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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6827/2015**

Date of judgment 20.07.2015

NARESH BHAI

..... Petitioner

Through : Mr. H. P. Chakravorti, Advocate.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Jagjit Singh, Senior Standing Counsel
with Mr. Preet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Request for appointment on compassionate ground was rejected by a communication dated 06.05.2013 which led to the filing of OA No. 2586/2013. The Tribunal dismissed the OA which forced the petitioner to approach this Court by filing the present Writ Petition.
2. The facts of the case in a nutshell are that parents of the petitioner were employed by the Northern Railway. The father of the petitioner died on 01.06.1988 while in service. On an application made by his wife, elder brother of the petitioner Shri Rakesh Bhai was appointed on compassionate grounds. After a span of two decades, mother of the petitioner, who was also working as Chief Office Superintendent died on 04.03.2011. The petitioner being the younger son applied for appointment on compassionate grounds. It was contended that the father and mother were living separately from 15.03.1988 on the basis of mutual agreement, thus he claimed that he was solely dependent on his mother.
3. It is strongly urged before us that the Tribunal has failed to consider the peculiar facts of the case that father of the petitioner had died as far back

as on 01.06.1988 while the mother died only on 04.03.2011; and secondly, the father and mother were living separately and the petitioner was living with his mother for all practical purposes and his mother was the bread earner and thus petitioner should have been granted employment on compassionate ground.

4. Counsel for the respondents submits that the Central Administrative Tribunal while relying on the circulars dated 31.10.1986 and 02.06.1997 rightly upheld the order of rejection dated 06.05.2013. Mr. Jagjit Singh further submits that upon the death of father of the petitioner, his brother was given compassionate appointment and as per rules only one appointment can be granted even if both the parties were employed with the Railways.
5. We have heard the learned counsel for the parties and given our thoughtful consideration to the matter. We have also examined the impugned judgment of the Central Administrative Tribunal. The basic facts are not in dispute that parents of the petitioner were employed with the Railways. Father of the petitioner died on 01.06.1988. Upon the death of the father, at the request of the mother of the petitioner elder brother of the petitioner was granted compassionate appointment.
6. It is argued before us that the petitioner should also be granted compassionate appointment for the reasons: (a) the father died as far back as on 01.06.1988; (b) petitioner was solely dependent on his mother; and (c) when the father died, the mother and father were living separately. We are of the considered view that the Central Administrative Tribunal has rightly upheld the order dated 06.05.2013 by which the request of the petitioner for grant of compassionate appointment was rejected.
7. The Railways considered the representation of the petitioner and rejected the same by an order dated 06.05.2013. The Railways took into

consideration that after the demise of the father, his wife (Petitioner's mother) obtained all settlement dues and family pension till she expired. It was at her request that her elder son Shri Rakesh Bhai was granted appointment on compassionate ground. It may be noticed that even though Shri Rakesh Bhai was a minor at the time of the death of his father, his appointment was kept in abeyance till he attained the age of majority. At the time of seeking compassionate appointment for her elder son Shri Rakesh Bhai, mother of the petitioner had given an affidavit that she was married to Shri Javer Bhai in the year 1969 and she was his legally wedded wife. In view thereof, all the retirement benefits of Shri Javer Bhai were received by his wife.

8. The stand taken by the petitioner that is father and mother were living separately, in our view, is without any basis. Neither any document has been filed nor the sequence of events as noticed hereinabove would show that the wife was living separately from her husband. We may also note that Shri Rakesh Bhai has given an undertaking that he will look after all the dependents of the family members including his widow mother which will also include petitioner herein. Two circulars have been relied upon by the respondent which read as under:

*"No. E(NG) II/86/RCI/1/Policy New Delhi, dated : 31.10.1986
The General Manager,
Eastern Railway,
Calcutta.*

*Sub. : Appointment on compassionate ground in the event
of death of husband and wife (both Railway employees)*

*Ref. : Your Railway's confidential letter No.
CPO/SC/SA/Comp//Cl.IV/896 dated 26.08.1986.*

*The issue raised in your letter quoted above viz.,
whether two compassionate appointments – one on account
of death of the father and another on account of death of
the mother when both were Railway employees – are
permissible, or not, has been considered by the
Department of Railways (Railway Board). Normally only*

the father is taken to be the breadwinner of the family. Therefore, in the case referred by your Railway, only one compassionate appointment is admissible. Accordingly, your presumption that another son can be appointed on compassionate grounds on account of demise of the mother, is not correct.

*Sd/-
(M. Kujur)
Deputy Director Establishment (N)
Railway Board”*

**“GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS / RAIL MANTRALAYA
(RAILWAY BOARD)**

No. E (NG) II/86 / RC-1/1/Policy dated 02/06/1997”
RBE No. 75/1997

Subject :- Appointment on compassionate grounds in the event of death of husband and wife (both are Railway Employees.

(Supplementary Circular No. 25 to Master Circular No. 16)

Kindly refer to Board’s letter No. E(NG)II/RC-1/1/Policy dated 31.10.1996 (RBE 214/1986) and para I (ix) of Master Circular No. 16 circulated vide letter No. E(NG)II/90/RC-1/117 dated 12.12.1990 on the above subject.

2. It has been mentioned therein that normally only the father is taken to be the breadwinner of the family. In the even of both wife and husband being Railway Employees, on account of death of the husband, employment is permissible to a ward but not on account of death of the wife.

3. The matter has been reviewed by the Board and it has been decided that in modification to Board’s letter dated 31.10.1986 and para (ix) of M. C. No. 16, compassionate appointment is admissible in case of death of the mother or father, subject to the stipulation that only one compassionate appointment will be available either on the death of the husband or wife whichever event occurs first.

Instructions will apply mutatis-mutandis to cases where both husband and wife are Railway employees and one of them is retired consequent to medical

decategorisation / invalidation and also in the case of missing Railway employees, subject to all other relevant conditions governing such appointments being fulfilled vide Railway Board's letter No. E(NG)II/86.RC-1/1/Policy dated 27.02.2001 (RBE 44/2001)."

9. It is a settled law that compassionate appointment is not a right and the object of granting compassionate appointment is to grant appointment to a dependant family member of a Government Servant dies in harness and leaves his family without any means of livelihood. The submission of learned counsel for the petitioner that this is a peculiar case where petitioner is solely dependent on his mother as his parents were separated in the year 1988, is without any force as after the demise of Shri Javer Bhai, father of the petitioner in the year 1988, mother of the petitioner was paid all the settlement dues and in fact she had made an application for granting appointment on compassionate ground to her elder son Shri Rakesh Bhai. There is no legal document which has been produced to show that she had separated from her husband or that petitioner was solely dependent on his mother.
10. We find that the respondent has acted in terms of its circulars and rightly rejected the case of the petitioner. Hence, we are of the view that this matter does not require any interference in proceedings under Article 226 of the Constitution of India. Accordingly, the present Writ Petition stands dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

JULY 20, 2015 gr/pst