

UNION OF INDIA AND ORS.

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v.

BHAGWAN SINGH

AUGUST 30, 1995

[J.S. VERMA AND K.S. PARIPOORNAN, JJ.]

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*Service Law :*

*Railways—Compassionate appointment—Normally to be made within a period of five years from the date of death or within one year from the date of the applicant attaining majority—In any case not later than ten years from the date of death—Application filed in Tribunal after 20 years—Tribunal allowing the same and directing appointment of applicant—Held; Not warranted—Tribunal's order set aside.*

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The respondent's father, a Senior Clerk in the Railways died on 12.09.1972 leaving behind his wife, two major sons and the respondent who was a minor aged 12 years then. The respondent sought appointment on compassionate grounds which was rejected by the railways.

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The respondent challenged the order of the Railways before the Central Administrative Tribunal which directed the Railways to provide appointment to the respondent on compassionate grounds if he was otherwise found suitable within three months. Being aggrieved by the Tribunal's judgment the Union of India preferred the present appeal.

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On behalf of the Union of India it was contended that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event and, in no case, more than 10 years from the date of death; and that the request for appointment on compassionate grounds should be received within one year from the date of the respondent's attaining majority.

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Allowing the appeal, this Court

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**HELD :** 1.1. Normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed. There is also no record to show that the respondent applied within five years of the event

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A or within one year of his attaining majority. It is also on record to show that the last application which was allowed by the Tribunal was one filed nearly 20 years after the death of the respondent's father. Patently the application is barred. [158-C-D; E]

B 1.2. It is also on record that on the date when the respondent's father died he had besides the respondent, who was a minor then, two major sons and a wife. The two major sons and the wife did not seek any appointment on compassionate grounds. The reason for making compassionate appointment which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family. [158-F-G; 160-B-C]

*Smt. Sushma Gosain & Ors. v. Union of India and Ors.*, A.I.R. (1989) SC 1976; *Smt Phoolwati v. Union of India & Ors.*, A.I.R. (1991) SC 469 and *Umesh Kumar Nagpal v. State of Haryana & Ors.*, [1994] 4 SCC 138, relied on.

D 2. It is settled law, that even if the Court reaches the conclusion that the respondent has made out a case, all that the High Court or the Administrative Tribunal can do, is only to direct the authority to consider the claim of the respondent in accordance with relevant law or rules, if any. [160-B]

E *State of Haryana v. Naresh Kumar Bali*, [1994] SCC 448, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7813 of 1995.

F From the Judgment and Order dated 22.2.93 of the Central Administrative Tribunal, in O.A. No. 204 of 1992.

Dr. Anand Prakash, A.K. Sharma C.V.S. Rao and Hemant Sharma for the Appellants.

G Sushil Kumar for the Respondent

The Judgment of the Court was delivered by

PARIPOORNAN, J. Delay condoned. Leave granted.

H The Union of India, respondent in O.A. No. 204/92 before the

Central Administrative Tribunal, Jodhpur and the Railway Authorities, Northern Railway, have filed this appeal against the Order of the Tribunal dated 22.2.1993. The respondent herein as petitioner filed O.A. No. 204/92 praying for quashing the order denying him employment on compassionate grounds and further prayed that appointment may be given to him. The Tribunal by the impugned Order quashed the orders assailed before it and directed the respondents to reconsider the application of the respondent/applicant for appointment on compassionate grounds and provide him with an appointment, if he is otherwise found suitable within three months. Hence, this appeal by the union of India and the Railway authorities, Northern Railway.

