

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 350/2010

This, the ^{24th} day of September, 2013

HON'BLE Sri Navneet Kumar, Member (J)

Ashok Kumar Pandey aged about 43 years son of late Sri Paras Nath Pandey, resident of Village Pariyawan, Post Sarawan District- Gonda

Applicant.

By Advocate: Sri D. Sinha for Sri S.K. Pandey

Versus

1. Union of India through the General Manager, North Eastern railway, Gorakhpur, U.P.
2. Divisional Railway Manager, North Eastern railway, DRM Office, Ashok Marg, Lucknow.

Respondents.

By Advocate: Sri Narendra Nath

(Reserved on 20.9.2013)

ORDER

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

The present Original Application has been preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) The Hon'ble Tribunal may kindly be pleased to issue order or direction commanding upon the respondents to consider the appointment of the applicant on a suitable post on compassionate ground under dying in harness rules as applicable in the Railway Department.
- ii) This Hon'ble Tribunal may kindly be pleased to pass any order which deems just and proper under the circumstances of the case in favour of the applicant.
- iii) Award the cost of Original Application in favour of the applicant.

2. The brief facts of the case are that the applicant who is son of the deceased employee claims for compassionate appointment in respondents organization. The ex-employee died due to serious illness while working as Engine Cleaner on 14.12.1974 and after a period of about 8 years, the applicant applied for appointment on compassionate ground. His case was considered and rejected four times and finally the applicant again applied for considering his case for grant of compassionate appointment in the year 2006 and 2007. It is also to be



pointed out that earlier applicant filed writ petition No. 2020 (SS) of 2010 before the Hon'ble High Court which was dismissed by the Hon'ble High Court in 2010 as not maintainable. The applicant preferred the present O.A. in 2010.

3. Learned counsel appearing on behalf of the respondents filed their reply and through reply it was pointed out that the case of the applicant was considered by the committee for grant of compassionate appointment and the decision of rejection of the claim was communicated to the applicant. The learned counsel for the respondents has also pointed out that his case was considered on 20/21.4.77, 2.4.1986, 22.10.1992 as well as on 28.2.2007. Apart from this, the learned counsel for the respondents has taken a ground of limitation and submitted that since from the death of ex-employee took place about 32 years back and the applicant's family is surviving for such a long period as such the O.A. is liable to be dismissed. The learned counsel has also relied upon on following two decisions of the Hon'ble Apex Court :-

- i) ***Umesh Kumar Nagpal Vs. State of Haryana and others***
reported in (1994) 4 Supreme Court Cases, 138
- ii) ***Santosh Kumar Dubey Vs. State of Uttar Pradesh and others***
reported in (2009) 2 Supreme Court Cases (L&S) 224.

4. The learned counsel appearing for the applicant has filed Rejoinder Reply and through Rejoinder reply, mostly the averments made in the Original Application are reiterated.

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

6. Admittedly, the applicant is son of the deceased employee who died while in service in 1974 and thereafter in 1982, he has made an application for grant of compassionate appointment which was said to has been considered by the authorities on 2.4.86 and the same was rejected. Again the case of the applicant was considered and the same was rejected on 22.10.1992. The learned counsel appearing on behalf of the respondents has pointed out through reply that the case of the applicant was considered and rejected in 1977, 1986, 1992 and finally in 2007. The averments made by the learned counsel for respondents also cannot be disputed to the extent that the present O.A. is barred by limitation since



finally the case of the applicant was considered and rejected on 28.2.2007 and the present O.A. has been preferred in 2010, as such the O.A. is liable to be dismissed on the ground of limitation alone.

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 dependents 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." In the instant case, it is clear that the ex-employee died in 1974. As per the averments made by the applicant's himself, the applicant after passing the High School examination in 1982, made his first representation and the said representation 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.

Navneet Kumar
(Navneet Kumar)
Member (J)