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BHAWANI PRASAD SONKAR

v.

UNION OF INDIA & ORS.
(Civil Appeal No. 5101 of 2005)

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MARCH 11, 2011

[D.K. JAIN AND H.L. DATTU, JJ.]

Service Law:

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Grant of compassionate appointment – Object of – Held: Compassionate employment is given solely on humanitarian grounds and cannot be claimed as a matter of right – Ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit –

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Compassionate appointment is an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules – The scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

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Compassionate appointment – Claim for – Guidelines governing the appointment – Held: Request for compassionate employment is to be considered strictly in accordance with the governing scheme – Application for

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compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time – Appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in

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service – It is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts – On facts, appellant's father was

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declared as de-categorized employee, not offered alternative employment and was made to retire from services on 30.08.1999 on recommendation by the Standing Committee – In terms of Circular dated 22.09.1995 which contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job, the appellant shall be entitled to employment on compassionate ground.

Appellant's father-Guard Mail/Express in the Railways, was declared a de-categorized employee and on recommendation by the Standing Committee was retired from service by the order dated 30th August, 1999 without offering him any alternate employment as stipulated in the service rules. Appellant's father filed applications before the Railway official seeking compassionate appointment for his son as a Class IV employee but the same were rejected. The appellant filed an application before the Tribunal which was also dismissed. The appellant then filed a writ petition seeking compassionate appointment. The High Court dismissed the petition on the ground that the employee did not fulfil the conditions envisaged in the Railway Board Circular dated 29th November, 2001. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1 The compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to the Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution

A of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which
B partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it
C seeks to achieve. [Para 15] [640-B-E]

Umesh Kumar Nagpal vs. State of Haryana and Ors. (1994) 4 SCC 138; Steel Authority of India Limited vs. Madhusudan Das and Ors. (2008) 15 SCC 560; V. Sivamurthy vs. State of Andhra and Ors. (2008) 13 SCC 730
D – referred to.

1.2 While considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

E (i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left
F with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be
G considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore,
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compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

Tested on the touchstone of the aforesaid broad guidelines governing appointment on compassionate ground, the appellant has made out a case for such appointment. [Paras 19 and 20] [642-G-H; 643-A-F]

2.1 It is manifest that in terms of circular dated 29th November, 2001 only those employees, who have been totally incapacitated from performing any service after 29th April, 1999 were entitled to seek compassionate employment for their wards. In the instant case, appellant's father retired on 30th August, 1999 i.e. after 29th April, 1999, but was not offered alternative employment in terms of the Circular dated 29th April, 1999. [Para 20] [643-F-H]

2.2 The circular/letter dated 29th November, 2001, on which reliance was placed while rejecting appellant's claim has to be understood in its correct perspective. Evidently, it seeks to limit the benefit of compassionate employment to only those incapacitated employees who had been retired after 29th April, 1999, as in case of employees who were found fit for performing services in a lower category, Circular dated 29th April, 1999 would be applicable, and the Railways was bound to offer

A alternative employment to such employees. It flows
therefrom that after 29th April 1999, those employees who
did not accept the alternative employment, and opted for
voluntary retirement could not be given the benefit of
compassionate employment for their wards. [Para 21]
B [644-A-C]

2.3 In the instant case, the respondents have not
placed any material on record to establish that the
appellant's father who retired on 30th August, 1999 i.e.
C after 29th April, 1999 was offered any alternative
employment in terms of Circular dated 29th April, 1999.
On the contrary, it appears that the Standing Committee
recommended his retirement. Having denied appellant's
father the benefit of Circular dated 29th April 1999, the
D respondents cannot claim that Circular dated 29th
November, 2001 was applicable to appellant's father,
disentitling him from seeking employment on
compassionate ground for his son as he was not totally
incapacitated and had sought voluntary retirement. It is
E clear from the retirement order dated 30th August, 1999
that the appellant's father was retired from service
pursuant to the recommendation of the Standing
Committee. [Para 22] [644-D-F]

