual cases of merit, the prior approval of the Ministry of Railways should be obtained and in such cases, personal approval of the General Manager should be indicated in the references. Detailed particulars are to be furnished in the prescribed proforma."

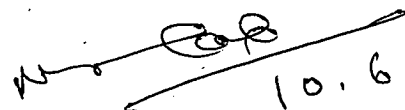
(No.E(NG)/II/87/RC-1/143 dated 19.4.88 & 7.8.1990).

It appears from the above provision of relaxation that in exceptional circumstances, appointment on compassionate ground can be considered in individual cases depending on its merits. At the same time, such an authority is vested in authorities, as indicated above, and the concerned respondents can consider ^{such} the case by exercising discretion of their own, keeping in view the facts and circumstances of the case, for coming to a definite conclusion. Therefore, the matter can be left to the discretion of respondent no.1 (General Manager, Eastern Railway, Calcutta-1), who may examine the case of applicant

no.2 and thereafter pass appropriate speaking order in accordance with law on the pending application of the applicants for compassionate appointment of applicant no.2 within a stipulated period.

11. In view of the facts and circumstances of the case, as stated above, respondent no.1 (General Manager, Eastern Railway, Calcutta-1) is directed to consider the prayer of applicant no.2 for appointment to a suitable post on compassionate ground in accordance with prescribed rules on the subject and thereafter to dispose of the pending representation of the applicants (Annexure-'E') by passing speaking order within a period of three months from the date of communication of this order. This O.A. stands, accordingly, disposed of.

12. No order as to the costs.


(L.R.K. Prasad)
Member (A)

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