

(Reserved on 13.08.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This the 21st day of *August*, 2018.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/01281/2013

Amin Khan, S/o Munna Khan, R/o Bavan Payaga Panne Ka Bada,
New Sarak, Laskar Gwalior.

.....Applicant.

VER S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Chief Workshop Manager, Rail Spring Karkhana, Gwalior.
2. Senior Personnel Officer, Rail Spring Karkhana, Gwalior.

.....Respondents

Advocate for the applicant : Shri Ashish Srivastava

Advocate for the Respondents: Ms. Shruti Malviya

ORDER

By means of the present original application the applicant has
prayed for following main reliefs: -

- I.to direct the respondents to appoint the applicant in
Group 'C' category by partially modifying the order dated
03.04.2012.
- II.to direct the respondents to not to force the
applicant to work against the post of group 'D' employee

rather his services may be utilized in group 'C' category and he may be paid pay and allowance therefore.”.

2. The facts of the case, as per the O.A. in brief are that the after death of Late Munna Khan, who was a railway servant, the claim of the applicant was considered for appointment on compassionate ground and vide order dated 30.01.2012, he was directed to appear in written test on 28.02.2012 and he appeared in the said test. Thereafter, the applicant was interviewed on 06.05.2012 by the Screening Committee. On 07.03.2012 (Annexure A-4), the result of the examination was published in which the applicant was declared unsuccessful for appointment in Group 'C' category. However, he was declared successful for appointment in Group 'D' category. Thereafter, vide 03.04.2012 (Annexure A-6) the applicant was appointed as peon in PB 5200-20200+GP Rs. 1800/-.

3. It is alleged in the O.A. that one Shri Jagdish Meena, the Welfare Inspector visited at the residence of the applicant and demanded Rs. 1 Lakh to ensure appointment of the applicant in Group 'C'. Then the mother of the applicant made a complaint on 17.05.2012 (Annexure A-7) before respondent No. 2 as well as other senior officers. It is also alleged that on the complaint made by the mother of the applicant, a detailed inquiry was conducted by the respondent Nos. 1 and 2 wherein it was found that the

applicant had passed in the examination, but he was deliberately declared failed for want of gratification as demanded.

4. It is further stated in the O.A. that since the applicant was fulfilling the eligibility for appointment in Group 'C' category, the respondents ought to have offer appointment without any written examination or otherwise. Hence, the applicant has filed the instant OA on the ground that the action of the respondents is illegal because the decision of the respondents to conduct written examination as well as interview for appointment on compassionate grounds is against the Rules. It is further contended that since the applicant was fulfilling the eligibility criteria for appointment in Group 'C', the respondents ought to have considered the claim of the applicant for appointment in Group 'C' category.

5. The respondents have filed Counter Reply stating therein that in terms of letter dated 11.04.2008 (Annexure CR-1), it is necessary for a candidate to appear and pass both written as well as viva voce test for Group 'C' post on compassionate grounds. The applicant appeared in the written examination as well as in viva voce voluntarily. Since the applicant could not pass the viva voce, he was offered for Group 'D' post as per rules and he has accepted the same willingly in writing (Annexure CR-2).

6. The applicant has filed Rejoinder Reply reiterating the averments in the OA. It is stated that the respondents have illegally compelled the applicant to appear in the written examination against the rule and that the respondents have forcibly and illegally undertaken the consent of the applicant for accepting appointment in Group 'D' category, which is illegal.

7. Heard Shri A. Srivastava, learned counsel for the applicant and Ms. Shruti Malviya, counsel for respondents. Learned counsel for the applicant submitted that the applicant was entitled for appointment in Group 'C' as he had passed the test, but as he refused to pay the bribe, he was declared failed. He further argued that the respondents should not have conducted any written examination and he should have been appointed based on his educational qualifications.

8. Ms. Shruti Malviya, learned counsel for the respondents argued that the applicant had submitted a letter, copy of which is at Annexure CR-2 to the Counter Reply. She also cited the following judgments in support of her argument that the applicant had no right to claim for a specific post under compassionate appointment and copy of these judgments were filed by her: -

- i. Union Bank of India and others Vs. M.T. Latheesh – (2006) 7 SCC 350.
- ii. State of Haryana and Another Vs. Ankur Gupta – (2003) 7 SCC 704.
- iii. Smt. Ishraj Mishra and another Vs. Union of India and others – [2018(1) ESC 403(All)(DB)].

9. Regarding the allegation that the Welfare Inspector had approached the applicant's family for bribe of Rs. 1 Lakh to facilitate his appointment in Group 'C' and that since he refused to bribe, he was declared as failed. Unfortunately, no concrete evidence has been furnished by the applicant with the pleadings to substantiate the allegation. Even the Welfare Inspector who had asked for bribe was not included as a party in the O.A.

10. Learned counsel for the applicant argued that holding a written and viva voce test for compassionate appointment is illegal and the applicant should have been considered for Group 'C' post on the basis of his educational qualification. This argument will not have any force, particularly after the applicant had appeared in the written and viva voce test as per instructions of the respondents. There is nothing on record to show that the applicant had protested or challenged the decision to hold the test for deciding compassionate appointment of the applicant. After appearing in the test without any protest, the issue of legality of holding of such a test which he failed to pass, cannot be raised now. Hon'ble

supreme Court in the case of Chandra Prakash Tiwari and others Vs. Shakuntala Shukla and others reported in (2002) 6 SCC 127 has observed as under: -

“.....in the event a candidate appears at the interview and participates therein, only because the result of the interview is not “palatable” to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.”

11. In the case of Mahmood Alam Tariq and others Vs. State of Rajasthan and Others reported in 1988 (2) SLR 595, the Hon’ble Apex Court has held as under: -

“It is important to keep in mind that in this case, the result of the viva voce examination are not assailed on grounds of mala fides or bias etc. The challenge to the results of the viva voce is purely as a consequence and incident of the challenge to the vires of the rule. It is also necessary to reiterate that a mere possibility of abuse of a provision, does not, by itself, justify its invalidation.”

12. The Hon’ble Apex Court in the case of Trivedi Himanshu Ghanshyam Bhai Vs. Ahmadabad Municipal Corporation reported in 2007 (8) SCC 644 has observed as under: -

“....accordingly, we are of the view that the Hon’ble Court was neither justified in interfering with the appointment of the appellant by holding that he did not possess the requisite administrative experience of ten years while working as an x-ray technician nor was it open to the High Court to entertain the writ petition challenging the appointment of the appellant and other selected candidates at the instance of the unsuccessful candidates.”

13. In the case of M.T. Latheesh (Supra), the dispute was refusal of Union Bank of India to offer compassionate appointment to M.T. Latheesh, based on the approved scheme of the Bank. In the said case, it was held by the Hon'ble Apex Court as under: -

“37. It is settled law that the specifically constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank has considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme.”

14. In the case of Ankur Gupta (Supra), Hon'ble Supreme Court set aside the order of Hon'ble High Court to allow compassionate appointment, taking into consideration the fact that matter of the applicant was already in government service.

15. In the case of Smt. Ishraj Mishra (Supra), Hon'ble Allahabad High Court has reiterated the legal principle that the

compassionate appointment can be considered on the ground of penurious condition of the deceased's family.

16. From the case laws and factual matrix of this case, it is clear that there is no justification to interfere with the decision of the respondents in this case. The O.A. is dismissed accordingly. No costs.

(GOKUL CHANDRA PATI)
MEMBER- A.

Anand...