

This the ¹⁷th day of April, 2009

Hon'ble Sri M. Kanthaiah, Member (A)

Akhilesh Kapoor aged about 28 years son of late Sri Jagat Narain Kapoor resident of T-II, Ganga Sichai Puram Colony, Telibagh, Lucknow.

Applicant.

By Advocate Sri A.K.Mishra

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow.
3. D.P.O., Settlement, Northern Railway, Lucknow.

Respondents.

By Advocate Sri V.K. Srivastava

Order

By Hon'ble Sri M. Kanthaiah, Member (J)

The applicant has filed Original Application with a prayer to quash the impugned order dated 6.9.2007 (Annexure A-1) passed by respondent No.3 and for appointment of the applicant on a suitable post under the dying in harness rules and also for payment of pensionary benefits of his deceased father.

2. The respondents have not filed counter reply but respondents counsel argued the matter stating that the applicant's claim is not at all maintainable.

3. Heard both sides.

4. The point for consideration is whether the applicant is entitled for the relief as claimed for.

5. The admitted facts of the case are that late Jagat Narain Kapoor while working as Assistant Superintendent, Personnel Department, Divisional Office, Northern Railway, Lucknow died on 12.9.86, leaving behind the first wife Smt. Mithlesh Kappor and Smt. Preti Kappor, eldest daughter, Sri Rajeev Kapoor, eldest son and Sangeeta Kapoor,

daughter and also children of second wife i.e. Rajesh Kapoor, Sailesh Kapoor and Sri Akhilesh Kapoor (applicant herein). Because of rival claims from the children of second wife, the respondent authorities asked them to produce succession certificate for payment of terminal benefits of the deceased employee. Upon which, first wife and their children have filed M.A.No. 31/87 on the file of Civil Judge Senior, Lucknow and the same was allowed granting 1/7th share to the sons of the deceased employee. Annexure-5 is the copy of succession certificate issued in favour of the Smt. Mithlesh Kapoor and their children. In pursuance of the succession certificate, the authorities have released the terminal benefits of the deceased employee. Against the said judgment, the children of second wife filed appeal in MCA No. 30/97 on the file of XI Additional District Judge, Lucknow and the same was allowed stating that the appellants therein are also entitled for succession certificate along with respondents for terminal benefits of deceased employee and thus the judgment of the trial court in case No. 31 of 1987 on the file of Civil Judge Sr. Division, Lucknow dated 7.1.97 was modified. Annexure No. 4 is the copy of judgment in MCA No. 30/97 dated 28.11.2000.

6. Smt. Mithlesh Kapoor is the first wife of the deceased and their son Rajeev Kapoor made an application for appointment of Sri Rajeev Kapoor on compassionate ground and the same was allowed appointing Rajeev Kapoor on compassionate ground vide order dated 25.8.2000. Thereafter, the applicant made an application for his appointment under compassionate ground. When there was no response, he filed O.A.No. 188/2005 on the file of this Tribunal and the same was disposed of with a direction to the respondent No.2 to consider the representation of the applicant dated 28.1.2001 and pass reasoned order as per rules within a period of 2 months. Annexure 11 is the copy of said order. In pursuance of the said direction of the Tribunal, the respondents passed order dated 6.9.2007 (Annexure A1) rejecting the

claim of the applicant on the ground that Rajeev Kapoor was already appointed on compassionate ground vide order dated 25.8.2002 for Assistant Station Master and as such the applicant is not entitled for another appointment under compassionate ground after more than 22 years after the death of his father. The impugned order also says that the provisions for appointment under dying in harness rules gives offer only one appointment on compassionate ground and thus the applicant is not entitled for his claim for compassionate appointment. It is not in dispute that Sri Rajeev Kapoor did not accept the offer of appointment made by the respondent authorities.

7. From the impugned order, it is clear that the respondent authorities have taken a ground that the claim of the applicant for his appointment on compassionate ground after more than 22 years is not at all maintainable. Even from the claim of the applicant on earlier O.A. also says that he made representation for his appointment vide letter dated 28.1.2001 i.e. after more than 20 years of death of his father and he has not explained any reasons for such delay. In the impugned order, the respondent authorities have categorically stated that claim of the applicant with such delay of more than 22 years is not at all sustainable. Besides that they have also stated that they offered appointment to Sri Rajeev Kapoor in the year 2002 itself but he did not join and in such circumstances, finding fault in the impugned order dated 6.9.2007 which is reasoned one is not at all sustainable. Thus, there are no merits in the claim of the applicant for consideration of his claim for appointment on compassionate ground after a lapse of more than 20 years of the death of his father as such O.A. is liable for dismissal.

8. In the result, O.A. is dismissed. No order as to costs.


(M. Kanthaiah)
Member (J)

17.04.2009