

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.24/2006.

Jaipur, this the 25th day of January, 2006.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.

1. Kailash Chandra Sharma
S/o Shri Durga Prasad Sharma,
Aged about 67 years,
R/o Ram Nagar Colony,
Bandikui, District Dausa.
2. Rahul Sharma
S/o Shri Kailash Chandra Sharma,
Aged about 18 years,
R/o Ram Nagar Colony,
Bandikui, District Dausa.

... Applicants.

By Advocate : Shri S. K. Jain.

Vs.

1. General manager,
Railway Coach Factory,
Kapurthala,
Punjab.

... Respondent.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

Applicant No.1 is the father and Applicant No.2 is brother of one Late Shri Praveen Sharma, who while working as Section Engineer (Electric) in the Railway Coach Factory, Kapurthala, Punjab, died in between the night of 2.7.04 and 3.7.04. After the death of deceased employee, Praveen Sharma, father of the applicant submitted an application for compassionate appointment of his son, Applicant No.2, who at that time was 17 and $\frac{1}{2}$

year of age and thus minor. A copy of the said application has been placed on record as Annexure A/3. This was followed by another application dated 29.6.2005 (Annexure A/4). However, vide order dated 20.7.2005, the application submitted by applicant No.1 for appointment on compassionate grounds was rejected on the ground that Applicant No.2 cannot be considered for appointment on compassionate grounds as he was not dependent upon the deceased late Shri Praveen Sharma who expired on 3.7.04 as per the extant rule. It is this order which is under challenger in this OA. The applicants have prayed for quashing the aforesaid order dated 20.7.2005 (Annexure A/1) with further direction to the respondents to give appointment to Applicant No.2 on suitable post on compassionate grounds w.e.f. the date of application i.e. 9.8.2004 (Annexure A/3).

2. I have heard the Learned Counsel for the applicants at admission stage.

3. Learned Counsel for the applicants submitted that in view of the Railway Board instruction dated 3.2.1981 and decision dated 12.2.1990 (Annexure A/5), the near relative is also entitle for appointment on compassionate ground. As such, the direction of the respondents in passing the impugned order Annexure A/1 is illegal. Learned Counsel for the applicants has also drawn my attention to the decision rendered by the CAT, Allahabad

Bench in the case of Hare Krishna Gupta and anr. Vs. Union of India & Ors., 2005 (1) ATJ 475, whereby the request for compassionate appointment made by the brother of the deceased was rejected by the department and the said order was quashed by the CAT, Allahabad Bench on the ground that rejection of the case of the applicant therein on the report of dependency made by the Welfare Inspector is arbitrary and the respondents were directed to consider the case of the applicant for appointment on compassionate grounds.

4. I have given due consideration to the submission made by the Learned Counsel for the applicants. I am of the view that the applicants are not entitled to any relief for the reasons stated herein after.

5. The sole question which requires consideration in this case is whether near relatives of deceased employee are entitled for compassionate appointment? At the outset, it may be stated that in terms of the Policy decision taken by the Railway Board vide their Letter No.E(NG)III/78/RC-1/1 dated 3.2.1981 and Letter No.E(NG)II/88/RC-1/1/ Policy dated 12.2.1990 (Annexure A/5), the near relatives of the deceased were also made eligible for appointment on compassionate grounds on the terms and conditions mentioned in the said letter. The question whether the compassionate appointments of near relations tantamounts to appointment on the basis of

descent and is, therefore, violative of Article 16(2) of the Constitution, was considered by the Apex Court in its judgment dated 8.4.1993 in the case of Auditor General of India and others vs. Shri G. Anantha Rajeswara Raj, and the Hon'ble Supreme Court has held as under :-

"If the appointments are confined to the son/daughter or widow of the deceased Government employee who died in the harness and who needs immediate appointment on grounds 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 breadwinner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases, it cannot be a rule to take advantage of the memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para.1 of the memorandum is upheld and that appointment on compassionate grounds to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Government employee is valid. It is not on the ground descent simpliciter, but exceptional circumstances for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the memorandum limiting to relieve the members of the deceased employee who died in harness, from economic distress. In other respects Article 16(2) clearly attracted."

6. It appears that implication of the observations/direction of the Supreme Court on the then existing scheme of compassionate appointment was examined by the Railway authorities and ultimately the provision of appointment of near relative has been deleted vide Board's No.E(NG)II-88/RC1/1 of 13.12.95. Bahri's 137/95. In other words, no near relative will henceforth be eligible for appointment on compassionate grounds and it

is only those persons who are proposed for appointment is shown as dependent on the ex-employee as per Pass Rules who had been held eligible for appointment on compassionate grounds. Thus, the action of the respondents, whereby the claim of Applicant No.2 for compassionate appointment was rejected, cannot be faulted.

7. Further the applicants also cannot draw any assistance from the judgment rendered by the CAT, Allahabad Bench in the case of Hari Krishna Gupta and anr. (supra) wherein the brother of Applicant No.2 therein has died in harness on 30.10.1988 when the provisions regarding granting compassionate appointment to near relatives of the deceased was in vogue i.e. Annexure A/5. It was under these circumstances the judgment was rendered by the CAT, Allahabad Bench. On the other hand, the brother of Applicant No.2 in the present case died in 2004 much after the date when the decision was taken by the Railway authorities thereby deleting the provisions for appointment of near relatives on compassionate ground i.e. 13.12.1995. As such, the decision of CAT, Allahabad Bench in the case of Hari Krishan Gupta is not attracted in the facts and circumstances of this case. Moreover the decision rendered by the Allahabad Bench cannot be said to be a good law in view of decision rendered by the Apex Court in the case of G. Anantha Rajeswara Raj (supra) and has

been rendered in ignorance of law laid down by the Apex Court.

8. Thus, for the foregoing reasons, the present OA is dismissed at admission stage with no order as to costs.


(M. L. CHAHAN)

JUDICIAL MEMBER

P.C./