

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH : P A T N A

O.A.NO.: 433 of 1996.

DATE OF DECISION : 5 -APR-99.

1. Smt. Sudheshwari Devi, wife of Late Baidyanath Chaudhary.

2. Dinesh Prasad Chaudhary, son of Late Baidyanath Chaudhary.

..... Both residents of village Bari Nagar, Post Guru Bazar, District Katihar, Bihar.

.....APPLICANTS.

Vrs.

1. Union of India, through the General Manager, N.E.Railway, Gorakhpur.

2. Divisional Railway Manager, N.E.Railway, Sonpur.

3. Senior Divisional Manager [Operating], N.E.Railway, Sonpur.

4. Senior Divisional Personnel Officer, N.E.Railway, Sonpur.

.....RESPONDENTS.

Counsel for the applicants. : Shri M.P.Dixit.

Counsel for the respondents. : Shri P.K.Verma.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

O R D E R

S.NARAYAN, V.C.:- A claim of appointment on compassionate ground has been set-forth in the instant case which has been contested by the respondent Railways on the ground that the claim was not covered under rules and circulars of the Railway Board on the subject.

2. The relevant facts of the case were, however, not in dispute. It was an uncontroverted case of the applicants that one Baidyanath Chaudhary, R.G.Station Master, N.E.Railways, Karha Gola, being



the husband of applicant no.1 and father of applicant no.2, was serving under the respondent no.3, Senior Divisional Manager, N.E.Railways, Sonpur, and he met a train accident in the intervening night of 30/31st January, 1995, by Train No. 534 Down. In this accident, Baidyanath Chaudhary, got both of his feet amputated on the spot of accident. Baidyanath Chaudhary was to superannuate on the next following day i.e. on 31st January, 1995. It is said that the accident took place in the mid-night of 30/31st January, 1995, while he was coming back from Sonpur after preparing his retirement papers and he fell down from the said train at Karha Gola Railway Station and got his both feet amputated. The death, as a result of the aforesaid injury, occurred on 13th February, 1995, while under medical treatment.

3. The applicants have filed certain papers like, Station Diary, dated 30/31st January, 1995, sent by the Station Master, Karha Gola, letter dated 31st January, 1995, addressed by Station Master, N.F.Railways, Fardbeyan of the deceased dated 31st January, 1995, letter dated 1st February, 1995 of Dr. P.K.Pathak, ADMO, Katihar, Accident Report, dated 10th February, 1995, and the Death Certificate of Himalayan Poly Clinic. All these papers did indicate that the deceased, Baidyanath Chaudhary, met an accident while travelling in Train No.534 Down in the intervening night of 30/31st January, 1995, and got his both the feet amputated on the spot of the accident and, thereafter, after a lapse of about 12 days he succumbed to the injury. These are the hard facts which could not be denied. It also goes by admission that the



deceased was to superannuate on 31st January, 1995. These facts would certainly lead to a conclusion that the deceased, Baidyanath Chaudhary, became medically incapacitated because of amputation of both his feet while in service. On account of amputation of both his feet, he had most certainly got crippled and was not in capacity to do his work on the last day of his service i.e., on 31st January, 1995, subsequent to which his superannuation came into effect. His death, of course, occurred after his superannuation and, therefore, that was not very much material for any decision in the instant case. It was simply to be determined in this case, whether his case, on account of his incapacitation in the preceding night of the day of superannuation, would entitle his family members to claim appointment on compassionate grounds?

4. Straightway coming to the relevant circular of the Railway Board, one may refer to the circular vide E[NG]II/78/RCI/1, dated 7th April, 1983, the relevant extract of which reads as follows :-

" Appointments on compassionate grounds relate to those appointments which can be made of dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments may be made are as below :

[i] When Railway servants loses their lives in the course of duty or get so crippled that they cannot do any work [this also in the course of duty-for example, loco and traffic running staff in charge of trains involved in accidents].

x x x

[iv] When Railway employees become crippled



while in service or develop serious ailments like heart diseases, cancer etc. or otherwise medically decategorised for the job they are holding and no alternative job of the same emoluments can be offered to them."

5. So far the case of the deceased, Baidyanath Chaudhary, was concerned, it is sought to be covered by clause [i], referred to above, inasmuch as, while he was still in service he was going from Sonpur to Karha Gola to attend his duty on the last day of his superanuation i.e., 31st January, 1995. There could be no other purpose than to attend his duties at Karha Gola. It was very much asserted by the applicants that he had gone Sonpur for preparation of his pension papers and that was but natural for a retiring incumbent to do like that in his head office situated at Sonpur to expedite finalisation of the retirement benefits. It is, therefore, established on the record that the deceased got crippled by meeting an accident while going to attend his duty at Karha Gola. The accident, in which he lost his feet, did occur at Karha Gola Railway Station where he was posted. The advantage, what has been granted in Clause [i] so available, thus, must go in favour of the deceased.

6. Now, coming to clause [iv] also, one would find that the deceased became crippled while in service and he would be supposed to be medically decategorised for the job he was holding. No question arises of offering any alternative job of the same emoluments in his case because it was a matter only of a day after the accident when he actually superannuated. The provision of this clause should



also come into role to cover the case of the deceased, be it very marginally.

