

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.312/97

Date of order:13.12.2000

Jagdish Prasad Upadhyaya, S/o Sh.Rameshwar Prasad Upadhyaya, Retired Driver Gr.C, W.Rly, Kota, R/o Murti Mohalla, Gangapurcity, Sawaimadhapur.

...Applicant.

Vs.

- 1. Union of India through General Manager, Western Rly, Churchgate, Bombay.
- 2. The Divisional Railway Manager, W.Rly, Kota Division, Kota.

...Respondents.

Mr.S.C.Sethi - Counsel for the applicant.

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the orde Annx.A1 passed by the General Manager and to direct the respondents to consider the candidature of Sh.Vijay Narain Upadhyaya for appointment on compassionate grounds.


2. In brief facts of the case as stated by the applicant are that the applicant was working as Driver Gr.C and was posted at Gangapurcity. It is stated that the applicant was medically decategorised and prematurely retired vide order dated 12.1.95 but no alternate appointment was offered to the applicant. It is stated that at the time of premature retirement, the applicant has lot of liability to meet but the General Manager rejected arbitrarily the application of the applicant for appointment of his son on compassionate ground

which was unjust and malafide. It is stated that the candidature of the applicant's son should have been considered for appointment on compassionate ground, therefore the applicant filed the O.A for the relief as mentioned above.

2. Reply was filed. In the reply it is stated that against order Annx.A1 dated 18.7.96, the applicant did not file any representation to the competent authority, therefore this O.A is not maintainable in view of the provisions given under Sec.20 of the ATs Act. It is also stated that the applicant was found unfit for medical category A1 but was found for C2 category. No alternate job could be made available to the applicant, therefore, he was retired on medical ground vide order dated 12.1.95. It is also stated that the applicant was paid Rs.55251/- as Gratuity and other retiral benefits and the General Manager has rightly turned down the request of the applicant for appointment of his son on compassionate ground. It is further stated that the applicant is getting Rs.1434/- plus allowances per month as invalid pension. The applicant was also paid commutation of pension amount Rs.61835/-, therefore, in view of the reply, it is stated that no indigent circumstances were found in the family of the applicant and the applicant is not entitled to any relief sought for.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant vehemently argued that the General Manager did not appreciate the indigent circumstances of the applicant as the applicant is maintaining 7 members in his family after he was retired prematurely. Therefore, it is submitted that the candidature of the son of the applicant be considered for compassionate appointment on any suitable post. The learned counsel for the respondents has opposed the arguments and stated that the General Manager has



considered in details the financial conditions of the applicant and his family members thereafter rightly reached to the conclusion that the applicant is not entitled to appointment on compassionate ground.

6. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

7. In Umesh Kumar nagpal Vs. State of Haryana, (1994) 4 SCC 138, a Bench of two Judges has pointed out that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis, the object is not to give a member of such family a post much less a post held by the deceased.

8. In Jagdish prasad Vs. State of Bihar (1996) 1 SCC 301, Hon'ble Supreme Court observed that the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family.

9. The Hon'ble Supreme Court in the recent judgment reported in (1998) 5 SCC 192, Director of Education and Anr. Vs. UOI & Ors, held that the object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in pecury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment.

10. On the basis of settled legal position, the respondents



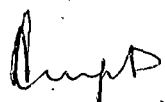
department is competent to examine each and every case separately on the basis of facts and circumstances of each case and if the indigent circumstances found in the family of the person concerned then only appointment on compassionate ground can be given to such family.

11. In the instant case, the applicant was medically decategorised at the age of 57. As per letter dated 9.4.90 issued by the Head Quarters of Western Railway, the case of such medically decategorised staff will be sent to the General Manager, who has crossed the age of 55 years or have less than 3 years of service left. In this case, admittedly, the applicant was medically decategorised/retired prematurely at the age of 57 years. It is also an undisputed fact that the applicant was paid gratuity, commutation of pension, etc and invalid pension @ Rs.1434/- plus allowances is paid monthly. It is stated by the learned counsel for the applicant that the applicant is maintaining 7 members in his family and a certificate to this effect has also been produced. It appears that both the sons of the applicant are <sup>Majors</sup> ~~Major~~ the daughter has already been married, the younger brother who does not come within the family stated to be more than 47 years.

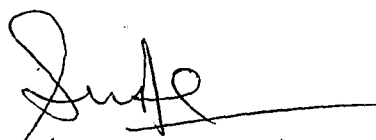
12. In view of the facts and circumstances of this case, we do not find any infirmity in the order passed by the General Manager, Western Railway, Bombay, Annex. A1 and there is no reason to interfere in the said order.

13. We, therefore, do not find any merit in this O.A and the same is dismissed as having no merits.

14. No order as to costs.

  
(A.P. Nagrath)

Member (A).

  
(S.K. Agarwal)

Member (J).