

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

**Original Application No.266/2011
This the 18th Day of April 2012**

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

Jabar Bahadur Yadav, S/o Late Sitaram aged about 46 years Ex-Gangman under Senior Section Engineer (P. Way) Northern Railway Station, Janghai Distt. Jaunpur and resident of Village-Semari Post Office Janghai, Jaunpur at present living at Arjunganj, Lucknow.

...Applicant.

By Advocate: Sri A.C. Mishra.

Versus.

1. Union of India through General Manager, N. Railway Head Quarter Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. Samar Bahadur aged about 33 years 6 months S/o Late Sitaram Ex-Gangman, resident of village-Semari (Boliapur) Post Office Janghai Bazar, Distt. Jaunpur.

.... Respondents.

By Advocate: Sri Praveen Kumar holding brief for Sri D.K. Misrha for official respondents and Sri Raj Singh for Private Respondent No.3.

ORDER (Oral)

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

This O.A. has been filed for the following relief's:-

“8.1. That Hon'ble Tribunal may graciously be pleased to direct the Respondent No.2 to consider the applicant for appointment on comp. ground in any group D post due to death of his father during service period and his is the first some and is entitled for appointment on comp. ground as per Railway Rules contained in Annexure No.3 and 6 to the O.A. and has already passed VIIth. *Al*

8.2. That the Hon'ble Court/Tribunal further be pleased to direct the Respondent No.2 not to offer any appointment on comp. grounds in any group C/D post to Resp. No.3 as he is second son of his Late father and not entitled for consideration of said appointment in face of the applicant.

8.3. That Hon'ble Tribunal may also be pleased to direct the Respondent No.2 for making payment of one/3rd. share of the whole settlement dues of his late father Late Sita Ram, but paid whole amount to the mother ignoring the respondent no.3 and also to the applicant. or, he may be permitted to approach the competent court for his due 1/3rd share.

8.4. Any other relief as deems fit in the eye of the Hon'ble Tribunal under such facts and circumstances may also be allowed to the applicant with cost."

2. The contention of the applicant is that he happens to be the elder son of Late Sita Ram, who died on 05.12.2009 while working as Gangman with the official respondents. The present age of the applicant is 46 years and he has passed VIII Class. Thus, at the time of death of his father he was about 44 years of age. His case is that in connivance with his mother i.e. widow of the deceased Late Sita Ram compassionate appointment has been offered in favour of Respondent No.3, the younger brother presently aged about 33 years, who has passed class Xth.

3. His sole contention is that according to relevant circulars job should be offered to elder son, but it has been wrongly offered to his younger brother i.e. Respondent No.3 in connivance with his mother. Therefore he may be considered for the job.

4. From the other side appearance has been put in on behalf of official respondents as well as Respondent No.3 saying that in accordance with the relevant circulars the widow of the deceased Late Sita Ram, who is next kin of

her deceased husband had given her consent in favour of his younger son, Samar Bahadur and after considering her request the authorities have also called her younger son for appointment on compassionate ground in accordance with relevant provisions. It has been also pointed out that according to the applicant himself he has lodged a complaint at Police Station against her mother, which itself demonstrates that how the applicant will behave and take care of his mother, incase he is given appointment. The private respondent no.3, has come with an objection that the mother has given consent affidavit in his favour and therefore, his appointment is being considered by the official respondents in accordance with relevant rules.

5. At the outset, it is worthwhile to mention here that the applicant has not come with clean hands. He has not disclosed that he is a married person already earning his livelihood and subsisting alongwith his wife and two children as conceded now by the learned counsel for the applicant during the course of arguments. Secondly though the O.A. consists of 14 typed pages containing verification on the last page but there are several hand written additions and corrections without any signatures or initials vitiating the verification and making it meaningless. It is also contrary to the relevant Act and Rules of this Tribunal. Therefore on this ground itself this O.A. deserves to be dismissed.

6. Learned counsel for the applicant submits that there is no provision to offer compassionate appointment firstly to the surviving widow and then to children. This submission is misconceived. It is apparent from the

perusal of Annexure-3 itself upon which the applicant's counsel has himself placed reliance that where the widow cannot take up employment, Railways can keep the case for appointment on compassionate grounds open to enable consideration of appointment of a minor son when he attains majority [R.B.'s No.E(NG)II/84/RC-1/172 of 1-3-85, Bahri's 65/85]. Other circulars of the Railway Board which have been filed by the applicant himself also provide similarly. In the present case the widow had filed an affidavit requesting the official respondents to give compassionate appointment in favour of her second son i.e. Respondent No.3. The matter was accordingly proceeded with. The appointment however could not be given till date on account of some medical fitness test, which is in the process. Though, the applicant has made an allegation of connivance of her mother with the younger brother but, he has neither made his mother as party in this case nor has given any material on record to substantiate it. This baseless allegation against mother also shows his conduct and future designs. Not only this, according to his own version he has filed an FIR against his own mother. In such circumstances, how it can be expected that if job is given, he would take proper care of his old widow mother and younger brother. Under the Scheme of compassionate appointment the applicant even being the elder married son has no vested right in his favour. The only object of such a welfare scheme is to give financial assistance to the family of the deceased employee so that the family members may subsist. The applicant is aged about 46 years and he is already subsisting and leading a married life with his two

children and as conceded by the learned counsel for the applicant he is also living separately.

7. The learned counsel for the applicant requests that it may also be brought on record that on his own request this matter of Single Judge Bench was taken up before the Division Bench. But, this statement is false and against the record, which is very unfortunate on the part of the learned counsel for the applicant. In the order sheet dated 16.03.2012, it was in fact on the submission made on behalf of private Respondent No.3 that since this O.A. relates to challenging of his appointment which is under process, O.A. should be listed before D.B. It is hoped that the learned counsel for applicant, who is an elderly person, will not make such irresponsible statements in future which is against record.

8. Learned counsel for applicant also draws the attention of this Tribunal towards one Railway Board order dated 22.12.1994 Para-6, which is as under:-

“Wherever in individual cases of merit, it is considered that justification exists for extending consideration to cases falling beyond the above time limit i.e. where death took place over 15 years ago and where the applications for appointment is made after over two years after attaining majority, or where the application is made for other than first child/first son/first daughter, the prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma, circulate vice [Board's letter No.E9NG)II/87/RC-1/143 dated 19.4.1988 (Bahri's RBO 1988-I, 80; RBE 80/88)]”

9. From the other side, it is submitted and rightly so that it is not applicable because, it applies to the cases which are 15 years old and the cases which fall beyond the time limit.

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10. We don't find any substance in any the submissions made on behalf of the learned counsel for the applicant.

11. In view of the above, this O.A. deserves to be dismissed with an exemplary cost and accordingly, it is so ordered. The O.A. is dismissed with Rs.1000/- as a token cost, which shall be deposited in the CAT Bar Association, for being utilized preferably for academic purposes.

S.P. Singh
(S.P. Singh)
Member (A)

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

amit/-

18.4.2012