2.4 In light of the fact that Circular dated 29th
F November, 2001 was not applicable in the case of
appellant's father, inasmuch as the benefit of the 29th
April, 1999 Circular was not extended to him, and he was
made to retire from service, that the earlier circular dated
22nd September, 1995 is applicable in the instant case.
G Consequently, the appellant would be entitled to
employment on compassionate ground as the said
Circular contemplates compassionate employment for
the wards of those employees who have been medically
de-categorized, and have retired, without being offered
H an alternative suitable job. The plea of the respondents

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that on being de-categorized, appellant's father had opted for voluntary retirement cannot be accepted. The impugned judgment is set aside and it is directed that the appellant would be granted employment on compassionate ground. [Paras 23 and 24] [644-G-H; 645-A-C]

Case Law Reference:

(1994) 4 SCC 138	Referred to	Para 16
(2008) 15 SCC 560	Referred to	Para 17
(2008) 8 SCC 475	Referred to	Para 17
(2008) 13 SCC 730	Referred to	Para 18

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 5101 of 2005.

From the Judgment & Order dated 01.09.2003 of the High Court of Judicature at Allahabad (Lucknow Bench) Lucknow in Writ Petition No. 1178 (S/B) of 2003.

D.P. Chaturvedi (for Sheela Goel) for the Appellant.

Ashok Bhan, C.K. Sharma, A.K. Sharma, Madhurima Mridual, B. Krishna Prasad for the Respondents.

The Judgment of the Court was delivered by

D.K. JAIN, J.: 1. This appeal, by grant of special leave, is directed against the judgment dated 1st September, 2003 delivered by the High Court of Judicature at Allahabad at Lucknow, whereby the writ petition filed by the appellant herein, seeking compassionate appointment, has been dismissed on the ground that he did not fulfil the conditions envisaged in the Railway Board Circular dated 29th November, 2001.

2. Appellant's father, Mr. Prahladji Sonkar, was posted as a Guard Mail/Express, North Eastern Railway at the Lucknow

A Junction. Respondent No. 2 viz. the Senior Divisional Karmik
 Adhikari, North Eastern Railway (N.E.R.), Lucknow directed the
 appellant's father to appear before the Medical Board for a
 medical examination. Accordingly, appellant's father appeared
 before the Medical Board and was declared medically unfit in
 B A2, A3, B1 and B2 categories vide certificate dated 6th March,
 1998. However, he was found fit in C1 and C2 categories and
 was directed to appear for another medical examination after
 six months.

C 3. Accordingly, appellant's father again appeared for a
 medical examination and vide certificate dated 13th July, 1999,
 he was declared medically unfit as de-categorized employee.
 Nevertheless, he was found fit in category B1 and below.
 Thereafter, on 9th August, 1999, appellant's father appeared
 D before the Standing Committee which decided to retire him
 without offering him any alternate employment, as stipulated in
 the service rules. Ultimately, appellant's father was retired from
 service vide retirement order dated 30th August, 1999 issued
 by respondent No. 3 viz. Divisional Railways Manager
 (Karmik), Lucknow, which stated that:

E "Shri Prahlad Ji Sonkar, Guard Mail/Express in the pay
 scale of (5500-9000) at Lucknow Junction who having
 been declared as decategorised employee has been
 recommended by the standing committee for retirement,
 F is retired with immediate effect."

G 4. At this juncture, it would be relevant to note that an
 appointment on compassionate ground in the Railways was
 governed by Railway Board Circular dated 22nd September,
 1995 which provided that:

H "1. In terms of the instructions contained in para I(iv) of
 Board's letter No. E(NG)III/78/RC-1/1 dated 07.04.1983
 and 03.09.1983, appointment on compassionate grounds
 is permissible where a Railway employee becomes

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medically decategorised for the job he is holding and no alternative job with the same employee is but it is not accepted by the employee and he chooses to retire from service.

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2. The question whether appointment on compassionate ground can be considered in the case of a medically decategorised employee who does not wait for the Administration to identify an alternative job for him but chooses to retire under consideration of the Board.

