

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH: PATNA

Registration No.OA-224 of 1996

(Date of decision 24.4.1997)

Lakhan Prasad

S/o Late Mahadeo Ram,

Resident of Village Paharpur,

P.O.Poraiya, P.S.Nimighat,

District Giridih . . . . . Applicant

By Advocate: Mr. Y.V.Giri

Versus

1. The Union of India, through the

General Manager, Eastern Railway,

Fairley Place, Netaji Subhash Road,

Calcutta.

2. The Divisional Railway Manager,

Eastern Railway, Dhanbad.

3. The Senior Divisional Personnel Officer,

Eastern Railway, Dhanbad.

4. The Divisional Mechanical Engineer (P),

Eastern Railway, Dhanbad..... Respondents

By Advocate: Mr. Gautam Bose.

Coram: Hon'ble Mr. Justice V.N.Mehrotra, V.C.

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Hon'ble Mr. Justice V.N.Mehrotra, V.C.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying that the impugned order (Annexure-A/30) passed by Respondent No.3 be quashed and set aside. The applicant has also prayed that the respondents be directed to appoint the applicant on compassionate ground, <sup>father W</sup> his/being an ex-employee, on any post commensurate with his qualification. The applicant is the son of Late Mahadeo Ram who was also employed with the Eastern Railway as Driver Grade 'C'. By order dated 3.7.1965 Mahadeo Ram was declared medically unfit and was decategorised. He was not offered any alternative job even though he made several representations for that purpose. He also prayed for payment of post retirement benefits but as the same was not conceded to, he filed OA-276 of 1990 for that purpose. This OA was disposed of by this Bench by order dated 30.1.1990 observing that the applicant of that OA shall be deemed to have retired compulsorily on medical ground and on which account he would be entitled to retirement benefits if permissible to him under the relevant rules. It is asserted that on 19.6.1992, application was moved by the father of the applicant praying that his son (the present applicant) be appointed to a suitable post on compassionate ground. The prayer for compassionate appointment was however, rejected by Respondent No.3 vide order dated 12.8.1993 on the ground that no appointment is permissible to the wards of ex-employee who had retired compulsorily after medical decategorisation. Thereafter, the applicant along with his father filed OA No.566 of 1993 before this Bench praying for necessary direction for the appointment of the applicant on compassionate ground. During the pendency of that OA the father of the applicant died

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on 13.7.1994. The applicant, however, pressed that application. That OA was allowed by this Bench by order dated 7.3.1995. The impugned order dated 12.8.1993 was quashed/set aside and the respondents were directed to reconsider the case of applicant no.1 for appointment on compassionate ground, as per extant rules. It is asserted that even though the applicant was entitled to be appointed on a suitable post on compassionate ground, the Respondent No.3 passed the impugned order dated 17.1.1996 (Annexure-A/30) rejecting the prayer for compassionate appointment on the ground that the compulsory retirement is treated as a penalty under D & A Rules, hence no compassionate appointment could be offered to the applicant.

2. In this OA it is contended that the impugned order passed by Respondent No.3 was totally illegal and wrong and it was in contravention of the order of this Tribunal in OA-566 of 1993. It has been asserted that according to the relevant rules, the applicant was entitled to be appointed on a suitable post on compassionate ground.

3. The respondents have filed written statement opposing this application. It has been contended that the father of the applicant was in fact removed from service but this Tribunal had converted the removal to compulsory retirement on medical ground. It is asserted that as held earlier by this Bench, the father of the applicant was medically decategorised in the year 1965 and after a lapse of 30 years, the applicant cannot claim that he should be appointed on compassionate ground.

4. I have heard the learned counsel for the parties and have perused the record. It cannot, in this case be denied that the order passed by Respondent No.3 refusing to consider the case of the applicant for appointment on compassionate ground by observing that compulsory retirement

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is treated as penalty under D & A Rules and hence no compassionate appointment would be made is clearly and obviously against the decision of this Tribunal in OA No.566 of 1993. In that case the earlier order by the authority concerned rejecting the prayer for appointment on compassionate ground was quashed and after holding that the father of the applicant was medically decategorised and was discharged from service on medical ground, it was specifically directed that the case of appointment of applicant on compassionate ground should be reconsidered. It was obviously wrong for the Respondent No.3 to insist on saying that the compulsory retirement amounted to penalty under D & A Rules. This observation was totally improper and unwarranted. The case of the applicant for compassionate appointment had to be considered as directed by this Bench.

