

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 1527 OF 2013

Date of order: 19th Decemr. 2017

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Tarun Kumar Chatterjee,
Son of Late Murari Mohan Chatterjee,
Village - Westjitpur, P.O. Bholardabri,
Via- Alipurduar Junction,
P.S. Alipurduar,
District - Jalpaiguri, 736 123 as employed.
.. Applicants

Vs.

1. Union of India,
Through the General Manager,
North East Frontier Railway,
Maligaon, Guwahati, Assam - 781011.
2. The Chief Personnel Officer,
North East Frontier Railway,
Maligaon, Guwahati, Assam - 781011.
3. The Divisional Railway Manager,
Alipurduar Junction Division,
North East Frontier Railway,
District - 736 123..
4. The Divisional Personnel Officer,
Alipurduar Junction Division,
North East Frontier Railway,
District - 736 123..

.. Respondents

For the Applicant : Mr. C. Sinha, Counsel
Ms. T. Das, Counsel

For the Respondents : Mr. M.K. Bandyopadhyay, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Ld. Counsel for both sides are present and heard.

2. This application has been filed under Section 19 of the Administrative

Tribunal Act, 1985 seeking the following relief:-

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- (a) An Order directing the Respondent Authority to offer appropriate compassionate appointment to the applicant to which he is lawfully entitled after medical decategorization of his father;
- (b) An Order directing the Respondent Authority not to kill any further time but to take prompt decision regarding compassionate appointment of the applicant;
- (c) An Order directing the respondents to produce/cause production of all relevant records;
- (d) Any other order/orders/directions as may deem fit and proper to the Hon'ble Tribunal."

3. This matter was initially heard and disposed of by the Tribunal vide an order dated 9.1.2015 whereby the Tribunal had ordered as follows:-

"(f) Hence considering the fact that when application for compassionate appointment made on 17.6.2000 for the applicant, there was no relevant scheme for such appointment and the orders of Hon'ble Apex Court cited above, I see no reason for intervening in the order passed by the respondent authority rejecting the claim of the applicant for compassionate appointment."

4. Thereafter the said order was challenged by the applicant, who filed a Writ Petition in the Hon'ble High Court at Calcutta being WPCT No. 41 of 2015 and the Hon'ble High Court at Calcutta was pleased to allow the said Writ Petition setting aside the order dated 9.1.2015 and directed the Tribunal to hear out the said O.A. No. 1575 of 2013 by a Division Bench. Accordingly, the matter has been reheard.

5. The case of the applicant, as submitted by his Ld. Counsel, is that his father was posted as Driver Gr. 'C' (Spl) in the Alipurduar Junction of the Railways. While in service, his father was declared medically unfit in A/1, A/2, A/3, B/1 categories but fit in B/2 and below categories. Thereafter his condition worsened but he was not offered any alternative employment suitable to his condition and he was compelled to seek voluntary retirement which was accepted w.e.f. 10.7.87. The father of the applicant made an application for compassionate appointment in favour of his elder son, Barun Kumar Chatterjee, on 8.9.97 but it was not considered by the Authorities. In the meantime, Barun Kumar Chatterjee fell seriously ill and ultimately died in 2008. On 19.6.2000, however, the father of the applicant had preferred

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an application in favour of his younger son which was refused by the authorities. The matter was thereafter taken up by the Compassionate Ground Adalat in 2005 where it was decided to search out relevant documents and to re-examine the case, but no such effort was made by the Railways. The matter was again taken up in the Review PNM in 2007 and decision was taken to discuss the matter with Divisional Personnel Office, but to no effect. As such, an application being O.A. No. 1254 of 2010 was filed before the Central Administrative Tribunal in which order was passed on respondent No. 2 to consider the representation of the applicant and dispose of the same and pass appropriate orders within a period of three months from the date of receipt of a copy of the order. Consequent to the same, the applicant filed a representation for compassionate appointment but the same was rejected by Memo dated 3.9.2010. Challenging the said memo, the applicant filed O.A. No. 2092 of 2010 which was heard and disposed of by the Tribunal vide order dated 14.2.2013, inter alia, holding to the effect that no alternative job having been offered to the father of the applicant, the case of the applicant for compassionate appointment ought to have been considered by the authorities. The respondents were directed to consider the case of applicant No. 2 for compassionate appointment and to pass a reasoned and speaking order. In response, the authorities passed an order dated 5.6.2013 (Annexure "A-14" to the O.A.) rejecting his claim only on the ground of delay. Challenging the said order, the applicant has filed the instant application.

