

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 330/00281 of 2014

Dated: This the 11th day of January 2019.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

- 1) Smt. Shanti Devi aged about 50 years, wife of Late Charan Singh, resident of Village Keharigarhi, Post Office Raya District Mathura.
- 2) Raj Kumar son of Late Charan Singh, Resident of Village Keharigarhi, Post Office Raya, District Mathura.
- 3) Ami Chand, son of Late Charan Singh, resident of Village Keharigarhi, Post Office Raya, District Mathura.

. . . Applicants

By Adv: Shri Babu Nandan Singh/Sri C.L. Nim

V E R S U S

- 1) Union of India through General Manager, North Central Railway, Headquarter Office Subedarganj, Allahabad.
- 2) The Divisional Railway Manager, North Central Railway, Agra.
- 3) The Senior Divisional Personnel Officer, North Central Railway, Agra.

. Respondents

By Adv: Shri R.K. Srivastava/Shri Satya Prakash.

O R D E R

1. The present Original Application has been filed under Section 19 of the Central Administrative Tribunal Act, 1985 by applicant Shanti Devi, Raj Kumar and Ami Chand seeking the following relief:

“(i) to issue a writ order or direction in the nature of certiorari and quash/set aside the impugned order dated 04.03.2013 (Annexure A-1 to Compilation -1) to this original application.

(ii) to issue a writ order or direction in the nature of mandamus directing the respondents to consider and provide a suitable job on compassionate ground to the applicant No.3 who is fully eligible for the purpose.

(iii) to issue any other writ order or direction in favour of the humble applicant as deem fit and proper by this Hon’ble Tribunal in the facts and circumstances of the case.

(iv) To award the cost of this application in favour of the humble applicant.

(v) to issue a suitable order or direction to set aside the impugned order dated 12.6.2006 (Annexure A-1A) and consider the claim for compassionate appointment in favour of the applicant No.2”.

2. Case of applicants is that Charan Singh husband of applicant No.1 and father of applicants No. 2 and 3 died on 24.06.2004 during his service in the respondent-department and his monetary service benefits including family pension were paid to the applicants by the respondents. Applicants sought appointment on compassionate basis and filed an application for appointment of applicant Raj Kumar in this regard which evoked no response from the respondents and therefore, applicants filed representation dated 06.09.2006 (Annexure A3 to compilation No. II). Therefore, respondents informed the applicants that since applicant Raj Kumar has passed 8th class only, he is not eligible for appointment in group ‘D’ post on compassionate grounds.

3. It is the further case of applicants that at time of death of Charan Singh applicant Ami Chand was a minor and during this period he attained the age of majority and passed the High School Examination in the year 2010 and application for appointment of applicant Ami Chand followed by representation dated 17.03.2013 got no response from the respondents. Ultimately, respondents vide impugned order dated 04.03.2013 rejected the claim of applicants for compassionate appointment on the ground that applicant Raj Kumar being 8th class pass only cannot be appointed. The letter dated 04.03.2013 refers to letter dated 12.06.2006 informing the rejection of candidature of applicant Raj Kumar which was allowed to be challenged in the present O.A. by way of amendment vide order dated 24.07.2015. Hence the present O.A. seeking relief of appointing applicant No. 3 on compassionate basis.
4. In their counter-affidavit, respondents have taken the plea that applicant though taking the plea that he had passed class 5th submitted application dated 17.07.2004 along with the certificate of passing class 3rd but no certificate of passing class 8th was attached therewith. The specific plea of respondents is that applicant Raj Kumar had not the qualification of 8th class pass at the time of death of his father and therefore, not eligible for compassionate appointment. It is the further case of respondents that applicant Raj Kumar was already a major at the time of death of his father and not having the qualification of being 8th pass was not eligible for compassionate appointment as per Railway Board letter 15.02.2000.
5. I have heard and considered the arguments of the learned Counsels for the parties and gone through the material on record.

6. Before proceeding further, reference may be made to the impugned orders dated 12.06.2004 and 04.03.2013 which are reproduced as under:-

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CENTRAL RAILWAY

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12.6.2006

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7. Learned counsel for applicants argued that the respondents instead of rejecting the application of applicant Raj Kumar being ineligible for appointment on the ground that he does not fulfil the education qualification should have given the applicant Raj Kumar the benefit of RBE No. 166/2011 dated 09.12.2011 issued by the Railway Board, which benefit of appointment has been given to other persons who have passed or are yet to pass 8th class and placed on record photocopy of the said appointment order of such like persons.
8. RBE No. 166/2011 dated 09.12.2011 issued by the Railway Board reads as under:

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)

RBNo. 166/2011

No. E(NG)II/2011/RR-1/11NEW Delhi, Dated
09.12.2011

The General Manager (P)

All Zonal Railways/Production Units etc.

(As per standard mailing list)

Sub: Recruitment/engagement of persons in Pay
Band of Rs. 5200-20200 (Grade Pay of Rs. 1800/-)
Minimum educational qualification – regarding.

Ref: Board's letter No. E(NG)II/2009/RR-1/10Pt.
dated 09/12/2010, E(NG)II/2008/SB/SR/15 dated
17/09/2010 and E(NG)II/2010/RC-5/1 dated
16/07/2010.

The issue of minimum educational qualification of candidates belonging to the categories of compassionate appointment, land loser, accident victims, LARGEES and substitutes in line with

recommendations of the sixth Pay Commission as accepted by the Government of India has been under consideration for some time.

2. Accordingly, it has now been decided by the Ministry of Railways (Railway Board) that in exceptional circumstances, wherever grant of appointment is considered to any of those persons in categories mentioned above, not in possession of prescribed educational qualifications for the post, such persons will be recruited/engaged as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum educational qualification prescribed under the recruitment rules. The emoluments of these trainees, during period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the 1S pay band without any grade pay. The period spent in the -1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs. 5200-20200 along with grade pay of Rs. 1800.

3. This should be included in the appointment letter being given to the candidate, in case such appointments are made.

4. With the issue of these instructions, letters mentioned in reference above stand suitably modified.

Please acknowledged receipt. (Harsha Dass)
(Hindi Version will follow) Joint Director Estt. (N) II
Railway Board"

9. The record shows that letter of rejection of candidature of applicant Raj Kumar was rejected in the year 2004, when the

RBE No. 166/2011 dated 09.12.2011 issued by the Railway Board was not in existence since it was passed in the year 2011 and would be prospective in nature. It is a well settled legal position that Rules cannot be applied with retrospective effect unless expressly provided or intended in the Notification itself. Therefore, there would be no occasion for the respondents to apply the circular of 2011 to the applicant Raj Kumar in the year 2004 or even at the present moment. It is not the applicant's case that the appointment letters of other persons placed on record and referred to by him for being granted the compassionate appointment pertain to pre- 2011 period.

10. In view of the facts and circumstances of the case, I am of the view that no good ground is made out by the applicant for issuance of directions in the present O.A. Accordingly, O.A. being meritless is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER (J)

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