

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 189/2009

This, the 29<sup>th</sup> day of April, 2010

Hon'ble Dr. A. K. Mishra, Member (A)

Kamlesh Morya aged about 31 years, son of Late Shri Indra Pal, Resident of village Purva, post Barva, Sarsanda, Tehsil Sandila, Thana Badhaoli, District Hardoi.

Applicant

By Advocate Sri R. K. Srivastava.

Versus

1. Union of India through its Secretary Ministry of Railway, New Delhi.
2. Mandal Rail Prabandhak, Uttar Railway, Lucknow.
3. Sahayak Karmik Adhikari, Uttar Railway, Lucknow.

Respondents

By Advocate Sri C.B. Verma.

Order

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant has challenged the order communicated in the letter dated 16.01.2009 issued on behalf of Respondent No. 2 and has prayed for setting aside this order and to issue a direction to the competent respondent authority to appoint the applicant on any Class IV post on compassionate ground,

2. The father of the applicant was working as a Khallasi under the respondent authorities and died in harness on 24.12.1992 leaving behind the widow, two minor sons and two minor daughters. The respondent authority appointed the widow of the deceased employee on a Group D post of 'Safiwali' in its order dated 11.5.1992. But the applicant's mother represented that she should be given either a post of Mali, or Peon because she is Murai by caste and that too

nearer her home, but her representation in this regard was not considered. Subsequently she applied on 4.1. 1998 that her son, the applicant should be considered for compassionate appointment. It was followed up by another representation on 15.2.2000. Thereafter, she kept on representing the matter and ultimately she was asked on 14.8.2008 to explain the delay in submitting the application for engagement of her son. Afterwards, the claim of the applicant was rejected on the ground that it was devoid of merit and that it related to an incident which was 18 years old.

3. The grounds taken in the application in challenging the impugned order are that it was illegal, arbitrary and discriminatory in nature; that the impugned order is non-speaking and against the evidence available on record; that it was perverse in nature ; that it was against the principle of natural justice; that it was passed in most casual and mechanical manner without application of mind; that the family of the applicant is in a penurious condition and that the applicant was interested in getting a job.

4. The respondents have stated that the mother of the applicant was offered a regular class IV job soon after the death of his father, but she deliberately chose not to take up assignment. It is not for the applicant to choose a post or a place of posting. If the applicant deliberately rejects an offer for her own reasons, then she loses all rights in the matter.



5. After refusing to accept the appointment of offer, the applicant subsequently made an application in the year 2000 requesting the respondents to consider her son for that purpose. When she was called upon to explain why there was a delay of 4 years after her son attained majority, there was no satisfactory explanation. According to respondents, there was no application in the year 1998 as alleged by the applicant. The first application in this connection was made only in the year 2000. A number of decisions of the Supreme Court were cited to establish that compassionate appointment was not a matter of right; it could not be claimed through a line of succession; it is to be considered strictly in terms of the scheme formulated by the government to alleviate the distress caused to the family because of the sudden death of the lone breadwinner. The claim for compassionate appointment, otherwise, cannot be sustained on the touchstone of Articles 14 and 16 of the constitution. List of cases relied on are indicated below:-

- (i) *Haryana stat Electricity Board and Others vs Hakim Singh reported in (1997) 8 SCC-85;*
- (ii) *Commissioner of Public Instructions and Others Vs. K.R. Vishwanath reported in (2005) 7 SCC 206 and in State of Haryana Vs. Rani Devi, (1996) 5 SCC 308;*
- (iii) *LIC of India Vs. Asha Ramchhandra Ambekar (1994) 2 SCC 718;*



- (iv) *Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138;*
- (v) *Sushma Gosain Vs. Union of India (1989) 4 SCC-468;*
- (vi) *Phoolwati Vs. Union of India 1999 Supp (2) SCC 689 and Union of India Vs. Bhagwan Singh (1995) 6 SCC 476;*
- (vii) *Director of Education (Secondary) Vs. Pushpendra Kumar (1998) 5 SCC 192;*
- (viii) *Haryana State Electricity Board Vs. Kishori Devi reported in (2002) 2 UPLBEC 1283 SC and State of Manipur Vs. MD Rajaodin (2003) 7 SCC 511.*

6. The learned counsel for the applicant placed reliance on the judgment of the Allahabad High Court, Lucknow Bench made in the case of **Vaibhav Singh Vs. State of U.P. and Others (2006) 2 UPLBEC-1807** in which a view was taken that if the State Government was satisfied that the time limit fixed for making the application for employment caused undue hardship in any particular case, it might dispense with, or relax the requirement in order to deal with the case in a just and equitable manner. In the supplementary affidavit the applicant has annexed the master circular dated 12.2.1990 of the Railway Board which gives the power of relaxation to the General Manager at Paragraph V in respect of the timelimit within which the appointment should take place. However, this power has been circumscribed by the



proviso that the request for compassionate appointment should have been received as soon as the son, daughter to be considered for compassionate appointment had become a major, say within a maximum period of one year. For better appreciation, paragraph V (vii) is extracted below:-

*V(vii) The request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter to be considered for compassionate appointment has become a major, say within a maximum period for one year."*

7. The learned counsel for the applicant submits that even if there was a delay of 2 years the matter should have been referred to the General Manager rather than decided at the level of Divisional Railway Manager. Paragraph V deals with the overall timelimit which was originally 5 years from the date of death; it was subsequently extended to 20 years within which the case should be finally disposed of. The relaxation in respect of this timelimit could be made by the General Manager in appropriate deserving cases.

8. In this case, as per record, the request was received on 15.2.2000; four years after the applicant attained the age of majority. Further, as pointed out earlier, the applicant's mother was offered an appointment which she refused for her own reasons. Therefore, on the facts of the case, the decision of

the Allahabad High Court on which reliance was placed by the counsel for the applicant is not applicable.

9. On the other hand, there is a catena of Supreme Court judgments which clearly lays down the law that compassionate appointment cannot be considered on the ground of descent as a matter of right; it should be as far as practicable, proximate to the death of the employee. The observations of the Supreme Court in the latest decision in *Santosh Kumar Dubey Vs. State of Uttar Pradesh and others* ( 2009 ) , 6 SCC 481. (Paragraphs 11 and 12) are reproduced below:-

"11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated



as a bonanza and also as a right to get an appointment in government service."

In the case of *National Institute of Technology and Others Vs. Niraj Kumar Singh* (2007) 2 SCC 481, the entire gamut of the case law on the subject was discussed and it was observed in paragraphs 13 and 14 that:

"13. Admittedly, the appellant is State within the meaning of Article 12 of the Constitution of India. It, therefore, in the matter of appointment, is under a constitutional obligation to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India.

14. Appointment on compassionate ground would be illegal in absence of any scheme providing therefore. Such scheme must be commensurate with the constitutional scheme of equality."

In the case of *State of U.P. Vs. Paras Nath*, (1998) 2 SCC 412, the court has held as under:-

"The purpose of providing employment to a dependant of a Government servant dying-in-harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules



providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time."

10. In view of the fact that the applicant's mother was offered an appointment and she refused to take it up and also the fact that the request for compassionate appointment of the applicant was made after a delay of 2 years beyond the limit of 2 years permissible from the date of his attaining majority are sufficient grounds to reject his representation. I do not find any merit in this application to interfere with the decision of the respondent authorities.

11. Accordingly, the O.A. is dismissed. No costs.

*A. K. Mishra* 29/04/10  
(Dr. A. K. Mishra)  
Member (A)

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