6. Per contra, Ld. Counsel for the respondents has argued that the Late Murari Mohan Chatterjee, Ex. Driver/APDJ had joined Railway service in 1950; he was medically decategorised on 6.1.1986 from A-1 medical category and was found fit in B-2 medical category. Without waiting for an

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alternative appointment which was under process of offer, he had preferred voluntary retirement which was granted w.e.f. 10.7.1986.

7. As Late Murari Mohan Chatterjee, the father of the applicant, had applied for compassionate appointment in favour of the applicant on 17.6.2000, received by the respondents on 19.6.2000, the prayer was rejected as the provision for compassionate appointment against decategorisation had been withdrawn on 29.4.99 vide Railway Board's Letter No E(NG)II/95/RC-I/94 dated 18.1.2000.

8. To arrive at a conclusion, following issues require deeper examination:-

- (i) Whether the respondent authorities were in the process of offering alternative employment to the applicant's father?
- (ii) Whether the late applicant's father had decided to forego the scope of alternative employment and prefer voluntary retirement and if so, had the Respondent authorities erred in accepting his VR while the scope of alternative employment was under process?
- (iii) Since the Scheme for compassionate employment on the basis of medically decategorised voluntary retirement was alive prior to April 1999 why was the matter of grant of appointment to Barun Chatterjee, the elder son of the Late employee not pursued with the respondents as there is nothing on record to substantiate any conscious rejection of this prayer by the respondents?
- (iv) Why was an application made on behalf of Shri Tarun Chatterjee, the younger son of the father of the applicant on 19.6.2000 considering the elder son, Shri Barun Chatterjee was alive till 2008?
- (v) Does the application lawfully deserve consideration within the guiding principles for grant of compassionate appointment consequent to

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medical decategorization?

Ad seriatim, the following are noted against the above mentioned issues:-

{(i) & (ii)} It is seen from Annexure A-4 to the O.A. that late Murari Mohan Chatterjee had admitted on 17.6.2000 that due to unavoidable circumstances of his family he was not in a position to accept the lower grade post and hence had applied for voluntary retirement.

Annexure "A-4" to the O.A. is a written admission by the applicant's father that the deceased employee was not in a position to accept an alternative employment in a lower grade post.

The Railway authorities had therefore erred when they had accepted the request for Voluntary Retirement w.e.f. 10.7.87 while the process of offer of alternative suitable post was in the offing and was being processed. The Railway authorities themselves closed the issue prematurely and incorrectly by accepting the Voluntary Retirement in violation of Railway Board's instructions dated 6.2.1982, 24.5.1982, 3.9.83 and 27.12.1983. Such an action has led to an earlier order of the Tribunal stating that:

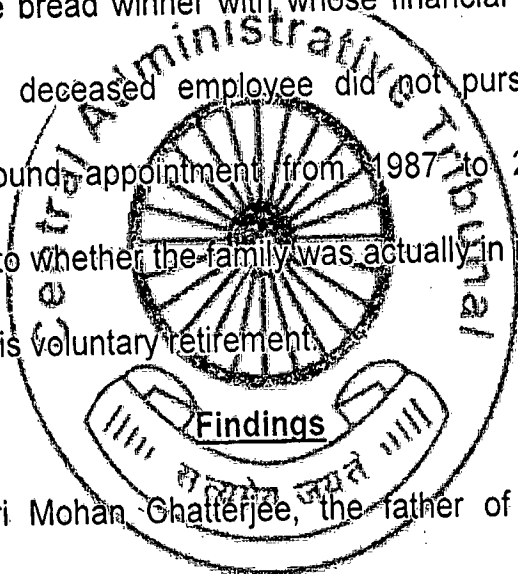
"..... we are of the view that since after the medical decategorisation the applicant No. 1 was not offered any alternative post....."

