

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

(Lucknow this the 11th day of April 2014)

Hon'ble Mr. Shashi Prakash, Member (A)

ORIGINAL APPLICATION NO.53 OF 2012

(Under Section 19 of the CAT Act, 1985)

1. Smt. Urmila, aged about 27 years, widow of Late Shri Shrawan Kumar and daughter in law of Late Shri Pokhai.
2. Smt. Shanti Devi, aged about adult, widow of Late Shri Pokhai
(Both are Residents of -554/1247, Pavanpuri, Alambagh, Lucknow)

-----Applicant.

By Advocate: Sri Praveen Kumar

Versus.

Union of India, through---

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Works Manager, Carriage & Wagon Workshop, Alambagh, Lucknow.

-----Respondents.

By Advocate:- Sri S. Verma

ORDER

(Delivered by Hon'ble Mr. Shashi Prakash, Member (A))

Through the present O.A. the applicant is seeking quashing of the impugned order dated 21.7.2011 and order dated 16.11.2011 by

Sn

which the respondent no.2 has rejected the claim of applicant no.1 to consider her claim for appointment on compassionate grounds.

2. The facts of the case are that the husband of applicant no.2 Sri Pokhai who was working with respondent no.2, died-in-harness on 9.11.2009. After his death his son Sri Shrawan Kumar, the husband of applicant no.1 and the son of applicant no.2 applied for compassionate appointment. After consideration of his case he was appointed as a trainee to the part of Apprentice Skilled Artisan on compassionate ground against 25% Direct Recruitment Quota vide letter dated 5.3.2010. Sri Shrawan Kumar joined his training but unfortunately died on 22.5.2011 after completing one year and one month of training. Subsequent to the death of Sri Shrawan Kumar his wife (applicant no.1) applied for appointment on compassionate grounds for the reason that since both the breadwinners of the family had died, the family was facing conditions of starvation. She made the application on 23.6.2011.

3. The application of the applicant no.1 for consideration for compassionate appointment was rejected by the applicant by the impugned order dated 21.7.2011 for the reason that under the existing rules of the Railways there is no provision for providing compassionate appointment to a daughter-in-law. Being aggrieved by the action of the respondent no.2 the applicant no.1 approached this Tribunal in O.A. No.330 of 2011. The aforesaid O.A. was disposed of with the direction to decide the representation of applicant no.1 filed in July 2011. In pursuance of the tribunal order a detailed representation was

Su

submitted by applicant no.1 which was also rejected by the respondent no.2 by their order dated 16.11.2011 (Annexure-A-1) the grounds stated in the impugned order was that since Sri Shrawan Kumar, the husband of applicant no.1 had died during the training period, he was therefore not a regular employee of the railway and as per the existing rules the applicant no.1 is not eligible for being considered for compassionate appointment. It was further clarified in the impugned order that in the event a person employed on compassionate basis dies during the training period then at the request of the widow of the earlier deceased employee, another son of that deceased employee can apply and be considered for compassionate appointment.

4. It is contended in the O.A. that application of the applicant no.1 has been turned down by the respondent on flimsy grounds without assigning any proper reason. The decision of the respondents is in violation of the provisions of circulars issued by the Railway Board which provide that widow/son/daughter/near relatives/wards of the casual labour etc. and trainees is to be considered for compassionate ground.

5. In the counter affidavit filed by the respondents it has been submitted that merely by giving an offer for training as Apprentice Skilled Artisan, late Shrawan Kumar did not acquire the status of a railway servant within the scope and meaning of Paragraph 103(43) of the Indian Railway Establishment code, Volume-I. It is contended that one of the conditions laid down in the offer of appointment was that the late Shrawan Kumar would be absorbed as Skilled Artisan after

completion of orientation training for a period of three years. As he had not completed the aforesaid training and died midway he cannot be deemed to be a Railway Servant and therefore the claim of the applicant for appointment on compassionate ground as his wife is not tenable. Further, the respondents have stated that there is specific provision in the rules governing appointment on compassionate grounds that in case one son of the deceased railway servant, who had been offered appointment on compassionate ground dies while under training, the widow of the earlier deceased railway servant can apply for consideration of her second son. The fact that the applicant no.2 instead of applying for her second son and sought appointment of her daughter-in-law is not permissible under rules. Because the daughter-in-law is not a dependant of a (deceased) railway servant.

