

(2006) 01 PAT CK 0057
In the Patna High Court
Case No : C.W.J.C. No. 4706 of 2003

Union of India (UOI) and Others

APPELLANT

Vs

Amar Nath Ray and Another

RESPONDENT

Date of Decision : 04-01-2006

Acts Referred:

Citation : (2006) 01 PAT CK 0057

Final Decision : Allowed

Judgement

1. The writ petition is directed against the order dated 4.12.2002, passed by the Central Administrative Tribunal, Patna Bench (for short "the Tribunal") in Original Application No. 597 of 2000, whereby the Tribunal has directed the authorities to consider the case of private respondent No. 1 for appointment on compassionate ground and issue necessary orders regarding his appointment as per the law.

2. The father of respondent No. 1, who was a railway employee in the Eastern Railway, died in the year 1977 i.e. 28 years back. Admittedly, at that time private respondent No. 1 was only two years old. His mother was also dead and as such his grandmother is looking after the family.

3. In 1993, private respondent No. 1 attained majority and then he applied for appointment on compassionate ground on 9.2.1994. When the authorities did not give appointment, he approached the Tribunal after Six years in 2000 and the Tribunal, relying upon certain orders passed by the Benches of the Tribunal, has allowed the claim.

4. Learned counsel appearing for the Union of India submitted that, admittedly, when private respondent No. 1 was minor at the time of death of his father, no appointment on compassionate ground could have been made after such a long time after attaining his majority for the simple reason that the very object, for which the compassionate appointment is provided for, will stand frustrated.

5. Learned counsel appearing for the private respondent, on the other hand, submitted that there is circular of the Railway that the application can be filed in

case of dependent being minor after obtaining majority within two years and as such the claim of private respondent No. 1 cannot be thrown on the ground as urged on behalf of the counsel appearing for the Union India.

6. After hearing learned counsel for the parties and after going through the impugned order, we are inclined to interfere with the order of the Tribunal for the reasons stated hereinafter. The Constitution guarantees equality before law in the matter of appointment. The appointment on compassionate ground, which, in substance, means an appointment on the ground of descent, has been held to be permissible by the Apex Court with a very good object to mitigate the hardship caused to the family of the deceased employee. The object is laudable but we feel after so many years of remaining at the Bar and Bench that instead of serving the very purpose, for which this provision has been made. It is really causing damage to the system itself. We also find that regular appointment has become exception now-a-days. The appointment on the ground of land oustee, appointment on compassionate ground and other similar grounds have become rule of the day. We also find that many incompetent persons, who in a normal course could not have been dreamed of getting a service, are getting preference over the brilliant and efficient students, whose father/mother unfortunately is/was not in the Government service. Be that as it may, as the law stands we have to decide the matter according to law.

7. The relevant date to consider the appointment is the death of the employee and if on that day the person is not eligible he cannot claim compassionate appointment subsequently. If that will be allowed, then there will be endless compassion, which the law does not permit. Admittedly, private respondent No. 1 was two years old at the time of death of his father. He has survived for all these 28 years. He attained majority in 1993. Thus, his claim for compassionate appointment, in our view, did not survive in law.

8. During course of argument, learned counsel for respondent No. 1 has submitted that there is a circular of the Railway providing that after obtaining majority application for compassionate appointment can be made. Though the circular is not before us, but we are of the view that any such circular will be contrary to the basic object for appointment on compassionate ground. No department can make a rule, which, is inconsistent or contrary to Articles 14 and 16 of the Constitution and to the basic law laid down by the Supreme Court with regard to compassionate appointment.

9. In this connection, it is useful to refer to two decisions of the Suprerrrs Court, which have important bearing on the question involved in this case, in .the case of Jagdish Prasad Vs. State of Bihar and Another, , trier son of the deceased employee was minor at the, time of his death and an application was filed for appointment on attaining the majority after about 23 years. While dealing with the said matter, the Apex Court held as follows :-

The very object of appointment of a dependent of the deceased employees who

die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years" old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted,, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules.

10. The same view has been reiterated in the case of Sanjay Kumar Vs. The State of Bihar and Others, . In that case also son of the deceased employee was minor aged about ten years at the time of death of his mother and his claim for appointment on compassionate ground on attaining majority was disallowed by the Apex Court.

11. During the course of hearing, learned counsel for private respondent No. 1 submitted that in pursuance of the direction issued by the Tribunal, his claim has already been rejected. Be that as it may, that does not make any difference because if the said order of the Tribunal goes then there is no question of consideration of his case for appointment on compassionate ground.

12. Fir the reasons aforementioned, this writ application is allowed and the impugned order, passed by the Tribunal is set aside.