

Raj Kamal Gagrai Petitioner
Versus

**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

For the Petitioner : Mr. Jorong Jedan Sanga, Advocate
For the respondents : Mr. Vijay Kumar Sinha, Advocate

2. Applicant's claim for compassionate appointment on death of his father in harness on 22nd July, 2015 while working as Chief Office Superintendent in S.E. Central Railway, Raigarh has been rejected firstly on 22nd December, 2016 (Annexure-2) and again on reconsideration by Annexure-3 dated 04th March, 2016. Being aggrieved, he preferred Original Application No. 051/00188 of 2017 before learned Central Administrative Tribunal, Patna Bench, Circuit Bench at Ranchi. By impugned order dated 17th December, 2018, learned Tribunal dismissed the application observing that the applicant was 29 years of age, his sister was 27 years of age and were having educational qualification of post-graduate and it appeared that they were not the liability of

the deceased-employee. Besides that, the family was in possession of agricultural land whose annual income is Rs. 35,000/- per annum. Death-cum-retirement dues of the deceased which the family received was more than Rs. 20 lakhs. The widow is getting family pension @ Rs. 12,270/- + D.A. They are able to maintain their livelihood. Therefore, as per provisions of Master Circular No. 16 (Annexure-5), applicant is not entitled for compassionate appointment. Learned Tribunal rejected the plea of the applicant that his case was regretted only on the ground that the superannuation of his father was within eight months. Learned Tribunal observed that the case of the applicant was considered in detail after receipt of reply to queries and no sufficient ground was established for consideration of his claim as against other more deserving dependants of other deceased railway employee. Being aggrieved, applicant is before us in the present writ petition.

3. Respondents have filed a counter-affidavit and thereafter supplementary counter-affidavit on being specifically directed vide order dated 02nd November, 2020. They have brought on record, the relevant extracts of the file containing the decision making process on the claim of compassionate appointment of the petitioner. The first order of rejection (Annexure-2 dated 22nd December, 2015) issued by the Divisional Personnel Officer for Senior Divisional Personnel Officer indicates that this case was not considered by the competent authority since the employee had died 8 months before his superannuation and there were no sufficient grounds since the aim of compassionate appointment is to provide immediate assistance to the bereaved family. On further representation (Annexure-3 dated 04th March, 2016) his claim was regretted by letter dated 09th March, 2017 (Annexure-4) issued by the Assistant Personnel Officer for

Senior Divisional Personnel Officer stating that on reconsideration, the competent authority has regretted the case yet again.

4. Apparently, the orders of rejection contain the only ground that the deceased had died at a time when there were only 8 months left for his superannuation. This cannot be a basis for rejection of a claim for compassionate appointment in the eye of law neither does the Master Circular (part of Annexure-5) enclosed to the written statement of the respondents before CAT supports such a reason. That is why respondents were asked to file supplementary counter-affidavit to bring on record the file containing the decision making process. A perusal of Annexure-R/1 to the supplementary counter-affidavit indicates that all the factors which have been taken note of in the file are much later than the order of rejection dated 22nd December, 2015. It appears from the notings of the November, 2016 and thereafter January, 2017 that the report of sectional staff and welfare inspector were taken into account which indicated that the unmarried daughter was studying in B.Ed and the family was under some financial burden; the son was undergoing coaching for competitive exams. Further the noting dated 10th January, 2017 by Sr. D.P.O. shows that the family had received substantial settlement dues and the employee had just about 8 months to retire before his untimely death. It also observes that there was no rules to bar grant of employee assistance when there is little time left before the superannuation of an employee. The subsequent notings on the file dated 23rd February, 2017 apparently of the DRM besides mentioning these facts also takes note that the agricultural income of the family was Rs. 35,000/- per year. Further, it records that no new facts were brought out to add what was already put up on the file. Therefore, the claim

was once again regretted. This decision regretting the claim of the applicants/widow has been communicated on 09th March, 2017. Learned counsel for the respondents explains that there is no fresh reconsideration on 10th March, 2017 as was inadvertently stated in the counter-affidavit.

