

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH

J A I P U R .

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OA NO.587/94

Date of order: 12.1.1996

Chandra Prakash and another : Applicants

Versus

Union of India and others : Respondents

Mr.R.N.Mathur, counsel for the applicants

Mr.S.Kumar, counsel for the respondent No.3

None present for the official respondents 1,2 & 4.

CORAM:

HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicants herein approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 mainly to claim the following reliefs:

- i) that the respondents may be directed to give appointment to the applicant No.1 Shri Chandra Prakash;
- ii) that the appointment of respondent No.3 Shri Shyam Sunder Sharma be cancelled;
- iii) that the respondent No.3 be directed to pay 75% amount of salary and other perks which he received on account of his appointment on compassionate grounds and alternatively the applicant has prayed that in case of appointment of respondent No.3 is not cancelled for any reason, directions may be issued that he shall maintain the family of the applicant specially widow and younger brother of the applicant No.1 who is 13 years of age and the respondent No.3 be directed to pay 75% of salary and the other perks to the applicant No.2 Smt. Nangi Devi after deducting the said amount from the salary of the respondent No.3.

2. Facts leading to this application and which are undisputed are that Shri Laddo Lal, the father of applicant No.1 Shri Chandra Prakash was in the

employment of Western Railway on the post of Gangman. While posted under FWI Sawai Madhopur, he died while in service on 1.9. 1986. At the time of death of his father, the age of applicant No.1 was around 10 years. Looking to the financial status of the family, the applicant No.2 Smt. Nangi Devi approached the respondent railways for appointment of his children but since his children were minor, she was told to approach as and when her son became major on attaining the age of 18 years. She made an application to respondent No.2 but with no consequence. She also approached the Labour Enforcement Officer (Central) Sawai Madhopur vide application dated 2.3.1994. Proceedings are still pending before the Labour Enforcement Officer. However, before the Labour Enforcement Officer, official respondents informed that Shri Shyam Sunder, respondent No.3 has been given appointment on compassionate grounds as a dependant of late Shri Ladoo Lal. Shri Shyam Sunder, respondent No.3 is the son of elder brother of late Shri Ladoo Lal, father of the applicant No.1. It is the grievance of the applicants that even after appointment of Shri Shyam Sunder on compassionate grounds, Shri Shyam Sunder has never maintained the family of the deceased Shri Ladoo Lal. It is further alleged by the applicants that she being illiterate she did put her thumb impression on certain papers as asked for by respondent No.3. On the basis of the papers submitted at that time, respondent No.3 was given appointment by the official respondents. The applicant also approached the Chief Personal Officer, Western Railway vide his application dated 6.6.1994

(Annexure A-2) and also made a representation to the Minister of Railways and Senior Dy. General Manager and Chief Vigilance Officer, Western Railway. Since nothing was heard, the applicant () feeling aggrieved has approached this Tribunal to claim the aforesaid reliefs.

3. The respondents have contested the application by filing a written reply. Separate replies have been filed on behalf of official respondents as also by respondent No.3. The main stand of the official respondents has been that the application is barred by the limitation as in consequence of the request of the deceased widow Smt. Mangi Devi, respondent No.3 was appointed by the official respondents in pursuance of the application dated 20.2.1987 (Annexure R-1). It is also averred that since more than 7 years period has elapsed by now, the application is highly belated and deserves rejection on this ground alone. It is also averred on merits that since the respondent railways have already given appointment to one of the dependant i.e. respondent No.3, no relief can be granted to the applicant No.1 or to applicant No.2; more so in view of the declaration given by respondent No.3 regarding the maintenance of the family of the applicants.

4. Respondent No.3 has contested the application on a number of grounds. The first is that the application is not maintainable as in it a number of reliefs have been claimed. It has also been averred that appointment

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of respondent No.3 has been after completion of all the formalities and with prior consent of applicant No.2 Smt. Nangi Devi. It has been denied that respondent No.3 is not maintaining the applicants. The plea of limitation has also been raised by respondent No.3. It has also been urged on behalf of this respondent No.3 that if he is thrown out of job after 9 years, his future will be in dark. The respondents have therefore insisted that this application should be rejected.

5. I have heard the learned counsel for the applicant Shri R.N.Mathur and the learned counsel for respondent No.3 Shri S.Kumar as none was present on behalf of official respondents.

6. The primary question to be determined in this OA is whether the appointment of respondent No.3 has been illegal or irregular and in violation of the Rules/Circulars issued by the respondent railways. Book entitled, An extract taken from the Railway Establishment Manual by Shri M.L.Jand (Second Edition) under the caption Other Modes of Recruitment filed on behalf of the applicant as at Annexure A-3 lays down the provision of the grounds on which the compassionate appointment can be given to the dependants of railway employees. The relevant portion of sub-clause (2) of the above provision reads as under:-

"(2) Appointment on Compassionate Grounds-In order to ensure welfare of the Railway employees and their families, special provision to offer the dependants of railway employees appointments without going through any selection, have been made. 'Dependant' for this purpose means the same as under Pass Rules for a(i)below

and in other cases only the son/daughter/wife. The appointments are in addition to whatever other relief like exgratia payment; compensation under W.C. Act etc. may have been paid. Important conditions governing these appointments have been issued by Rly. Board vide (E(WC)11/78/RCI/1 Dt. 7.4.83 as under:-

I. Circumstances in which compassionate appointments may be made

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 lose 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).