5. The question, however, arises as to whether a direction for appointment on compassionate ground should be issued on the facts of the case. The applicant has in fact prayed for such a direction. It cannot <sup>be W</sup> /disputed that the father of the applicant was found medically unfit and was decategorised in the year 1965. He was not offered any alternative job. It is also not disputed that for the first time application was moved by the father of the applicant praying for appointment of the applicant on compassionate ground in the year 1992 i.e. after the lapse of 27 years. Can it be said that after the lapse of such a long period the Railways should be directed to appoint the applicant on compassionate ground :

6. As has been observed in the case Auditor General of India vs. G. Ananta Rajeshwara Rao (AIR 1994 SC 1521) appointments to civil posts are to be made in accordance with the rules applicable to the same. Exceptions has,

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however, been made in the case of Govt. employees who die in harness leaving their families in distress. In such case provision has been made for appointment of the widow, son or daughter of the deceased employees in case the family was in distress and due to its indigent condition it was unable to manage itself. It was further held that merely because a person was in Govt. service, his descendant cannot as of right, claim that he should also be appointed as a Govt. servant. It was clearly held in this case that there cannot be an appointment on the ground of descent as it will clearly violate Article 16 (2) of the Constitution. The Hon'ble Supreme Court in this case <sup>also</sup> made it clear that if the appointments are confined to the son/daughter or widow of the deceased Govt. employees who die in harness and who need immediate appointment on ground of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress to the members of the family, it is unexceptional.

7. Thus, according to the decision by the Hon'ble Supreme Court in the above mentioned case, the purpose of compassionate appointment was to relieve the family which needed immediate assistance due to the death of the bread winner. The same rule can be applied to the case of the employees who are decategorised on medical grounds and to whom alternative job is not offered. Thus, in the present case the need of the family, if any, would have arisen in the year 1965 or so when the father of the applicant was medically decategorised. It is rather difficult to hold that the need which might have existed in the year 1965 continued till the year 1992 when application for compassionate appointment of the applicant was for the first time made.

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8. In the case Umesh Kumar Nagpal vs. State of Haryana, 1994 Supreme Court Cases (L & S) 930 also this point was emphasised and it was observed: The whole object of granting compassionate employment is thus to enable the family to tide over 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.

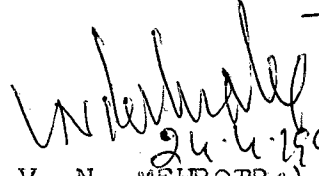
9. Having in view the law laid down by the Hon'ble Supreme Court on this question, it cannot be accepted that after the lapse of about 27 years, the Railways were bound to offer job to the applicant on compassionate ground.

10. The learned counsel for the applicant has, however, argued that in view of the decision in OA-566 of 1993, directing the consideration of the case of the applicant for compassionate appointment, this Bench should not reconsider as to whether the applicant is in fact entitled to such a compassionate appointment. I am, however, unable to agree with this argument. In OA-566 of 1993, the direction was simply to reconsider the case of the applicant for appointment on compassionate ground as per extant rules. That order was passed because the authority concerned had not considered the matter on the ground that the father of the applicant had been compulsorily retired. It was never held that the applicant was entitled to be appointed on compassionate ground even though a period of 27 years had expired. The question of economic distress of the family or the need to tide over sudden crisis was obviously not considered nor any finding was given regarding the same.

10. On the question of delay in moving application for appointment of a dependant of the deceased employee on compassionate ground, reference may be made to the decision by the Hon'ble Supreme Court in the case Union of India vs. Bhagwan Singh (1995) 31 ATC 736. In this case it was observed that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed. The dependant of the deceased had in that case moved application for appointment on compassionate ground after the lapse of about 20 years. His application was rejected by the authority concerned. He moved the Tribunal by filing an application which was allowed. The Union of India filed appeal before the Hon'ble Supreme Court which was allowed and the order by the Tribunal was set aside. This decision will clearly be applicable to the facts of the present case also.

11. Considering the above facts and circumstances, I am of the view that though the impugned order passed by the Respondent No.3 was not proper in the light of the finding in OA No.566 of 1993, still there is no substantial ground to send the matter back to the authority concerned for reconsideration.

12. In view of these observations this OA is dismissed. No order as to costs.

  
( V. N. MEHROTRA )  
VICE-CHAIRMAN