
(2010) 10 PAT CK 0028
In the Patna High Court
Case No : CWJC No. 2213 of 2005

Smt. Maharani Devi and Another	Vs	APPELLANT
The Union of India (UOI) and Others		RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 129 FLR 296 : (2011) 1 PLJR 498

Hon'ble Judges : T. Meena Kumari, J; Shiva Kirti Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Petitioners and learned Counsel for the Railways.
2. The relevant facts lie within a narrow compass. Under a circular dated 16.5.1991 the Railways introduced a scheme for compassionate appointment which included for consideration of case of a near relative of the deceased employee dying in harness. The circular is available as annexure-1 and provides that in case an employee dies in harness leaving behind only a widow and no children then appointment of a near relative may be considered in case of hardship and on merits of each case. The husband of Petitioner No. 1, Kailash Singh expired on 3.12.1995 while he was a permanent employee of the Eastern Railway now the East Central Railway. The claim was advanced for appointment of a nephew of deceased Kailash Singh which was in the first instance rejected by a non speaking order dated 19.3.1997 and when that order was set aside by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) in O.A. No. 155/2000 and matter was remanded, by another order dated 12.8.2002 which is a speaking order available on record as Annexure-8. That order was challenged by the Petitioners before the learned Tribunal through O.A. No. 784/2002 which has been dismissed by the impugned order dated 1.12.2004 contained in Annexure-9.

3. A perusal of Annexure-8, which is the reasoned order passed by the authorities of the Railways, shows that the claim for compassionate appointment has been rejected on two grounds. After considering the monetary benefits which the widow received as well as her monthly pension the authorities did not find that it was a case of hardship and hence, on merits the claim was rejected. However, it was also rejected on an additional ground that there is no provision for compassionate appointment to the near relative of a deceased employee except widow/son/daughter as per new scheme for compassionate appointment contained in Railway Board's letter dated 13.12.1995. The learned Tribunal considered the case of the parties on 1.12.2004 and by the impugned order dismissed the O.A. preferred by the Petitioners after holding that the claim for compassionate appointment was actually made only on 22.2.1996 when the Railway Board's letter dated 13.12.1995 was in force and hence, as a near relation or nephew the Petitioners could not claim right for compassionate appointment. From the discussions made in the impugned order it is clear that the Tribunal considered the issue which circular would be applicable and held that the subsequent scheme dated 13.12.1995 only could be applied because the application was made after that date on 22.2.1996.

4. This writ petition was initially dismissed in limine by a Division Bench of this Court on 15.2.2005. The Petitioners preferred SLP giving rise to Civil Appeal No. 3581/2009 before the Apex Court. That appeal was allowed in terms indicated in the judgment and order dated 15.5.2009. In that order the Apex Court did not interfere with the findings of fact but remitted the matter to this Court for deciding the issue as to which scheme pertaining to compassionate appointment should be held applicable, the one prevailing at the time of death of the employee or the one prevailing when the application for compassionate appointment was filed.

5. On hearing the parties and going through the schemes for compassionate appointment both under circular dated 16.5.1991 and under decision of the Railway Board dated 13.12.1995, it is found that under the schemes no right accrues to any person on mere death of railway employee in harness. The only right is of consideration of a claim for compassionate appointment if it is lodged by the eligible person as per terms of the scheme. Thus, the right of consideration is a contingent right dependant upon filing of an application. If the dependant wife or other heirs choose not to file any application for compassionate appointment, there is no obligation to offer such appointment to any eligible heir. Further, such appointment cannot be claimed as a matter of right. The suitability of the candidates is required to be assessed and it is also very much dependant upon availability of vacancies. Hence, in our considered view under the scheme for compassionate appointment there is no vested right of appointment and even the right of consideration is available only when an application is made by an eligible heir of the deceased employee or a relation. In such a situation, the relevant date would be the date of making application for compassionate appointment and not the date of death of the employee for

deciding which scheme will govern the case for compassionate" appointment. The scheme available on the date of making the application for compassionate appointment will have to be followed by the authorities.

6. In our aforesaid view we are supported by the view taken by the Supreme Court in a recent judgment in the case of State Bank of India v. Rajkumar, reported in 2010(2) BBCJ IV 353. In that case the Apex Court was called upon to decide the validity of provisions in a scheme for compassionate appointment which required even pending applications to be considered in the light of subsequent scheme. The provisions were held to be good on the ground that scheme for compassionate appointment by its very nature does not create any vested right and hence, even if provisions had retrospective effect it did not offend Article 14 of the Constitution of India.

7. There is yet another aspect which supports the view taken by us. The new scheme was framed on 13.12.1995 in view of a judgment of the Apex Court disapproving grant of compassionate appointment to a relation in absence of any immediate heir such as son or daughter etc. In that view of the matter also it will not be proper to order the authorities to act as per the old scheme so as to offer appointment to a nephew of the deceased employee.

8. Having answered the issue noticed earlier, it must be held that when the application for compassionate appointment was filed on 22.2.1996 as per findings of fact given by the learned Tribunal in paragraph 16 of the impugned order, no right of consideration for compassionate appointment was available to the nephew of the deceased employee on that date as per the new scheme of compassionate appointment framed by the Railway Board on 13.12.1995. Hence, this Court finds no good ground to interfere in the matter. The writ petition is, therefore, dismissed. No costs.