

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 345/2010

This the 22nd day of November, 2013**Hon'ble Sri Navneet Kumar, Member (J)**

Smt. Vipati Devi aged about 41 years wife of late Janki Prasad r/o Gram- Dubauli Tola Magrepur, Tehsil- Farenda, District- Maharajganj.

Applicant

By Advocate: Sri Raj Singh

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
3. The Divisional Personnel Officer, North Eastern Railway, Lucknow Division, Lucknow.

Respondents

By Advocate: Sri Narendra Nath

(Reserved on 23.10.2013)**ORDER****BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

The present Original Applicant is filed under Section 19 of the AT Act with the following reliefs:-

- i) This Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 16.4.2010 passed by the respondent No. 3 (Annexed as Annexure No. A-1 to this O.A.)
- ii) to direct the respondents to reconsider the claim of the applicant appointment on compassionate ground.
- iii) To pass such other orders which are found just fit and proper under the circumstances of the case.
- iv) To allow the original application with cost.

other order which this Hon'ble Tribunal deems just and proper be also passed.

2. The brief facts of the case are that the applicant is the daughter-in-law of the ex-employee who was working as Peon/Chowkidar at the Jarwal Road, Railway Station, Bahraich. The

ex-employee was found missing from the station w.e.f. 26.10.2000 and the husband of the applicant also after great pursuance could not find out his father and ultimately on 27.11.2000, he preferred an application and lodged a report at police station Jarwal Road, Bahraich. The ex-employee who was due to superannuate w.e.f. 31.5.2003 and till the time of his retirement, he could not be traced by the police authorities. Unfortunately, the husband of the applicant also died on 11.1.2005. That the husband of the applicant was the only son and there was no other legal successor, as such the Railway Administration directed the applicant to produce the succession certificate issued by the competent court of law to get the retiral dues of missing employee. The applicant, thereafter, filed the suit before the Civil Judge, Senior Division, Maharajganj and obtained the succession certificate and ultimately the entire retiral dues was paid to the applicant ton 11.12.2009. In the mean time, the applicant has also applied for grant of compassionate appointment but the request for compassionate appointment was rejected by the respondents vide order dated 16.4.2010 without assigning any reason therein and only under the garb of misunderstanding that the claim of the applicant was not covered within the rules. The applicant feeling aggrieved by the said order dated 16.4.2010, preferred the present O.A. and submitted that the applicant being extremely poor lady as such, a kind consideration is required from the side of the respondnets in regard to consider her case for grant of compassionate appointment.

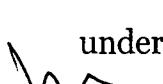
3. The learned counsel appearing on behalf of the respondents filed their preliminary objection and also filed their Counter Reply and through Counter Reply, the respondents have relied upon the Railway Board Policy dated 13.12.1995 and pointed out that the provisions for appointment of near relative on compassionate ground was deleted and also pointed out that since the applicant is the daughter-in-law of the ex-employee who was working as a

Chowkidar under the Section Engineer (works), Jarwal Road can not be considered for grant of compassionate appointment as the policy in regard to grant of compassionate appointment is absolutely clear and the daughter-in-law is not included in the category of persons who are eligible for appointment on compassionate ground. The learned counsel for the respondents has also relied upon number of decisions such as:-

- i) **State of Gujarat and others Vs. Arvind Kumar T. Tiwari and another reported in (2012) 2 Supreme Court Cases (L&S) 795.**
- ii) **Maharani Devi and another Vs. Union of India and others reported in (2009) 2 Supreme Court Cases (L&S) 323.**
- iii) **Santosh Kumar Dubey Vs. State of Uttar Pradesh and others reported in (2009) 2 Supreme Court Cases (L&S) 224.**
- iv) **Umesh Kumar Nagpal and others Vs. State of Haryana and others reported in (1994) 4 Supreme Court Cases 138**
- v) **Smt. Sudha Jain Vs. State of U.P. and others reported in (2011) 2 UPLBEC 1396.**

4. It is also vehemently argued by the learned counsel for the respondents that the compassionate appointment cannot be claimed as a matter of right. It is only for the family to come out of the financial crises due to loss of immediate bread earner.

5. Learned counsel appearing on behalf of the applicant has filed the reply to the preliminary objection and also filed Rejoinder Reply and through rejoinder reply, the learned counsel for the applicant relied upon the Master Circular No. 16 which provides as under:-



"Appointment on compassionate grounds relates to those appointments, which can be made of dependents of Railway servants...."

