

Central Administrative Tribunal
Jaipur Bench, JAIPUR

ORDERS OF THE BENCH

15 February, 2011

OA.33/2011

Present: Shri Vijay Saini, counsel for applicant

Heard.

For the reasons dictated separately, the OA is disposed of.


(M.L.Chauhan)
Member (Judicial)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 15th day of February, 2011

ORIGINAL APPLICATION NO. 33/2011

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

Gaffoor Khan son of Shri Bande Khan @ Alaband Khan, aged about 34 years, resident of Village Sali, Tehsil Dudu, District Jaipur.

.....Applicant
(By Advocate: Mr. Vijay Saini)

VERSUS

1. Union of India through General Manager, North Western Railway, Headquarter Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Jaipur.

.....Respondents
(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA against the order dated 15.11.2010 (Annexure A/1) whereby the applicant was informed that there is no provision regarding giving compassionate appointment to near relative of the deceased.

2. Briefly stated, facts of the case are the applicant is the brother of deceased Shri Bodu Khan, who while working as Gangman under PWI, Kishangarh expired on 17.07.1997. The case projected by the applicant is that the deceased left behind no person except him, who is his real brother. It is on the basis of these facts, the applicant claims that he should be given compassionate appointment, which request

Vijay Saini

was rejected vide impugned order on the ground that near relative of the deceased are not entitled for compassionate appointment.

3. I have heard the learned counsel for the applicant at admission stage. It may be stated that the scheme for compassionate appointment as initially formulated was applicable to widow/ son/ daughter/adopted son/ adopted daughter/ near relative of the Government servant who died in harness or died by suicide leaving his family in immediate need of assistance when there is no other earning member in the family. The scheme so issued by the Department, came into consideration before the Apex Court in the case of **Auditor General of India & Others vs. Shri G. Anantha Rajeswara Raj.** The question which came before the Apex Court was that whether compassionate appointment to near relatives tantamount to appointment on the basis of descent and is, 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 died in 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 advance of the memorandum to appoint the person 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 ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demist 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 died in harness, from economic

distress. In other respects Article 16(2) clearly attracted."

4. Pursuant to the decision rendered by the Apex Court, Government of India, Department of Personnel & Training issued OM dated 09.12.1993 whereby it was decided to delete the provisions in the existing scheme providing appointment on compassionate grounds to near relatives. It was further stipulated in the said OA that no near relative will henceforth be eligible for compassionate appointment. It is only the widow or son or daughter or adopted son or adopted daughter of a deceased government servant who can be considered for appointment on compassionate grounds.

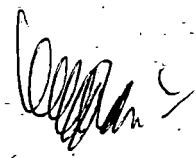
5. Thus in view of this specific change in the policy decision for grant of appointment on compassionate grounds in the light of the decision rendered by the Apex Court, I of the firm view that the applicant is not entitled for compassionate appointment being not covered under the Scheme. Thus, I see no infirmity in the action of the respondents whereby the claim of the applicant was rejected vide impugned order dated 15.11.2010 (Annexure A/1.).

6. That part, it may be noticed that brother of the applicant died on 17.07.1997 and the present application has been filed after a lapse of about 14 years. This is also one of the circumstances which disqualified the applicant for claiming appointment on compassionate ground as the applicant has survived for such a long period and now it cannot be said that the financial condition of the deceased family is in penurious condition, requiring immediate need of assistance, even if it

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is held that near relative of the deceased are also entitled for appointment on compassionate grounds.

7. Thus viewing the matter from any angle, I am of the view that the applicant has not made out any case for ~~our~~ interference. Accordingly, the OA is dismissed at admission stage with no order as to costs.


(M.L. CHAUHAN)
MEMBER (J)

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