

Case :- WRIT - A No. - 20722 of 2018

Petitioner :- Hemant Pal

Respondent :- Union Of India Through General Manager Head Quarter North Central Railway, And 2 Others

Counsel for Petitioner :- Syed Mushfiq Ali

Counsel for Respondent :- Vivek Kumar Rai

Hon'ble B. Amit Sthalekar,J.

Hon'ble Jayant Banerji,J.

Heard Sri Syed Mushfiq Ali, learned counsel for the petitioner and Sri Jyoti Prakash holding brief of Sri Vivek Kumar Rai, learned counsel for the respondents.

The petitioner in the writ petition is seeking quashing of the orders dated 2.8.2011 and 13.3.2012 whereby his claim for appointment on compassionate ground has been rejected as well as the order of the Central Administrative Tribunal, Allahabad dated 30.1.2018.

Briefly stated the facts of the case are that one Roop Singh, railway servant, married Smt. Malti (mother of the petitioner), after death of his first wife. Roop Singh died on 23.4.1995 while still in service. The mother of the petitioner submitted her application seeking appointment on compassionate ground. Her claim was processed and it was also accepted but she did not join. Later on, it appears that she submitted another application claiming appointment for her son i.e. the petitioner but according to her she was given an assurance by the respondents that his claim would be considered after he attains the age of majority.

She has relied upon Circulars of the Railway Board dated 10.11.2000, 7.4.1983, 3.9.1983 and 22.9.1995 which provide that a railway servant, who has been medically decategorized for all kinds of railway services, compassionate appointment may be give to his ward. These circulars of the Railway Board have not been doubted by the Tribunal.

The stand of the Railways on the other hand was that the claim for appointment on compassionate ground of Smt. Malti was accepted by the D.R.M., Jhansi and thereafter, it was sent to the Chief Personnel Officer, Head Quarter Mumbai for approval vide letter dated 10.1.1996, followed by a reminder dated 28.6.1996 but her claim was rejected by the Head Quarter, vide order dated 22.8.1996 and this order was also communicated to Smt. Malti on 17.9.1996. The petitioner, however, denied receipt of such letter dated 22.8.1996 / 17.9.1996, rejecting the

claim of his mother for appointment on compassionate ground.

The Tribunal has, however, rejected the claim of the petitioner for compassionate appointment on the ground that even assuming that the letter of the Railways dated 17.9.1996 had never been received by Smt. Malti but she raised the claim for appointment of her son in 2009 which shows that she was fully aware of the rejection of her claim in 1996 but only was waiting for her son to attain the age of majority and it is only after he attained the age of majority, she started moving applications, claiming appointment for her son i.e. petitioner. From the year 1996 till 2009 more than 12 years had already passed. Considering these facts, the Tribunal had rejected the claim of the petitioner for compassionate appointment on the ground that after 12 years it cannot be said that there was a sudden financial crisis in the family warranting compassionate appointment.

The facts as noted by the Tribunal are not disputed between the parties. Even on assuming that the claim of Smt. Malti had been rejected and the said order had not been communicated to her but there is no explanation as to why she did not approach the Tribunal at the relevant point of time, staking her own claim for appointment on compassionate ground and started agitating the matter only in the year 2009, after the petitioner attained the age of majority.

This itself shows that she was aware that her claim had been rejected but was waiting for her son i.e. petitioner to attain the age of majority so that she can claim appointment for him on compassionate ground.

This writ petition filed in 2018 i.e. after 23 years of death of the bread winner of the family is, therefore, grossly barred by laches, as held by the Supreme Court in the case of **Umesh Kumar Nagpal vs. State of Haryana and others, (1994) 4 SCC 138** compassionate appointment is not a hereditary right but rather it is to be granted on a consideration of the financial distress and hardship being faced by the family of the deceased employee and in order to grant succor and immediate relief to the family of the deceased employee. If the family has been able to survive for 23 years after the death of the bread earner, the claim then only, survives on the right of heredity. Compassionate appointment cannot be granted by way of hereditary right.

The Supreme Court in the case of **Jagdish Prasad V. State of Bihar and another reported in (1996) 1 SCC 301** dismissing the appeal filed by the son of deceased employee held in paragraph 3 as under:

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

The Supreme Court in the case of **Haryana State Electricity Board Vs. Naresh Tanwar and another etc. reported in JT 1996 (2) S.C. 542** has also followed the judgement in the case of Umesh Kumar Nagpal (supra).

The Supreme Court in the case of **Haryana State Electricity Board and another V. Hakim Singh reported in (1997) 8 SCC 85** has observed that If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.

The Supreme Court in the case of **Sanjay Kumar Vs. State of Bihar and others reported in (2000) 7 SCC 192** has held in paragraph 3 as under:

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education & Anr. v. Pushpendra Kumar & Ors. supra. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

The Supreme Court in the case of **State of J & K and others V. Sajad Ahmed Mir** reported in AIR 2006 SC 2743 in paragraph 17 has held as under:

"17. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal."

A Full Bench of this Court while deciding **Special Appeal No.356 of 2012, Shiv Kumar Dubey vs. State of U.P. and others** and other connected cases has formulated the principles governing appointments on compassionate grounds under the Dying in Harness Rules, 1974. The principles elucidated in para 29 of the judgment read as follows:-

"29. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an 26 C.M.W.P. No. 13102 of 2010 administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the

age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family."

In the case in hand if the family has been able to survive for 23 years after the death of the bread winner of the family, it may be validly inferred that the sense of immediacy for seeking compassionate appointment had ceased to exist. Compassionate appointment cannot be claimed as a hereditary right.

Thus in view of the law settled by the Supreme Court and the Full Bench of this Court, I find no merit in the writ petition and the same is accordingly dismissed.

Order Date :- 26.9.2018

Vandana