

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4891 of 2016

Pradeep Sao @ Pardeep Gupta, Son of Sharawan Sao, Grand Son of Late Nakul Deo Sao, Resident of Village - Kiul Dharamshala, P.O. - Kiul, District - Lakhisarai, Bihar.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Railways, Govt. of India, Rail Bhawan New Delhi - 110001.
2. The General Manager, East Central Railway, Hajipur, Bihar.
3. The Divisional Railway Manager, East Central Railway, Danapur, Bihar.
4. Senior Divisional Personal Officer, East Central Railway, Danapur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Din Bandhu Mishra, Advocate.

For the Respondent/s : Mr. Arun Kumar Arun, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 15-07-2016

The challenge in the present writ petition is to an order dated 29th January, 2016 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Tribunal') whereby the request of the petitioner for appointment on compassionate ground remained unsuccessful.

The fact of the case is that Late Nakul Deo Sao was an employee of Railways. He died in harness on 15.08.1993. The petitioner is the grandson of late Nakul Deo Sao and the son of late Sharawan Sao. Nakul Deo Sao was survived by his son Shrawan Sao, who is said to have suffered mental illness and the economic crisis,

therefore, he was unable to pursue his claim for compassionate appointment. Thus, the petitioner sought appointment on compassionate ground after 22 years of the death of his grandfather.

The Tribunal has rightly dismissed the application on the ground of limitation. It also found that compassionate appointment is confined to widow or any ward of the deceased employee and the grandson does not come under the definition of ward. Still further, the petitioner is said to be 28 years of age and, thus, has not approached the Tribunal within three years of attaining majority.

Learned counsel for the petitioner has referred to a Railway Board Circular dated 04.09.1996, which contemplates that the dependants of the Railways employees shall be considered for appointment on compassionate ground. The argument of learned counsel for the petitioner is that since the petitioner was a dependant member of the deceased, he is entitled to be considered for appointment on compassionate ground.

The word 'dependants' stands defined under the heading "Eligibility" of the Railway Board Circular No. R.B.'s No. E(G)82/EC2 (Lt. IV) dated 27.6.1985, which is reproduced here-in-below:

"Eligibility:

1. Dependent members of the family covered under pass rules are eligible;

2. In case there are daughters who have attained majority/major son who is employed and if widow cannot take up appointment it may be kept pending till minor attains the age of majority and if there is no other son/daughter the major if so desires could be appointed provided he resigns the job he had and otherwise major daughter could be given appointment”.

We find that the dependent is one who is covered under the pass rules. What are the pass rules has not been produced, but the several clauses of the eligibility condition of the said Circular, show that it deals with dependant son or daughter even if is minor. The grandson does not figure as dependant in the above said Circular. Therefore, the claim of the petitioner for appointment on compassionate ground on account of death of his grandfather, 22 years back, has rightly been found to be not tenable.

In respect of delay, learned counsel for the petitioner refers to Railway Board Circular No. E(NG)II/98.Re-1/64 dated 6.10.2009. The Circular deals with compassionate appointment in favour of widow/widower or any ward of her/his choice in respect of cases up to 20 years old from the date of death of the Railway employee. The relevant clause reads as under:-

“DRM/CWM/HODs have been delegated powers to consider compassionate appointment in favour of Widow/Widower or any ward of her/his choice in respect of cases upto 20 years old from the date of death of the Railway employee. Further, wherever in individual cases of

merit, it is considered that justification exists for extending consideration to cases where death of the ex-employee took place over 20 years ago, prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma.”

We are doubtful that there can be Circular that keeps the claim of compassionate appointment alive for 20 years. In any case, if the case of compassionate appointment is to be kept alive for 20 years, then it defeats the very purpose of compassionate appointment which is to provide immediate help to the family of the deceased on account of sudden death and the financial stringency, which the family may face. It runs counter to the Supreme Court judgment in the case of Umesh Kumar Nagpal vs. State of Haryana & Ors., (1994) 4 SCC 138, wherein the Court observed as under:-

“2.....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 dependants 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. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The

Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

We find that appointment on compassionate ground is meant for a family, who is in financial distress. It is not meant as source of employment which can be claimed even after 22 years of the death of the employee. Thus, the aforesaid condition cannot be said to legal and valid.

We do not find any error in the finding recorded by the Tribunal, which may warrant interference in the writ jurisdiction of this Court. It is, accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.07.2016
Transmission Date	