We heard Dr. Anand Prakash, senior Advocate who appeared for the appellants and Mr. Sushil Kumar Jain, Advocate for the respondent. The facts of this case lie in narrow compass. One Ram Singh, a Senior Clerk in the Railways died on 12.9.1972 leaving behind his wife, two major sons and the respondent who was a minor aged 12 years then. The respondent passed the Higher Secondary Examination in 1983. Stating that he attained majority in 1980/81 he sought appointment on compassionate grounds which was rejected by orders dated 21.9.1987, 19.6.1990 and 11.6.1991. The Authorities took the view that the application was beyond the period of limitation (five years), that the case of the respondent was not covered by the relevant rules, that at the time of demise of Ram Singh, there were two major sons of the deceased who did not seek employment and that the family was not in financial distress. The Central Administrative Tribunal referred to the last order dated 11.6.1991 wherein it was stated there since that were two brothers of the applicant who were majors at the time of demise of the father, an appointment on compassionate grounds could not be considered and held that the other reasons stated earlier - bar of limitation and that the respondent will not be covered by the rule, have been given a go- bye. It was further held that the rejection of the application of the respondent simply on the ground that two elder brothers of the applicant/respondent, who were majors, were available at the time of the death of the father, was unjustified and, therefore, the application of the respondent should be re-considered and an appointment on compassionate grounds should be provided, if the respondent is otherwise qualified.

Appellants' Counsel laid stress on Rule V contained in the com- H

- A munication dated 12.12.1990 and contended that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event and, in no case, it should be more than 10 years from the date of the death. Further condition specified in the said communication is that the request for appointment on compassionate ground should be received by the Railway Administration as and when the applicant becomes a major, say, within a period of one year. According to the respondent, the above rules will not apply since Ram Singh died in 1972 and the respondent applied before the rules dated 12.12.1990 came into force. Counsel for the respondent contended that it is true that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event, but this period can be relaxed in exceptional cases.

- D It is common ground, that *normally* all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible persons to be appointed.
- D In this case Ram Singh died on 12.9.1972. He left behind his wife, two major sons and the respondent, a minor aged 12 years then. The respondent attained majority in 1980/81. There is no material on record to show that the respondent applied within 5 years from "the event" or within one year from the date of his attaining majority. As early as 21.9.1987 an application filed by the respondent was dismissed. The subsequent applications filed in that behalf were dismissed on 19.6.1990 and 11.6.1991. There is material on record to show that the respondent was aged 33 years at the time of making the application and the last application which was allowed by the Tribunal was one filed nearly 20 years after the death of Ram Singh.
- F Patently the application is barred.

- G The facts of this case disclose that on the date when Ram Singh died (12.9.1972) he had, besides the respondent, who was a minor then, two major sons and a wife. The two major sons and the wife did not seek any appointment on compassionate grounds. As stated by this Court in *Smt. Sushma Gosain & Ors. v. Union of India & Others*, [1989] (2) SCALE 473 = A.I.R. (1989) S.C. 1976 :

- H "..... in all claims for appointment on compassionate ground, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the

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*hardship due to death of the bread earner in the family. such appointment should, therefore, be provided immediately to redeem the family in distress."*

(Emphasis supplied)

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The above decision was followed in *Smt. Phoolwati v. Union of India & Ors.*, AIR (1991) SC 469. The reason for making compassionate appointment which is exceptional, is to provide *immediate financial assistance to*, the family of a Government servant who dies in harness, *when there is no other earning member in the family*. Matters which should be considered while giving an appointment in public services on compassionate grounds have been laid down by a Bench of this Court in *Umesh Kumar Nagpal v. State of Haryana & Ors.*, [1994] 4 SCC 138, to the following effect :

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"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every cases, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of *an employee dying in harness and leaving his family in penury and without any means of livelihood*. 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 dependents 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*

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A to meet the crisis that a job is to be offered to the eligible member of the family. ...."

(Emphasis supplied)

B It is settled law, that even if the Court reaches the conclusion that the applicant has made out a case, all that the High Court or Administrative Tribunal can do, is only to direct the authority concerned to consider *the claim of the applicant* in accordance with relevant law or rules, if any. (See : *State of Haryana v. Naresh Kumar Bali*, [1944] 4 S.C.C. 448.)

C It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September, 1972. At the time Ram Singh died on 12.9.1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated 22.2.1993. The appeal is allowed. There shall be no order as to costs.

V.S.S.

Appeal allowed.