Apart from this, the learned counsel for the applicant has also relied upon a decision rendered by the Hon'ble High Court in Special Appeal No. 1026/2003 in the case of U.P. Power Corporation Vs. Smt. Urmila Devi. Apart from this, the learned counsel for applicant has also reiterated the averments made in the O.A.

6. Heard the learned counsel for the parties and perused the record.

7. Admittedly, the applicant is the daughter-in-law of the ex-employee who was missing while he was working as Peon/Chowkidar with Section Engineer (Works), Jarwal Road, Bahraich since 26.10.2000. The ex-employee was due to superannuate on 31.5.2003. The applicant's husband, who was the only legal heirs of the ex-employee also died on 11.1.2005 and as per the requirement of the respondents, the applicant has obtained the succession certificate and in pursuance thereof, the retiral dues of the ex-employee was also paid to the applicant. It is argued on behalf of the applicant that she made a request for grant of compassionate appointment and the said request was considered and rejected by the respondents vide order dated 16.4.2010, whereby it is pointed out that the case of the applicant does not come within the purview of the Rules. Now, the question which requires determination is whether the daughter-in-law of an ex-employee is entitled to get the benefit of considering her case for compassionate appointment or not. The Master Circular No. 16 of 1990 issued by the Govt. of India, Ministry of Railways, Rail Mantralaya, Railway Board is absolutely clear to the extent that persons eligible to be appointed on compassionate grounds. The relevant provision reads as under:-

“iii) Son/daughter/ widow/widower of the employees are eligible to be appointed on compassionate grounds in the circumstances in which such appointments are permissible. Where the widow cannot take up employment and the sons/ daughters are minor, the case may be kept pending till the first son/daughter becomes a major, i.e. attains the age of 18 years , subject to time limits as provided under para (v) of the circular. The benefit of compassionate appointments may also be extended to a “near relative/ adopted son/daughter”.

8. Subsequently, the Railway Board has issued a circular No. 137/1995 wherein it has been categorically pointed out that the provision for appointment of near relative on compassionate ground in the Railway may be treated as deleted and this was issued by the respondents wherein it is decided as under:-

“3. The matter has been examined by the Board who have decided that the DOP&T instrucitons dated 9.12.1993 quoted above may be adopted on the Railways. With the issue of this letter the provision for appointment of near relative on compassionate grounds on the Railways, contained in Board’s letters No. E(NG) III/7B/RC-1/1 dated 25.8.1980 and letters of even number dated 12.12.1990 and dated 16.5.1991 (RBE 102/1991) as also in part III of the Master Circular No. 16 may be treated as deleted.”

9. As such, after the said circular No.RBE 137/1995, consideration of appointment of near relative on compassionate ground is treated to be deleted. Not only this, as observed by the Hon’ble Apex Court in the case referred by the learned counsel for

the respondents also clear in this field and there appears to be no dispute.

7. As regards the merit of the case is concerned, the compassionate appointment cannot be claimed as a matter of right. In the case of **Umesh Kumar Nagpal Vs. State of Haryana (supra)**. The Hon'ble Apex Court has been observed as under:-

“The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

8. In the case of **Santosh Kumar Dubey Vs. State of Uttar Pradesh and others (supra)**, the Hon'ble Apex Court has observed as under:-

“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.”

9. The Hon'ble Apex Court has also been pleased to observe in the case of **State Bank of India and Others Vs. Raj Kumar reported in (2010) 11 SCC 661** and has been pleased to observe that the compassionate appointment is not a source of recruitment. It is an exception to general rule, that recruitment to public services should be on basis of merit, by open invitation, providing

equal opportunity to all eligible persons to participate in selection process. Further it was observed by the Hon'ble Apex Court as Under:-

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis.”

10. In the case of **State of Chhattisgarh and Others Vs. Dhirjo Kumar Sengar** reported in (2009) 13 SCC 600, the Hon'ble Apex Court has been pleased to observe as under:-

“10. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance.

11. In **SAIL Vs. Madhusudan Das** the Hon'ble Apex Court held that:

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme must be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

12. Apart from this, it is also observed by the Hon'ble Apex Court in the case of **Jagdish Prasad Vs. State of Bihar (1996) 1 SCC 301** that “Compassionate appointment claim made after a

long time of the death of the employee is not liable to be considered."

13. In the instant case, it is clear that the ex-employee was missing since 2000. The request for appointment on compassionate ground was considered and rejected by the respondents. Considering the averments made by the learned counsel for parties and also on the basis of observations made by the Hon'ble Apex Court, I do not find any merit in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

VR. Agrawal
(Navneet Kumar)
Member (J)

HLS/-