

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.2567 OF 2013

New Delhi, this the 23rd day of December, 2015

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Anshu Kumar,
Aged about 22 years,
S/o Smt. Poonam Rani,
R/o H.No.1067, Gali No.9, Ashok Nagar,
Shahdara,
Delhi 110093 Applicant

(By Advocate: Mr.H.P.Chakravorty for Mr.P.S.Khare)
Vs.

Union of India & others through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi
Respondents

(By Advocate: Mr. Shailendra Tiwari)

ORDER

The brief facts of the case of the applicant are that his mother passed away on 31.1.1993, while she was serving as a Constable in the Railway Protection Force, Northern Railway. At the time of death of his mother, he was aged 1 year and 8 months, and his sister was aged only 6 months. The applicant's father, being accused of murdering his mother, was arrested by the police, and he remained in jail for about 14 months.

Thereafter, his father having remarried another woman, the applicant and his sister remained with their near relatives, and subsequently, they stayed in Bapa Ahsram Residential Primary School. The family pension was released in his favour. After he attained majority, the applicant, vide his application dated 3.5.2010, requested the respondent-Railway to provide him employment assistance on compassionate ground. There being no response to his application dated 3.5.2010, the applicant again submitted a representation dated 22.10.2012 requesting the respondent-Railway to consider his case and grant him employment in the Railway on compassionate ground. The Senior Divisional Security Commissioner, Northern Railway, New Delhi, vide letter dated 29.1.2013 (Annexure A/1), intimated the applicant that his request for compassionate appointment was rejected, as it was found from the ration card that after the death of their mother, the applicant and his sister remained with their father till 2006, and the father of the applicant having remarried, compassionate appointment cannot be granted to him under the rules. Being aggrieved thereby, the applicant made an appeal dated 25.2.2013 (Annexure A/8) to the General Manager, Northern Railway, and thereafter filed the present O.A. in July 2013 for quashing of the said letter dated 29.1.2013 (Annexure A/1) and for issuance of a direction to the respondents to appoint the applicant in the Railway on compassionate ground.

1.1 It has been contended by the applicant that as per the Master Circular dated 12.12.1990 (Annexure A/7) issued by the Railway Board, the

General Manager of the Northern Railway is the competent authority to consider and take a decision in his case for compassionate appointment, and that his case having been considered and rejected by the Deputy Chief Personnel Officer, Northern Railway, the impugned letter dated 29.1.2013 (Annexure A/1) is unsustainable and liable to be quashed. It has also been contended by the applicant that in view of the fact that the family pension was released in his favour, it is not correct to say that after the death of their mother, the applicant and his sister were staying with their father.

2. In their counter reply, the respondents have stated that after the applicant's application was received, an enquiry was made, and his qualification, caste, residence, etc., were verified by the concerned Welfare Inspector of the Railway. Thereafter, the applicant's claim was sent, through the Chief Security Commissioner, Northern Railway, New Delhi, to the General Manager (P), Northern Railway, Baroda House, New Delhi, and the same was rejected. From the copy of the ration card issued in 2006, which was produced by the applicant, it appeared that the applicant, along with his sister, was residing with his father Shri Rajesh Kumar Chaudhary, at Sadarpur Colony, Sector 45, Noida. As per the instruction issued by the Railway Board, vide its letter dated 17.7.1991, on the death of the employee, the main thrust is to provide succour to the immediate dependant, namely, the widow. If the widow remarries, she and her children become the responsibility of the person who marries the widow. It has also been clarified by the Railway Board, vide its letter dated 26.4.2007, that the above rule

may be applied in the case of widower also, if the railway employee happens to be female. Therefore, in the present case, the father of the applicant was main dependant who remarried Smt. Pooja Devi. Thus, the claim of compassionate appointment was turned down by the Chief Personnel Officer, Northern Railway.

3. In his rejoinder reply, the applicant, while controverting the stand taken by the respondents, has reiterated more or less the same averments as in his O.A.

4. After the rejoinder reply was filed by the applicant, the respondents filed a copy of Master Circular No.16, i.e., Compendium on Appointment on Compassionate Grounds, in support of their assertion that the applicant's claim was considered and rejected by the Chief Personnel Officer, Northern Railway, who was competent to make appointment on compassionate ground in the case of the applicant.

5. I have perused the records, and have heard Shri H.P.Chakravorty for Mr.P.S.Khare, the learned counsel appearing for the applicant, and Shri Shailendra Tiwari, the learned counsel appearing for the respondent-Railway.

6. During the course of hearing, the only submission made by Shri H.P.Chakravorty, the learned counsel appearing for the applicant, was that under the rule, the General Manager, Northern Railway, was the competent authority to consider the applicant's claim for providing him employment assistance on compassionate ground, and that the Deputy Chief

Personnel Officer, Northern Railway, was incompetent to consider and reject the applicant's case. It was, therefore, submitted by Shri H.P.Chakravorty that the impugned letter dated 29.1.2013 (Annexure A/1) is unsustainable and liable to be quashed, and appropriate direction has to be issued to the General Manager, Northern Railway, to consider the applicant's case in accordance with rules.