5. Apparently, reasons indicated in the order of rejection are something else than what is borne from the records. The grounds of rejection is being sought to be supplemented by reasons brought on record through counter-affidavit and supplementary counter-affidavit which learned counsel for the petitioner submits is impermissible in the light of the decision of the Hon'ble Supreme Court in the case of **Mohinder Singh Gill vs. Chief Election Commissioner** reported in 1978 SCC (1) 405. Further, learned counsel for the petitioner submits that the Master Circular does not lay down any such criteria that a dependent son or daughter of an employee aged 29 or 30 years and having higher qualification could not be considered for compassionate appointment or either group-C or group-D post. Further settlement of death-cum-retiral dues or payment of family pension is not a disentitling factor for grant of compassionate appointment. Learned counsel for the petitioner submits that there is no basis either to hold that the family's agricultural income was Rs. 35,000/- per year. Even assuming that figure, it is hardly enough to provide sustenance to a family in times of distress on death of the bread earner. The Master Circular permits consideration of claim for compassionate appointment on the death of the father, who is a railway employee, even though the mother may be in the employment of the railways. Further, he submits that merely having a higher qualification should not be a ground to deny compassionate appointment if the dependents of the deceased are reduced to penury and

distress on the death of the bread earner. In any case, the claim of compassionate appointment has not been considered on objective grounds even as per the reasons recorded in the file though they cannot supplement the grounds taken in the order of rejection. As such, respondents who are bound to consider the claim of compassionate appointment within the four corners of the scheme for compassionate appointment/ scheme/circular for compassionate appointment prevalent in the organization, having fail to do so, may be directed to reconsider it afresh in accordance with law. Therefore, the order of rejection and the impugned order passed by the learned Tribunal, both deserve to be set-aside.

6. Learned counsel for the Railways has supported the case of the respondents relying upon the averments in the counter-affidavit and the relevant records annexed to the supplementary counter-affidavit. He submits that since the family had got sufficient source of livelihood in the nature of settlements received after the death of the employee and the widow was also getting family pension and moreover both the son and the daughter are aged 29 years and 27 years respectively having higher qualification, there was no basis for granting compassionate appointment to the dependent of such an employee dying in harness. The claim was not rejected only on the ground that the employee had only 8 months of service left. As such, learned Tribunal having considered the entirety of facts borne from the materials on record rightly refused to intervene in the matter. The writ petition being devoid of merit is fit to be dismissed.
7. We have considered the submissions of learned counsel for the parties in the light of the relevant materials facts borne from record taken note above and also the relevant Master Circular of the Railways applicable to cases of

compassionate appointment. The Master Circular does not provide any such criteria for rejection of a claim of compassionate appointment only on the ground that the deceased employee had eight months or little period of service left before his retirement. This is the only ground indicated in the order of rejection Annexure-2 dated 22nd December, 2015, though the respondents in their counter-affidavit and supplementary counter-affidavit have sought to supplement the reasons from the extracts of the file which we have obviously taken note of in the foregoing paragraphs. The Master Circular does not lay down any such criteria that if the dependants of the deceased are 29-30 years old or are well qualified, their cases cannot be considered even though they are unemployed and in distress after the death of the bread earner. The Master Circular also does not support the ground that if the death-cum-retiral benefits and family pension of the employee have flowed to the widow and the family, the claim for compassionate appointment is not to be considered. Moreover, the writ petitioner has not been able to controvert the reasons recoded in the file such as that the agricultural income of the family was Rs. 35,000/- per year. Reasons are the heart and soul beat of an administration or quasi-judicial order and fairness in action demands that a person aggrieved by the order of rejection should know as to the specific grounds on which his claim has been rejected so that it can be subjected to challenge in an appropriate forum or in judicial review before the superior courts. It is also true that the grounds of rejection made out in the order cannot be supplemented by reasons taken in the affidavit filed thereafter as per the ratio rendered in the case of **Mohinder Singh Gill (Supra)**.

Having taken into account the aforesaid facts and the

discussions made hereinabove, it appears that the claim for compassionate appointment of the petitioner has not been considered on objective criteria and in accordance with law as also the scheme for compassionate appointment prevalent under the railways under Master Circular which was brought on record by the railways themselves before the learned CAT along with their written statement. As such, the impugned orders of rejection dated 22.12.2015 and 09.03.2017 Annexure-2 and Annexure-4 respectively are quashed. The order of the learned Tribunal is set-aside as being unsustainable the law and on facts. The respondents are directed to reconsider the claim of the petitioner in accordance with law and as per the objective criteria prescribed under the Master's Circular applicable in the organization to such cases. The writ petition is allowed in the manner and to the extent indicated hereinabove. Let such decision be taken on reconsideration within a period of 12 weeks from the date of receipt of copy of this order.

I.A. No. 3792 of 2020

The prayer for payment of cost of Rs. 3,000/- on failure to file counter-affidavit in time in terms of the order dated 26th February, 2020 made through I.A. No. 3792 of 2020 is allowed on account of the intervening lockdown due to the Corona pandemic throughout the country and the Globe. I.A. No. 3792 of 2020 stands disposed of.

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)