

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 499/2011

Order Reserved on 24.2.2014

Order Pronounced on 28/2/2014

Hon'ble Mr. Navneet Kumar, Member(J)

Abhay Kumar Gautam, aged about 30 years, son of late Puranmasi, resident of C/o Ram Krishna Ambedkar, 162, Aishbagh, Ambedkar Nagar, Tal Katora Road, District Lucknow.

Applicant

By Advocate: Shri J. P. Mathur.

VERSUS

1. Union of India, through its Secretary, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi.
2. Divisional Railway Manager, North Eastern Railway, Ashok Marg, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager (Personnel), North Eastern Railway, Ashok Marg, Hazratganj, Lucknow.

Respondents

By Advocate Sri S. Verma.

ORDER

By Hon'ble Shri Navneet Kumar, Member (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

- (i) To issue order or direction thereby setting aside the impugned order of rejection dated 9.12.2011 placed at Annexure with the original application.
- (ii) To issue appropriate order or direction thereby directing the opposite parties to appoint the applicant against Group 'D' post on compassionate ground within the stipulated time.
- (iii) Any other appropriate order or direction with the Hon'ble Tribunal may deem fit be passed.

2. The brief facts of the case are that the applicant is the son of ex employee, who died on 24.11.1989. The applicant applied for compassionate appointment in 2004. The case of the applicant was

considered and rejected. Feeling aggrieved by the said rejection order, the applicant preferred the O.A. before the Tribunal vide O.A. No. 512/2004 and the Tribunal passed the order on 26.8.2009 directing the respondents to consider the case of the applicant for grant of compassionate appointment. In pursuance thereof, the respondents have again considered the case of the applicant and passed the orders on 9.12.2011 which is impugned in the present O.A.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was indicated by the respondents that the ex-employee died on 24.11.1989 and after a period of about 14 1/2 years, the applicant has applied for compassionate appointment. It is also indicated by the respondents that the applicant has moved an application after 4 1/2 years after attaining majority. Considering all the facts of the case, the case of the applicant was rejected in 2004 and thereafter again after the order of the Tribunal, it was considered and rejected by the competent authority. The learned counsel for the respondents has also pointed out that the applicant does not have any legal right to be appointed on compassionate ground and that too after the lapse of more than 14 years.

4. The learned counsel appearing on behalf of the applicant has filed rejoinder affidavit and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of counter reply are denied.

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

6. The applicant is the son of the deceased employee, who died on 24.11.1989. It is also correct to state that at that point of time, the applicant was minor and after attaining the age of majority, he should have applied for grant of compassionate appointment which he waited for 4 1/2 years and thereafter he applied in 2004 i.e. after

lapse of about 14 years from the date of death of the ex-employee. The provisions for consideration of wards for compassionate appointed is absolutely clear to the extent that first of all the wife can be considered and in case of her inability to take appointment on compassionate ground, son or daughter of the deceased can be considered for compassionate appointment. The scheme for compassionate appointment has been followed by the Railways and as per the said scheme, it is observed that under which the compassionate appointment can be considered. Apart from this, the persons who are liable to be appointed on compassionate appointment is provided in the said scheme/ circular.

7. Undisputedly, compassionate appointment cannot be claim as a matter of right. In the case of **State Bank of India Vs. Raj Kumar, (2010) 11 SCC 661**, elucidating the nature of the scheme of compassionate appointments the Hon'ble Court observed:-

“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. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeing appointment under the scheme will also ceased to exist, unless saved. The mere fact that an applicant was made when the scheme was in force, will not by itself create a right in favor of the applicant.”

8. As observed by the Hon'ble Apex court in the case of **Umesh Kumar Nagpal Vs. State of Haryana 1994 SCC**

(L&S) 930, the Hon'ble Apex Court has been pleased to observe 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.”

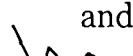
9. In the case of **State of Chhattisgarh and Others Vs. Dhirjo Kumar Sengar** reported in (2009) 13 SCC 600, the Hon'ble Apex Court has been pleased to observe as under:-

“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.

10. 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.”

11. Considering the observations made by Hon'ble Apex Court as well as submission made by the learned counsel for the parties and also pursuing the impugned order dated 9.12.11, I do not find



any reason to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to cost.

Navneet Kumar
(Navneet Kumar)
Member (J)

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