

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW
BENCH, LUCKNOW**

**Original Application No.144/2011
This the 8th Day of March 2013**

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Avadhesh Kumar, aged about 28 years, Son of late Shri Baboo Lal, resident of Village Chapra, Post Bhayara, District Barabanki.

...Applicant.

By Advocate: Sri Aditya Narayan.

Versus.

1. Union of India through its Secretary, Ministry of Railways, New Delhi.
2. General Manager, North-Eastern Railway, Gorakhpur.
3. Divisional Railway Manager, North-Eastern Railway, Izatnagar.
4. Divisional Railway Manager (Karmik), North Eastern Railway, Izatnagar.

.... Respondents.

By Advocate: Sri Pankaj Kumar Awasthi holding brief for Sri Rajendra Singh.

ORDER

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

Consequent upon the rejection order dated 22.01.2010 (Annexure-1) of the claim of the applicant for compassionate appointment by the respondents, this

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O.A. has been filed saying that while rejecting the claim the following material facts have been ignored:-

“(A). A lot of amount was spent on the treatment of the father of the Applicant, by taking loan from friends and near relatives and all the money received on account of death benefits of the late father of the Applicant was spent in returning the loan amount.

(B). The land and house, shown in the impugned rejection letter, were mortgaged for money for the treatment of the late father of the Applicant, and a lot of amount including the interest portion has to be paid to take them back for which the Applicant is finding it difficult.

(C). The Applicant has no source of income for his own need as he was fully dependent upon his late father.”

2. The respondents have contested the claim by filing a detailed Counter Affidavit saying that the applicant died on 28.05.2009, while in service leaving behind only son i.e. the applicant and two married daughters. His widow had already died during his lifetime. Further, the applicant has got 1.5 Bigha land and a House and has been paid Rs.2,06,034/- towards settlement dues. Therefore, the claim of the applicant was rejected. As regard the amount spent on treatment of his father and mortgage of house as alleged by the applicant, it has been said that being a personal matter of the applicant, it does not require any reply. But, the dependency of the applicant upon his father has been denied.

3. In the Supplementary Affidavit, it has been averred by the applicant that before his death on 28.05.2009 his father remained seriously ill from the last two years and in January, 2009 his father was hospitalized in Divisional Hospital, Izzatnagar. Since his condition was not improving, he was hospitalized in Hind Hospital,

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Hind Institute of Medical Sciences, Barabanki. There he remained admit for 15 days in the month of January and February, 2009. The photocopy of the discharge certificate has been annexed at Annexure-2 to this affidavit. As his father was suffering from Kidney ailment a lot of money was spent on his treatment. The amount so spent was arranged from the friends and relatives by taking loan from them, which was subsequently paid from the terminal benefits received by the applicant's family.

4. Against the above Supplementary Affidavit no Supplementary Counter Affidavit has been filed.

5. A Rejoinder Affidavit has also been filed by the applicant denying all the averments made in the counter affidavit.

6. Lastly, a second Supplementary Affidavit has also been filed by the applicant saying that on account of long treatment of his father the applicant could not manage his small agricultural land due to which it has become barren. Otherwise also, this land is situated in non-irrigated area. Further, to meet the expenses of treatment of father the land was mortgaged and now a heavy amount is required for redemption. Similarly, the house is also situated in a remote village and has no monetary value whatsoever.

7. Against this Supplementary Affidavit also, no Supplementary Counter Reply has been filed to controvert the aforesaid averments.

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8. I have heard the learned counsel for the parties and perused the entire material on record.

9. In the case in hand, the application for compassionate appointment was promptly given and the same has also been disposed of within a reasonable time. Therefore, the question of delay as mentioned in para-4.09 of the O.A. and the case law mentioned therein have no relevance.

10. From the perusal of the impugned order, it appears that no justification was found in the claim of the applicant mainly on the ground that the deceased employee left behind him only his married son i.e. the applicant and two married daughters. The wife of the employee had died during his lifetime itself. Further, in a village Chapra, District Barabanki the applicant has own 1.5 (Kachcha) Bigha of land and a Packka house consisting of two rooms. Besides, an amount of Rs.2,06,034/- has been paid as retrial benefits.

11. It appears that the aforesaid findings have been given on basis of some investigation made by the respondents as mentioned in para-3 of the above order. Regarding aforesaid retrial benefits, 1.5 Kachcha Bigha and Packka House consisting of 2 rooms, the applicant has explained that on account of kidney aliment of his deceased father the amount of retrial benefits was utilized in paying back the amount of loan taken from the friends and relatives. Similarly on account of financial constraints he could not make arrangements for

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irrigation, fertilizer and seeds etc. due to which his small piece of land which is situated in a remote area having no sale value, has become barren. Moreover, the land and house were mortgaged to arrange money for treatment of his late father and lot of amount including interest has to be paid for taking both the things back. All the above averments have been made in para-4.7 of the O.A. and also in the supplementary affidavit filed by the applicant, which have not been controverted by the respondents in their counter affidavit. Similarly, in the impugned order also these points do not appear to have been investigated and dealt with. It is also significant to mention here that usually the claims of compassionate appointment are dealt with by a Circle Relaxation Committee of the concerned department whenever 5% vacancies year marked for the purpose, are available and for this a comparative study is made of the cases of all such applicants. But, in the present case an altogether different procedure appears to have been followed and the above things are lacking for which no justification is on record. These days, we are living in the age of transparency. The principle of natural justice and fair play applies not only to judicial side but also to quasi-judicial and administrative orders. Every administrative order should indicate convincing reasons showing application of mind. In fact giving proper reasons ensures application of mind and it also prevents unnecessary litigation. Transparency is supposed to be one of the significant components of real justice.

12. Finally, therefore in view of the above, the O.A. is allowed. The impugned order is hereby set-aside with a

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direction to the respondents to consider expeditiously the claim of the applicant for compassionate appointment afresh in accordance with law and also keeping in view the observations made in the body of this order/judgment. No order as to costs.

Alok Kumar Singh
(Justice Alok Kumar Singh) 8.3.13
Member (J)

Amit/-