7. *Per contra*, Shri Shailendra Tiwari, the learned counsel appearing for the respondents, invited our attention to the impugned letter dated 19.1.2013 (Annexure A/1) and also to the Master Circular No.16, *ibid*, and submitted that the applicant's case was considered and rejected by the competent authority, i.e., the Chief Personnel Officer, Northern Railway, and that the decision of the said competent authority was only communicated by the Deputy Chief Personnel Officer, Northern Railway, to the Senior Divisional Security Commissioner, Northern Railway, who issued the letter dated 19.1.2013(Annexure A/1) to the applicant. It was, therefore, submitted that there is no scope for interference in the matter.

8. **In LIC of India v. Mrs. Asha Ramachandra Ambekar & another**, JT 1994(2) SC 183, it has been held by the Hon'ble Supreme Court that the Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. No mandamus will be issued directing to do a thing forbidden by law.

9. **In Umesh Kumar Nagpal v. State of Haryana and others,** 1995(1) SLJ 229 (SC)=JT 1994(3) SC 525, it has been held by the Hon'ble Supreme Court that compassionate employment cannot be granted after lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

10. **In Haryana State Electricity Board v. Krishna Devi, JT 2002(3) SC 485,** it has been held by the Hon'ble Supreme Court that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be claimed as a matter of right. The main object was to provide immediate financial help to the family of the deceased employee. Employment on compassionate ground cannot be made in the absence of rules or instructions issued by the Government or any public authority.

11. **In National Hydraulic Power Corporation v. Nanak Chand,** 2004 (12) SCC 487, it has been held by the Hon'ble Supreme Court that highly belated claim made by the respondent on attaining majority after 10 years of his father's death would not be maintainable.

12. In the instant case, the Railway Board, vide its letter dated 17.9.1991, has laid down that on the death of the employee, the main thrust

is to provide succour to the immediate dependant, namely, the widow, and that if the widow remarries, she and her children become the responsibility of the person who marries the widow. It has also been clarified by the Railway Board, vide its letter dated 16.4.2007, that the provision laid down in the letter dated 17.9.1991, *ibid*, will apply in case of widower also, if the Railway employee happens to be female. Therefore, in the present case, on the death of his mother, the Railway was to provide succour to the father of the applicant, i.e., the immediate dependant of the applicant's mother. It is the admitted position between the parties that the applicant's father remarried another lady. After the applicant made the request for providing employment assistance, the Railway conducted an enquiry to ascertain the qualification, residence, etc., of the applicant. During the enquiry, the applicant himself produced a copy of the ration card, which disclosed that the applicant and his sister were staying with their father. It was found by the Welfare Inspector that the applicant was staying with his father, and as the father of the applicant remarried another lady, the applicant was rightly held to be not entitled to employment assistance on compassionate ground. If on the death of the applicant's mother, the condition of the family became indigent, the applicant's father, who is the immediate dependant, ought to have made a request to the Railway for providing him employment assistance on compassionate ground. Admittedly, the applicant's father did not make request for employment assistance on compassionate ground soon after the death of the applicant's mother, and the applicant's father remarried

another lady. As per the circular dated 16.4.2007, *ibid*, the applicant was not entitled to raise a claim for compassionate appointment and that too, after more than 17 years of the death of his mother.

13. As regards the contention of the applicant that his claim was not considered by the competent authority, i.e., General Manager, Northern Railway, but was considered and rejected by the Deputy Chief Personnel Officer, Northern Railway, who was not competent to do so, it is found from the impugned letter dated 29.1.2013 that the applicant's claim was submitted to the Chief Personnel Officer, Northern Railway, and that the Deputy Chief Personnel Officer, Northern Railway, communicated to the Senior Divisional Security Commissioner that the applicant's claim was considered and rejected by the competent authority for the reasons indicated therein. It is, thus, clear that the Chief Personnel Officer, Northern Railway, considered and took the decision rejecting the claim of the applicant. The said decision of the Chief Personnel Officer, Northern Railway, was only communicated by the Deputy Chief Personnel Officer, Northern Railway, to the Senior Divisional Security Commissioner, Northern Railway. Therefore, it cannot be said that the Deputy Chief Personnel Officer, Northern Railway, considered and rejected the case of the applicant. The other aspect of the matter is as to whether the Chief Personnel Officer, Northern Railway, was competent to consider and take a decision in the case of the applicant. As per the Railway Board's letter Nos. E(NG)II/78/RC-1/1, dated 7.4.1983, and E(NG)II/78/RC-1/1, dated 30.4.1979, the gist of which has been referred to

in the Railway Board's letter dated 12.12.1990 (Annexure A/7 to the O.A.), and also in the Master Circular No.16, *ibid*, which has been filed by the respondents, the power to make compassionate appointment is vested in the General Manager. The General Manager may, however, re-delegate the power to the Divisional Railway Manager and also to Heads of Extra Divisional Units, who are in Level I, subject to such control as he may like to impose on the exercise of power by those authorities. In the cases of appointments to Group 'C' posts, the powers may be exercised by the Chief Personnel Officer in consultation with the Heads of Departments concerned. In the cases of Group 'D' posts, the powers to make such appointments should be delegated to the Divisional Railway Managers. In the present case, the applicant's claim was submitted to the Chief Personnel Officer, Northern Railway, who was competent to consider and take a decision on the same. As has already been found by the Tribunal, the case of the applicant was considered and rejected by the Chief Personnel Officer, Northern Railway. Therefore, it cannot be said that the applicant's claim was not considered and rejected by the competent authority.

14. In the light of above discussions, I have no hesitation in holding that the applicant has not been able to make out a case for the reliefs claimed by him, and that the O.A., being devoid of merit, is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

