

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

D. A. No. 575 of 1995

Date of order 20.5.1996

Sunil Kumar Chaurasia @ Binod Kumar .., Applicant

-versus-

The Union of India & others ... Respondents

CORAM: Hon'ble Shri K.D. Saha, Member (A)

Counsel for the applicant .. Shri Ranjit Narain.

Counsel for the respondents .. Shri Gautam Bose.

ORDER

Hon'ble Shri K.D. Saha, Member (A):-

By this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays that he may be appointed in the Railways on compassionate grounds as his elder brother Ashok Kumar, a Railway employee, died in harness on 21.9.1978.

2. The facts as given in the application are as follows:

The applicant's father Bateshwar Mandal while working in Eastern Railway Workshop, Jamalpur, died on 6.6.1975 and Ashok Kumar, the elder brother of the applicant, was appointed on compassionate grounds as Khalasi (Ticket No. 2839 M.T.S. Shop). The above-said Ashok Kumar, who was unmarried, suddenly fell ill and died on 21.9.1978 in the Railway Hospital, Jamalpur. It is stated that Smt. Sushila Devi filed a representation dated 22.12.1989, as at Annexure-1 seeking appointment of the applicant in view of the death of Ashok Kumar. It is further

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stated that this was followed by several reminders and the mother of the applicant also met Chief Workshop Personnel Manager, Jamalpur on 18.12.1989 and 4.1.1990 and getting no response has filed this application.

3. In the reply filed on behalf of the respondent- Railways, it is stated that on the death of above-said Ashok Kumar, son of Late Bateshwar Mandal, who was given appointment on compassionate grounds, Smt. Sushila Devi had applied for appointment on compassionate grounds of her daughter Smt. Aruna Kumari on 11.12.1985 as her other children were minor and the above-said Smt. Aruna Kumari was given appointment on compassionate grounds in Group 'D' category with effect from 17.4.1987. A copy ^{each} of Smt. Sushila Devi's application dated 11.12.1985 and the appointment notice dated 16.4.1987 regarding appointment of Smt. Aruna Kumari, daughter of Late Bateshwar Mandal, have been filed by the respondents as Annexures R-1 and R-2 respectively to the written statement. It is further submitted that Smt. Aruna Kumari is still in service with the respondents and against this background, no other appointment on compassionate grounds is permissible under the rules.

4. In the rejoinder, the submission of the applicant is that Smt. Aruna Kumari's appointment on compassionate grounds was given against the death of her father ^{late} Bateshwar Mandal and not on account of death of his brother Ashok Kumar.

5. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant does not dispute that Ashok Kumar

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was appointed to the Railways on compassionate grounds on the death of his father Bateshwar Mandal. He does not also dispute that Smt. Aruna Kumari was appointed to the Railways with effect from 17.4.1987 in Group 'D' category after the death of Ashok Kumar on 21.9.1978. His sole contention is that the appointment of Smt. Aruna Kumari is to be treated as having been made against the death of her father Bateshwar Mandal.

6. Mr. Gautam Bose, learned counsel for the respondents, draws my attention to the Master Circular No.16 regarding appointment on compassionate grounds (E(NG) II/90/RC-1/117 dated 12.12.1990) published in the Railway Board's Compendium of Master Circulars (Establishment Matters) Volume II published by Bahri Brothers, Delhi, and submits that if an appointment is made on compassionate grounds against the death of a railway employee, no further appointment on compassionate grounds can be given. The learned counsel submits that on the death of Bateshwar Mandal, his son Ashok Kumar was appointed on compassionate grounds and on his death on 21.9.1978, Smt. Aruna Kumari, sister of late Ashok Kumar and the applicant, was appointed to the Railways on compassionate grounds on 17.4.1987. Therefore, the question of appointment of the applicant on compassionate grounds on the death of Ashok Kumar does not arise. It is further submitted that the applicant has suppressed in his application the fact that Smt. Aruna Kumari was appointed to the Railways subsequent to the death of Ashok Kumar and the applicant having not come with clean hands, the application is liable to be dismissed on this ground alone. Mr. Gautam Bose submits that the application is also barred by limitation.

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7. Evidently, on the death of Bateshwar Mandal, his son Ashok Kumar was appointed on compassionate grounds and after the death of Ashok Kumar on 21.9.1978, on an application of Smt. Sushila Devi, mother of Late Ashok Kumar, Smt. Aruna Kumari, sister of Late Ashok Kumar was appointed in Group 'D' category with effect from 17.4.1987 on compassionate grounds. In view of this factual position, there is no question of appointment of the applicant on compassionate grounds on the death of his brother Late Ashok Kumar. The applicant has also suppressed the fact relating to appointment of Smt. Aruna Kumari in the application.

8. In the circumstances, I entirely agree with the submission of Mr. Gautam Bose, learned counsel for the respondents, that the application is liable to be dismissed on the ground that the applicant has not approached the Tribunal with clean hands having suppressed the facts relating to appointment of Smt. Aruna Kumari with effect from 17.4.1987. Even otherwise the application fails on merit. After appointment of Smt. Aruna Kumari on compassionate grounds pursuant to the death of Late Ashok Kumar, no other near relative can be appointed on the ground of death of Ashok Kumar.

9. For the reasons discussed hereinabove, the application is totally misconceived and is dismissed with no order as to costs.


(K.D. Saha) 20.5.96
Member (Administrative)