

Central Administrative Tribunal  
Jaipur Bench, JAIPUR

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ORDERS OF THE BENCH

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17th September, 2009

OA. 351/2008


MA 355/2008

Present: None for applicant

Shri Hawa Singh, counsel for respondents

In this case none has put in appearance on behalf of the applicant. Registry is directed to send a notice to the applicant either to appear in person or to make alternative arrangement on the next date of hearing, failing which the matter will be decided ex-parte.

List the case on 27.10.2009.


  
M.L. Chauhan)  
Member (Judicial)

mk

27-10-2009

Mr. H.K. Saini - Counsel for applicant  
Mr. Hawa Singh - Counsel for respondents

Heard the learned counsel for the parties. For the reasons dictated separately, the OA is dismissed.

  
(M.L. CHAUHAN)  
Judl. Member

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Issue Notice  
to applicant  
Vide, 1176  
dt 23/9/09  
E

Notice Return  
back to applicant  
"address not  
complete"  
B

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 27<sup>th</sup> day of October, 2009

**ORIGINAL APPLICATION No.351/2008**  
With MA No.355/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

1. Afrozi Begum w/o Shri Abdul Lafit r/o H.No.310, Madar Tekri, Kundan Nagar, Ajmer.
2. Mohammed Hanif s/o Shri Abdul Lafif r/o H.No.310, Madar Tekri, Kundan Nagar, Ajmer.

.. Applicants

(By Advocate: Shri H.K.Saini)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur
2. The Divisional Railway Manager, North-Western Railway, Ajmer.

... Respondent

(By Advocate: Shri Hawa Singh)

**ORDER (ORAL)**

Applicant No.1 is mother whereas applicant No.2 is brother of late Shri Mohammed Rafiq who expired on 24.8.1988 after rendering one year's regular service. In this case, the applicants have challenged the impugned order dated 13.1.1995 (Ann.A/1)

whereby applicant No.1 was informed that applicant No.2 cannot be given appointment on compassionate grounds. It is this order which is under challenge before this Tribunal. Admittedly, validity of the impugned order dated 13.1.1995 has been challenged by the applicants after a lapse of about 13 years.

3. The applicants have also moved M.A.No.355/2008 for condonation of delay in which the applicants have stated that applicants made certain representations and legal notice on which the respondents sent a letter dated 21.1.2001 thereby requiring certain documents from the applicants. Ultimately, a representation was made on 20.12.2006 and thereafter OA No.303/2007 was filed which was withdrawn due to technical mistake. It is further submitted that the delay was occurred due to lack of knowledge about the period of limitation.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that after death of Shri Mohd. Rafiq, his wife Smt. Shakila Bano and mother Smt. Afrozi Begum claimed for payment of death cum retirement gratuity, group insurance and family pension. It is further stated that before settlement of payment of Shri Mohammed Rafiq, his wife Smt. Shakila Bano had got remarried on 2.4.1993 after issuing succession certificate by the competent court. It is further stated that as per extent rules the dependant and family members of the deceased employee can request for compassionate appointment, but in this case applicants were not dependants of the deceased employee Shri Mohammed Rafiq

because husband of applicant No.1 was alive and was in Railway service. It is further stated that the deceased employee has left his wife only and no children were left behind. His wife never made any request to the authorities for appointment on compassionate ground till her remarriage i.e. on 2.4.1993. The applicant No.1 had made request on 29.10.1993 for compassionate appointment to her son Shri Mohammed Hanif as dependant of the deceased employee. The said request was rejected by the respondents vide letter dated 13.1.1995 (Ann.A/1). The respondents have also placed on record Railway Board letter dated 12.2.1990 (Ann.R/1) wherein it has been laid down that in case where an employee dies in harness leaving behind only the widow i.e. without any children, appointment of a near relative would not be admissible. Thus, according to the respondents, the applicants are not entitled to any relief.

5. I have heard the learned counsel for the parties and gone through the material placed on record. I am of the view that the applicants are not entitled to any relief for more than one reason. Admittedly, the deceased Shri Mohd. Rafiq died on 24.8.1988 after rendering one year's regular service. The widow had preferential right to apply for compassionate appointment. The widow of the deceased did not avail the opportunity of compassionate appointment. It is only after re-marriage of the widow of the deceased an application was made by applicant No.1 for employment of her son, applicant No.2 on 29.10.1993. By that time, the respondents have revised their earlier policy dated 25.8.1980

whereby appointment on compassionate grounds of near relatives of railway employees dying in harness could be considered subject to conditions stipulated therein and it was specifically provided in the revised policy that where an employee dies in harness leaving behind only the widow i.e. without any children, appointment of a near relative would not be admissible. Thus, case of the applicants was to be considered in the light of the instructions prevailing at the time when the application for compassionate appointment was made as the applicant has not chosen to apply for compassionate appointment in the year 1988 when right has accrued in their favour. That apart, the applicants are claiming compassionate appointment from the year 1993 and not from the date when the deceased employee died in the year 1988, as such, the application has to be considered in the light of the law prevalent at the relevant time.

6. Be that as it may, even if for arguments sake, it is presumed that the policy decision of the Railway Board dated 12.2.1990 (Ann.R/1) is not applicable in the case of the applicants, still I am of the view that the applicants are not entitled to any relief. At this stage, I wish to refer to the judgment of the Hon'ble Apex Court in the case of Auditor General of India and Ors. vs. Shri G.Anantha Rajeshwara Raj decided on 8.4.1993 wherein similar question was under consideration before the Apex Court. In the aforesaid case, the Apex Court was considering claim of compassionate appointment under the Central Government and the question in issue was whether compassionate appoint to a near relation

tantamounts to appointment on the basis of descent and therefore violative of Article 16(2) of the Constitution. The Apex Court has held as under:-

"If the appointments are confined to the son/daughter or widow of the deceased Government employee who dies 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 member of the deceased employee who dies in harness, from economic distress. In other respects Article 16(2) clearly attracted.  
..."

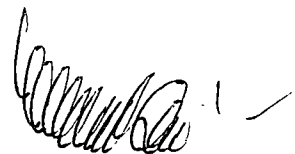
Thus, from the portion as quoted above, it is clear that the Apex Court has confined compassionate appointment only to the son/daughter or widow to the deceased Government employee who died in harness that too in deserving cases and the Apex Court has deprecated the practice of giving compassionate appointment to near relation and the Government was directed to modify its memorandum. Admittedly, applicant No.2 is brother of the deceased employee. At the relevant time, father of the deceased employee was also a railway servant and was maintaining the family. Thus, in the face of these facts, it cannot be

said that the applicant No.2 was entitled for compassionate appointment and the family was in immediate need of assistance in the event of there being no other earning member in the family. Thus, the applicants are not entitled to any relief.

7. That apart, facts remain that family has survived for a period of about 20 years. This ground itself is sufficient to reject the claim of the applicants for compassionate appointment even if it is held that applicant No.2 is entitled for compassionate appointment. The Apex Court in the case of State of Haryana vs. Rani Devi, and Anr. 1996 (4) SLR 505 has held that appointment on compassionate grounds cannot be made after a lapse of reasonable period which must be specified in the rules because the right to such employment is not a vested right which can be exercised at any time in future.

8. Thus for the foregoing reasons, I am of the view that the present OA is bereft of merit. Accordingly, the same is dismissed with no order as to costs.

9. In view of the order passed in the OA, no order is required to be passed in MA No.355/2008, which stands disposed of accordingly.



(M.L.CHAUHAN)

Judl. Member

R/