6. Sri Praveen Kumar counsel for the applicant while reiterating the facts contained in the O.A., drew attention to RBE No.102/2012 dated 14.9.2012 wherein certain clarifications have been given with regard to the appointment on compassionate ground. He argued that Paragraph of the RBE 3(vii) specifically states that a trainee has the status of Government/Railway Servant from initial day, as such, dependent of a person appointed on compassionate ground are eligible for compassionate appointment in the event of the death of the trainee. In the light of this provision, the learned counsel for the applicant stated that the applicant being a widow of late Shrawan Kumar who had been appointed as Skilled Artisan Trainee is fully entitled to be considered for compassionate appointment.

7. Sri S. Verma counsel for the respondents drew attention to the contents of the counter affidavit and supplementary counter reply filed by the respondents in response to the rejoinder affidavit filed by the counsel for the applicant. He submitted that the ineligibility of applicant no.1 for consideration on compassionate appointment has been made amply clear in the affidavits filed by the respondents. He reiterated that since late Shrawan Kumar, husband of applicant no.1 had died during the training period and had not been absorbed in the post to which he had been appointed because of non-completion of his training period the existing rules as applicable in the matter do not provide any scope to consider the case of applicant no.1. He drew attention to paragraph 8 of the supplementary counter affidavit and tried to explain that the term training as occurring in RBE No.102/2012 is not applicable in the instant case. He argued that the categories of compassionate appointment Land looser, Accident victims etc. are recruit engaged as trainees and can be given regular pay band and grade pay only on acquiring minimum educational qualification prescribed under the Recruitment Rules. The emoluments of these trainees during the period of training and before they are absorbed in the Government as employees will be in IS pay band without any grade pay and the periods pay band will not be counted as regular service. Based upon the above submission the learned counsel for the respondents submitted that the reliance placed by the counsel for the applicant on the contents of RBE No.102/2012 is wholly misconceived. Accordingly, the O.A. is devoid of merits and it deserves to be dismissed.

8. Heard the counsel for both the parties and peruse the pleadings.



9. The short appoint involved for adjudication in the present O.A. is regarding the eligibility or otherwise of the applicant no.1 for consideration for appointment on compassionate ground on account of the death of her husband during the training period. It is a fact that the entire controversy in this O.A. can best be settled in terms of the provisions contained in RBE No.102/2012 which unequivocally and clearly deals with such matter. Before discussing the aforesaid RBE, it may also be relevant to refer to the provisions of the scheme of compassionate appointment circulated by the Government of India. In para 7 of the scheme which relates to the subject of determination/availability of the vacancies, it is made abundantly clear that the appointment on compassionate ground should be made only against regular vacancies. In view of this specific provision, the offer of appointment given to Sri Shrawan Kumar, late husband of applicant no.1 had to be in nature of an appointment to a regular available post of Apprentice Skilled Artisan. That he was to be paid stipend and required to complete orientation training for a period of three years was incidental to his service. In fact, that the RBE in paragraph 3(vii) specifically lay down that a trainee has the status of Government Servant and would be a Railway Servant from the initial day, and that his dependants are eligible for appointment on compassionate ground in the event of his death plainly indicates that the late husband of the applicant no.1 happens to fall under this category. Accordingly, based upon this provision his widow, the applicant no.1 becomes eligible for consideration for compassionate appointment as his dependant. The arguments advanced by the counsel for the respondents that the

82

applicant had died midway during his training and had not been absorbed renders the applicant no.1 ineligible for compassionate appointment stands controverted by the above stated provisions.

10. The arguments advanced in the supplementary counter affidavit in para 8, rather than taking the plain meaning of RBE No.102/2012 has attempted to confuse the issue by mixing it up with the qualification criteria which is not the issue in this case.

11. In view of the above stated of facts, it is evident that as per the RBE No.102/2012 which has been issued as recently as 14.9.2012 is the relevant circular to be referred in this case and is required to be followed in considering the case of the applicant no.1.

12. Having regard to foregoing facts and circumstances we find is considerable substance in the O.A. Accordingly, the O.A. is allowed.


(Shashi Prakash)
Member (A)

M. R./-