{(iii) & (iv)} It is seen that the initial application dated 8.9.1987 at Annexure A-3 was in favour of Barun Kumar Chatterjee, who was alive till 2008. Interestingly, there are no records to prove either that the grant of compassionate appointment in the case of Barun Kumar Chatterjee was rejected by the respondents, or pursued by the deceased employee, though his elder son was alive till 2008. Given the fact that the Scheme was alive till April, 1999, there was reasonable possibility of Barun Kumar Chatterjee of being granted with compassionate appointment after the voluntary retirement of his father in July, 1987 subject to fulfilment of

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was alive, the late employee preferred an application in favour of his younger son from 2000 onwards and vigorously pursued the same when the Scheme had come to an end and when it was not possible for the respondents to re-open a Scheme which had already been closed with respect to grant of compassionate appointment post medical decategorisation.

(v) The main rationale in granting compassionate appointment to an incumbent is to provide relief and succour to a family from dire financial stress which the family is subjected to on account of sudden demise, accident or similar unexpected incident that deprives the family of the services of the sole bread winner with whose financial support the family had survived. The deceased employee did not pursue the matter of compassionate ground appointment from 1987 to 2000. Hence, the question arises as to whether the family was actually in immediate financial distress following his voluntary retirement.



(a) Late Murari Mohan Chatterjee, the father of the applicant had consciously foregone the scope of alternative appointment (Annexure A-4 to the O.A.).

(b) Given the currency of the Scheme till 1999 and despite the initial application made on 1987, no steps were taken to follow up the case of compassionate ground for 12 years in the case of the elder son of the deceased employee, who was alive for nearly 21 years thereafter.

(c) Continuous and vigorous attempts have been made to procure appointment on compassionate ground in favour of the younger son when the Scheme of the respondent authorities had come to a close. As 20 years is a long time, during which the deceased employee must have received his

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retirement benefits subsequent to voluntary retirement and also that the family has survived thereafter, the applicant has not been able to establish a case of dire penury or financial stress which may provoke any decision on revival of a Scheme which has long been closed by the respondent authorities.

It has been stated in **Haryana State Electricity Board v. Naresh Tanwar JT 1996 (2) SC 542** that :

The theory of compassionate appointment has been holding the field for quite some time. The precise connotation of the theory, however, was not laid in any authoratative pronouncement. The courts proceeded on a case by case basis and were guided more by sympathy and sentiment than any recognised principle of law. It has, therefore, been recognised as an exception to the general rules relating to appointments.

In **V. Sivamurthy v. State of Andhra Pradesh (2008) 7 MLH 914 (SC)** it was held that the principle is not confined to consequences arising out of death only, and compassionate appointment of dependants of a medically invalidated serving government employee has been held to be permissible. The court has reasoned that problems of a family whose member is medically incapacitated, are in some case more critical than those in the case of a death of a government servant although the court has cautioned that safeguards should be taken to ensure that compassionate appointment is given in deserving cases only where government servant becomes medically invalidated and becomes a burden on the family.

In **I.G. (Karmik) v. Prahlad Mani Tripathi (2007) 6 SCC 162**, it has been held that, "Compassionate appointment must be in consonance with the constitutional scheme of equality enshrined in Arts. 14 and 16."

As reported in **Haryana State Electricity Board v. Krishna Devi (2002)**

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10 SCC 246, the Hon'ble Apex Court has held in absence of extant rules or instructions at the time of death of the employee, there can be no claim for compassionate appointment.

In **State of Haryana v. Ankur Gupta** (2003) 2 SCC 704 the Hon'ble Apex Court has held that, "such appointments cannot be made dehors any statutory policy."