(ii) When Railway employees die in harness while in service before retirement."

A perusal of ~~above~~ provisions exhibit ^① that for the purpose ^② of appointment on compassionate grounds to the dependant of the deceased railway employee, a dependant means the same as under Pass Rules in vogue and in other cases only the son, daughter or wife. Be that as it may, it is abundantly clear from a perusal of the application dated 20.2.1987

(Annexure E-1) made by the applicant No.2 Smt. Nangi Devi to the Railway Divisional Manager, Kota that she had voluntarily prayed the respondent railways to give an appointment to Shri Shyam Sunder Sharma S/o Shri Radha Kishan, respondent No.3 as she herself showed more so also her inability to join service, as her two sons were aged 8 years and 5 years respectively at that time.

It is in pursuance of this request made by applicant No.2 that in consequence of the application dated

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24.4.1987 (Annexure R-2) made by respondent No.3 to the Divisional Railway Manager, Kota, the respondent railways has given appointment to respondent No.3 on compassionate grounds after the death of the deceased Shri Ladoo Lal deceased husband of applicant No.2. From a perusal of Annexure R-3 it is also made out that not only the widow of Shri Ladoo i.e. Smt. Nangi Devi but also respondent No.3 Shri Shyam Sunder gave certificate and undertaking as required by the respondent railways and thereafter only Shri Shyam Sunder, respondent No.3 was given appointment on compassionate ground in the year 1987. The claim now made by applicant No.2 for appointment of applicant No.1 Shri Chandra Prakash on compassionate ground after Shri Chandra Prakash having attained the age of 18 years at the time of filing of this OA is not maintainable. The reasons are two fold. Firstly the applicant No.2 herself has voluntarily requested the respondent railways to give appointment to respondent No.3 deceased husband's brother's son. Respondent No.2 has been serving the respondent railways for a period of more than 8 years. The respondent railways have given compassionate appointment to respondent No.3 in pursuance of the rules, instructions and guidelines as applicable in the year 1987. In case applicant No.1 is allowed to be given appointment on compassionate ground by the respondent Railways, it would amount to give two appointments on compassionate ground which is not permissible under the rules/instructions and guidelines in vogue in the respondent railways. Once the applicant

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No.2 chose to volunteer for giving appointment on compassionate grounds to her nephew, respondent No.3 Shri Shyam Sunder, she now cannot turn back and ask appointment for applicant No.1 Shri Chandra Prakash who has now attained the age of 18 years. In view of this, it cannot be said that there has been any illegality or irregularity in the appointment of respondent No.3 by the respondent railways in the year 1987. In any view of the matter, the matter cannot be re-opened by applicant No.2 now after respondent No.3 has put in a service of more than 28 years. Had there been any complaint about not supporting her family by respondent No.3, she could have approached the respondent railways to get the appointment of respondent No.3 cancelled as is clear from the undertaking of service given by respondent No.3 Shri Shyam Sunder as also by her own undertaking given to the respondents vide Annexure R-3. She having failed and appropriate to take necessary steps at the right moment, she cannot be now allowed to get the cancellation of the appointment of respondent No.3 merely on the ground that she being illiterate had signed blank papers at the time when respondent No.3 was given appointment by the respondent railways. In any view of the matter, I do not find any force in the contentions raised on behalf of the applicant for claiming cancellation of appointment of respondent No.3 Shri Shyam Sunder which is a highly belated action; more so when valuable civil rights have vested in favour of respondent No.3 by virtue of his appointment on compassionate grounds in the year 1987. The issue framed above, therefore, is answered in the negative.

7. In respect of other reliefs claimed by the applicants in the OA, it is suffice to mention that as per the pleadings of the parties separate proceedings are pending before the Chief Vigilance Officer as also the Labour Enforcement Officer (Central) Sawai Madhopur where not only the question of the maintenance of the applicants' family by respondent No.3 is pending consideration but also the claim for payment of supporting amount to the applicants' family is under examination. Since these matters are already pending and are in active consideration of the Chief Vigilance Officer of the respondent railways as also before Labour Enforcement Officer (Central) Sawai Madhopur, it would not be appropriate to express any opinion in respect of reliefs claimed by the applicants in para 8(ii) and 8(iii) of the OA. It can, however, be observed that in pursuance of the certificate given by respondent No.3 Shri. Shyam Sunder and an undertaking and certificate given by Smt. Nangi Devi, applicant No.2 ~~at~~ ² at Annexure R-3; it would be open for the respondent railways to consider the merits and de-merits of the claim made by the applicants ~~for~~ their maintenance etc. as also to pass any appropriate order regarding the liability and consequences arising from the breach of the undertaking given by respondent No.3 at the time of his compassionate appointment by the respondent railways.

8. With above observations, the OA filed by the applicants is hereby rejected with no order as to costs.


(RATTAN PRAKASH)
MEMBER (J)