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Central Administrative Tribunal Lucknow Bench Lucknow

Original Application: 516/2009

This, the 1<sup>st</sup> day of August, 2010

HON'BLE DR. A.K. MISHRA, MEMBER (A)

Awadhesh Kumar aged about 29 years, son of late Sri Sahab Deen, resident of Village and post Dehuwa Tahsil Misrikh District Sitapur.

Applicant

By Advocate Sri R.C. Gupta.

Versus

1. Union of India through Secretary Ministry of Railway Department, New Delhi.
2. Divisional Railway Manager Northern Railway Moradabad U.P.
3. Station Master Northern Railway, Sitapur U.P.
4. Nand Lal son of late Sahab Deen, resident of Village Dehuwara Post Dadewara. Tahsil Misrikh District Sitapur.

Respondents

By Advocate Sri B.B. Tripathi for Sri N.K. Agarwal.  
Sri Prashant Singh Atal.

ORDER

HON'BLE DR. A. K. MISHRA, MEMBER (A)

The prayer in this application is to set aside the order dated 17.9.2009 passed by respondent No. 2 by which the respondent No. 4 has been given appointment as Khallasi on compassionate ground and for a direction to the Respondent No. 2 to consider the case of the applicant in place of Respondent No. 4.

2. The facts of the case are as follows:-

One Sahab Deen Ex-Track Man of Northern Railway at Moradabad died a natural death on 15.7.2007. He left behind 4 married sons including the applicant as well as the Respondent No. 4 and one unmarried daughter, namely Km. Gyanwati.

3. The claim of the applicant is that he is the eldest son and his date of birth according to High School marks sheet is 20.1.80 and the respondent No. 4 was living separately from the family of the deceased employee for more than 15 years and did not have any family liability to discharge. The applicant claims to have made a series of objections when he learnt about the proposal to appoint Respondent No. 4, but no heed was given to his objections. At paragraph 4.6. of the application he states that being the eldest member of the surviving family, he had the responsibility to look after his sister who is of marriageable age and also to take the other liabilities of the family. But unfortunately, his case was not considered and respondent No. 4 was given appointment unjustifiably. In proof of his averment, he has filed in his R.A. a copy of the Ration Card which indicates the following members as part of the family;

1. Sahab Deen
2. Wife
3. Sonelal
4. Mukesh Kumar
5. Mintu
6. Gyanwati

Unfortunately for him, this card does not show his name as a member of the family. In other words, his own evidence shows that both he and the respondent No. 4 were living separately from the main family during the life time of their father.

4. Although the official respondents have also described the respondent No. 4 as the second son, presumably on the basis of marks sheets, the respondent No. 4 has claimed that he was the eldest son. He has

filed legal heir certificate dated 1.7.2008 issued by the District Magistrate, Sitapur (Annexure C-5 to his CA). He has also enclosed a copy of Family Register in which his year of birth is indicated as 1975 and that of applicant as 1977. Further, he has filed copies of identity cards issued by Election Commission of India in which the age of respondent No. 4 is stated to be 21 as on 1.1.95 and that of the applicant as 19 on that day. On the basis of these documents, he claims to be the eldest son of the deceased employee.

5. The respondents have stated that all the major sons of the deceased employee are married and living separately long since. But the respondent No. 4 had taken the responsibility to look after the youngest daughter Km. Gyanwati who continues to reside with him. It is in this context that the respondent No. 4 was appointed on compassionate ground so that he could look after his sister who was then minor and living with him. According to them, there was no irregularity in such appointment.

6. It is further stated by the respondents that the wife of the deceased employee had died before the death of the employee. The only family responsibility was towards the employee looking after the minor sister. She has made an affidavit on 3.3.2010 stating that she was all along staying with respondent No. 4 who was looking after her. She has rejected the claim of the applicant in this regard. Earlier, an affidavit had been made signed by sister Gyanwati and one of the brothers Mukesh Kumar in which official respondents

*[Signature]*

were requested to give the compassionate appointment to their elder brother Nand Lal (Respondent No. 4). The applicant's name is shown as one of the signatories. But his signature is not available on this document. But the very fact that respondent No. 4 is described as elder brother lends some credence to his claim to be the eldest son.

7. One of the factors in granting compassionate appointment is the presence of minor unmarried daughter and the need to discharge the family obligation towards her. Keeping this fact in view, the official respondents' have appointed respondent No. 4. Although, there seems to be some confusion about the date of birth and about the claim of relative seniority between the two, I find that on the basis of evidence produced, the claim of the respondent No. 4 to be the eldest brother cannot be discarded. The dates of birth recorded in the marks sheet do not appear to be correct in view of the overwhelming evidence, in support of the claim of respondent No. 4 that his year of birth is 1975 and that of the applicant as 1977. Therefore, the claim of the applicant to be eldest member of the surviving family is also not borne out, notwithstanding that this fact was not taken into consideration by the respondent authorities.

8. In the circumstances, I do not find any infirmity in appointment of respondent No. 4 on compassionate ground. Accordingly, the O.A. is dismissed. At the same time, it is expected that the respondent authorities would take cognizance of the claim of respondent No. 4

that he was 21 years of age on 1.1.1995 on the basis of evidence adduced by the respondent No. 4 himself in his counter affidavit by way of placing on record the copy of the Identity Card issued by the Election Commission of India. No Costs.

*A. K. Mishra*  
(Dr. A. K. Mishra)  
Member (A)

v.