As held in **National Institute of Technology v. Niraj Kumar Singh** (2007) 2 SCC 481, and later in **State Bank of India & anr. V. Raj Kumar** (2010) 11 SCC 661 the Hon'ble Apex Court has held that it is now clear that the grant of compassionate appointment would be illegal in the absence of any scheme providing therefor. Such Scheme must be commensurate with the Constitutional Scheme of Equality.

The ratio that an employer cannot be compelled to make compassionate appointment contrary to its policy has also been laid down in **Kendriya Vidyalaya Sangathan v. Dharmendra Sharma** (2007) 8 SCC 148.

It has also been held that since the grant is basically a matter of policy, it is competent for the State to take a policy decision not to continue with the scheme for compassionate appointment as reported in **Yadav Laxmi v. A.P. State Co-operative Bank** 2006 (3) SLR 518 (AP).

In **Sushma Gosain v. Union of India** 1989 (4) SLR 327, the Hon'ble Supreme Court had held that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadearner in the family and that such appointment should, therefore, be provided immediately to redeem the family in distress.

It has also been held that it is neither a vested right which can be exercised at anytime even after the crisis created by the death is over as

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reported in **Haryana State Electricity Board v. Naresh Tanwar JT 1996(2) SC 542.**

In **Srikanth v. Chief Engineer, Karnataka Electricity Board, 1996 (1) SLR 118** it has been held that neither is it a hereditary right nor can it be bequeathed.

It has been further held that his right is limited to get preferential treatment subject to the discretion of the employer in **Union Bank of India v. M.T. Latheesh, (2006) 7 SCC 350.**

In **Life Insurance Corporation of India v. Asha Ramchandra Ambekar (1994) 2 SCC 718**, the Supreme Court observed:

"Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration—yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom." Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be.....

"..... 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."

In **Umesh Kr. Nagpal v. State of Haryana, (1994) 2 SCC 718 Sawant, J.** laid down the principles relating to compassionate appointment in clear and emphatic language. He said:

"The question relates to the considerations which should guide while giving appointment in public services on compassionate ground.

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On such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of

granting compassionate employment is thus to enable the family to tide over the sudden crisis.

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..... The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. Relief against destitution."

The Apex Court has further held that, in its essence, compassionate appointment is a matter of policy of the employer, it cannot be compelled to make compassionate appointment contrary to its policy in **Kendriya Vidyalaya Sangathan v. Dharmendra Sharma (supra)**.

In **State of J&K v. Sajad Ahmed Mir** reported in (2006) 5 SCC 766, the Court explained why delay may be a negative factor. Compassionate appointment, the Court said, is an exception to the general rule viz. An employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Art. 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and a substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Art. 14.

In the instant application, the deceased employee had volunteered to forego his claim for alternative employment and preferred an application for his elder son upon such retirement. The said application was never followed up despite the currency of the Scheme for compassionate grant of

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appointment to dependents upon voluntary retirement on being declared "medically unfit". There is also no record produced to substantiate that the respondents had rejected the claim of Barun Kumar Chatterjee in violation of Rules dated 6.2.1982, 24.5.1982 and 27.12.1983.

Once the Scheme closed and despite the fact that the elder son was living, vigorous attempts started to obtain an appointment for the younger son. In the application dated 17.6.2000, however, there is no mention that the application dated 17.6.2000 was in modification of that dated 8.9.1987 preferred in favour of the elder son.

9. As laid down by the Apex Court in **NIT v. Niraj Kumar Singh (supra)** grant of compassionate appointment would be illegal in the absence of any Scheme providing therefor. Again, compassionate appointment is not a vested or hereditary right that can be bequeathed, as held in **Srikanth's case (supra)**. The applicant therefore cannot rightfully claim the appointment either on the basis of an existing Scheme/Policy or as his hereditary right devolving from his deceased elder brother, with reference to Rules dated 6.2.1982, 24.5.1982 and 27.12.1983 respectively of the respondent authorities.

10. We are of the view that the applicant has failed to substantiate his case on grounds of extant Scheme, existing policy, bequest or pecuniary distress. Thus, the O.A. fails to succeed and is dismissed on merit. Parties to the application will bear their respective costs.


(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member