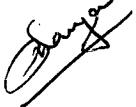
7. Thus, on the strength of the provision, contained in Clause [i] & [iv] of the Circular of Railway Board, which had definitely a legal force, must come to the aid of the case of the applicants in the instant O.A. It is true, that the applicants case gets support of the aforesaid directives of the Railway Board very marginally and merely on technical ground but, it does, come to the help of an active consideration for appointment on compassionate grounds. For the moment, I am not on the issue of other criteria for appointment on compassionate grounds such as, financial condition of the family of the deceased. I may put emphasis only on this aspect of the matter that if the circular of the Railway Board did cover the case of a Railway employee becoming crippled either while in service or while he is deemed to be in course of his duty, it must be extended to the family members of the deceased, Baidyanath Chaudhary.

8. It would be apt to refer to the contention of the respondent Railways, which has been very much emphasised, that since the death of Baidyanath Chaudhary occurred after the superannuation, no appointment on compassionate ground could be claimed by any of his family members. This plea does not hold good for the reason discussed in the preceding paragraphs. It was not the death which matters, rather, it was the medical incapacitation of the deceased which definitely occurred while in service and furthermore, while he was travelling to attend his



duty on the last day of his service before superannuation. Thus, on the ground that the death occurred after the superannuation, can not be deemed to be a valid ground to refuse the claim of appointment on compassionate grounds.

9. I may push the matter furthermore with another point of view. Obviously, this was a marginal case and based on technical aspect of the matter, where the circular and directives of the Railway Board covered the claim of appointment as set-up by the applicants. First, the circular, as referred to above, while making reference of either the death or the incapacitation of an incumbent, has nowhere prescribed the point of time during the service tenure when such claim may arise. To put it in other words, the circular has nowhere clarified that the scheme of compassionate appointment should not be made available to an incumbent at the fag end of his service. Infact, no distinction has been made with regard to the event of entitlement either taking place in the early part of the career or at the fag end. Therefore, even if the entitlement occurs on the last day i.e. to say, a day before the superannuation, it has got to be given effect to. Therefore, merely because the deceased, Baidyanath Chaudhary, was incapacitated a day before the superannuation a claim of compassionate appointment arising out of this event should not be denied in an ordinary course.

10.  Secondly, when a course is open both way, either to accept or to refuse a particular benevolent provision, it is almost an established principle of ethic that a Court of Law should go for an

interpretation in favour of granting the benefit to the claimant. The compassionate appointment is a scheme of welfare for the Railway employees and, therefore, even on technical ground or even in a marginal case, <sup>if</sup> the benefit can be extended to an employee, it must be preferred instead of denying in favour of the employer. In this view of the matter as well, I have been convinced that the respondents should not have refused the benefit of compassionate appointment merely on the ground that the deceased was incapacitated at the fag. end of his service, and further, that the death occurred a few days after his superannuation.

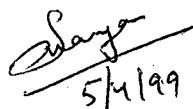
11. Of course, the compassionate appointment was dependent on some other criteria as well, such as, financial condition of the family of the deceased. Learned counsel for the respondents wanted me to place reliance on a decision of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vrs. State of Haryana & Ors., reported in 1994 [4] SCC 138, wherein, it was held that offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointment in class-III & IV posts is legally impermissible. I do not, however, propose to go against the above principle laid down by the Hon'ble Supreme Court but, here was a case wherein the applicants have not been denied the benefit of compassionate appointment on the ground of financial condition of the family being affluent. The whole tenor of the written statement filed on behalf of the respondents was that since the deceased met the accident amputing both of his feet only in the preceding night of the date of superannuation and the death occurred few days after the superannuation, the benefit

benefit could not be extended to them. On this score, the discussions above, would establish that the case of the applicants did fall in the criteria for appointment, may it be very marginal or technical. So far, the financial condition of the family of the applicants was concerned, I would most certainly observe that this aspect of the matter ought to have been considered by the respondent authorities at the relevant time. For the present, it is difficult on the record of this case to determine whether the claim of compassionate appointment was fit to be rejected because of the affluent financial condition of the family.

12. Reliance was also sought to be place by the respondents' side on a decision of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vrs. Asha Ram Chandra Ambedkar, reported in 1994 [2] SCC 718. It was held therein, that Courts can not order appointment on compassionate grounds dehors the provisions of statutory regulations and instructions. In this context, I may once-again point out that while interpreting the circular, dated 7th April, 1983, of the Railway Board, it has been found that the case of the applicants did fulfill the criteria for being considered for compassionate appointment on the ground of incapacitation of the deceased, Baidyanath Chaudhary, in the preceding night of the day of his superannuation. Since, the respondents did not raise any other aspect of the matter such as, financial condition of the applicants, I need not go into that aspect of the matter.

*Sanjay*

In the light of what has been discussed above, this O.A. must succeed. It is held that the claim of appointment on compassionate grounds can not be refused to the applicant no.2 merely on the ground that his deceased father, Baidyanath Chaudhary, was incapacitated a day before the retirement and that his death occurred subsequent to his superannuation. The respondent authorities are, therefore, directed to consider the case of the applicants for appointment on compassionate ground and to pass an order in accordance with statutory regulations and instructions.

  
5/4/99

[S.NARAYAN]  
VICE-CHAIRMAN.

SKJ\*