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**(2013) 04 DEL CK 0203**

**In the Delhi High Court**

**Case No : Writ Petition (C) No. 3655 of 2012**

Raj Kumar

APPELLANT

Vs

General Manager

RESPONDENT

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**Date of Decision : 29-04-2013**

**Acts Referred:**

**Citation : (2013) 04 DEL CK 0203**

**Hon'ble Judges : Valmiki J Mehta, J**

**Bench : Single Bench**

**Advocate : Neha Gupta, for the Appellant; Shankar N. Sinha, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Valmiki J Mehta, J.—This writ petition is filed by the petitioner Sh. Raj Kumar, son of late Sh. Doodh Nath. Late Sh. Doodh Nath was an employee of the respondent-Railways. Sh. Doodh Nath expired on 31.01.2011 while still in services of Railways and the petitioner claims compassionate appointment. The case as set up in the writ petition is that the petitioner's mother was offered employment but she wants the petitioner to get employment with the respondent. Petitioner had approached the respondent and the respondent on 15.02.2012 rejected the request of the petitioner for appointment on compassionate ground in view of the fact that the financial condition of deceased Doodh Nath's family was not such which required compassionate appointment.

2. It could not be disputed before me that on the death of Sh. Doodh Nath, the family received amounts totaling to Rs. 11,76,000/- as settlement dues/retirement benefits and the petitioner's mother is also getting pension of Rs. 6980/- per month. It is also relevant to note that the petitioner is found to be earning Rs. 4000/- per month as a private employee. The Supreme Court in the case of State Bank of India and Another Vs. Raj Kumar, has held that the entitlement to compassionate appointment is not a matter of right and is not a substitute for a regular recruitment process. The Supreme Court has clarified

that compassionate appointment can only be granted if there is a prevalent scheme for grant of compassionate employment, and not otherwise. The relevant paras of the judgment of Supreme Court in the case of State Bank of India (supra) are paras 6 to 8 which read as under:-

6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

7. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these

schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

(Underlining added)

3. A reading of the aforesaid judgment shows that grant of compassionate employment is not to be treated as one of the methods of public employment and compassionate employment can only be granted in accordance with the applicable scheme.

4. In the present case, as per the scheme dated 6.1.2009, and which has been filed as Annexure R-1 to the writ petition, it is necessary that the competent authority should satisfy itself on the basis of the balanced and objective assessment of the financial conditions of the family entitlement for grant of compassionate appointment. Accordingly, the competent authority in view of the facts stated above has taken a decision that the financial condition of the deceased family is not such that compassionate employment should be granted.

5. Learned counsel for the petitioner sought to place reliance upon the judgment in the case of Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, to argue the proposition that grant of pension is not relevant to consider the financial status of a person. In my opinion, there is no quarrel to this proposition that pension need not be considered, however, various paras in the said judgment have stressed upon the entitlement to compassionate appointment for the reason that on account of certain death there is a financial crisis in the family, and which is not so in this case. In any case, the judgment relied upon by the petitioner does not state that the policy of the employer has to be violated for giving compassionate employment.

6. In view of the fact that the monetary amounts which has been given above with respect to the family of the petitioner, as also the fact that petitioner himself is earning, in my opinion, the respondent was justified in declining the compassionate appointment. In view of the above, there is no merit in the

petition, which is accordingly dismissed, leaving the parties to bear their own costs.