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3. After careful consideration of the matter, Board have decided that in partial modification of Board's letter No. E(NG)III/78/RC-1/1 dated 03.09.1983, in the case of medically decategorised employee, compassionate appointment of an eligible ward may be considered also in cases where the employee concerned does not wait for the administration to identify an alternative job for him but chooses to retire and makes a request for (sic) such appointment."

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5. It is also pertinent to mention here that on 29th April, 1999, the Railway Board issued a circular stating, inter alia, that in light of the mandate of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, employees who become incapacitated from holding the post they were currently holding, but found eligible for retention in service in posts corresponding to lower medical category, shall be offered alternative employment in the posts for which they are found suitable.

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6. Appellant's father moved an application dated 1st September, 1999, before respondent No. 2 requesting that his son be given compassionate appointment as a Class IV employee. Since there was no response to the said request, the father of the appellant moved another application, dated 30th December, 1999, before respondent No. 3. On 18th January, 2000, the Railway Board issued a letter stating that

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A when an employee is declared as medically unfit to perform the work which he was performing but is found to be fit to perform work in a lower category, any request for giving compassionate employment to such employee's ward would not be considered if the employee opts for voluntary retirement after being de-

B categorized.

7. Thereafter, on 29th November, 2001, the General Manager (Personnel), Gorakhpur issued a letter stating that in case of employees who opted for voluntary retirement after 29th April, 1999, the cases of wards of only totally incapacitated employees would be considered for appointment on compassionate grounds. In pursuance of the same, respondent No. 3 issued a letter dated 15th February, 2002 to appellant's father stating that the application for appointment of his son on compassionate ground was not found fit for consideration by

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D the competent authority.

8. Being aggrieved, the appellant preferred an Original Application before the Central Administrative Tribunal, Lucknow (for short "the Tribunal").

E 9. Vide order dated 31st December, 2002, the Tribunal dismissed the Original Application, observing thus:

"I have considered the facts of the case and submissions made on behalf of the parties, and I am of the view that the O.A. deserves to be dismissed on the basis of the circular letter dated 29.11.2001 which had the effect of superseding the earlier instructions on the subject. Since, the applicant's father was not totally incapacitated and retired on 30.8.99, the claim of the applicant for compassionate appointment has to be considered in the light of the instructions of the Railway Board letter dated 29.11.2001 according to which he is not eligible for compassionate appointment."

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H 10. Still being aggrieved, the appellant filed a writ petition

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before the High Court. As afore-mentioned, the High Court has, A
vide the impugned judgment, dismissed the petition, stating
that:

“The Tribunal has recorded clear-cut finding to the effect
that the petitioner was not eligible for any compassionate B
appointment which (sic) could be offered as envisaged in
the policy decision of the Railway Board as indicated in
the Circular dated 29.11.2001, were not satisfied.

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Taking into consideration the facts and circumstances of
the case as brought on record in their totality no justifiable
ground for any interference by this Court can be said to
have been made out while exercising the extraordinary
jurisdiction under Article 226 of the Constitution.” D

11. Meanwhile, the appellant also preferred a review
application before the Tribunal for reviewing its earlier order
dated 31st December, 2002. Vide order dated 5th March,
2004, the said application was dismissed by the Tribunal on
the ground that the same was barred by limitation. E

12. Hence, the present appeal.

13. Mr. D.P. Chaturvedi, learned counsel appearing on
behalf of the appellant, while assailing the impugned judgment, F
strenuously urged that having retired appellant’s father without
offering him a suitable alternative job, despite the fact that he
was found medically fit in category B1, the respondents were
obliged to appoint the appellant in terms of instructions dated
7th April, 1983 and 3rd September, 1983, which were reiterated
in Circular dated 22nd September, 1995. G

14. *Per contra*, Mr. Ashok Bhan, learned counsel
appearing on behalf of the respondents, contended that
appellant’s father, having opted for voluntary retirement in terms H

A of the Railway Board's letter dated 18th January, 2000, could not seek appointment of his son on compassionate ground. Learned counsel urged that the appellant has not brought any material on record to substantiate his plea that his father was forced to retire.

B 15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our
 C Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate
 D appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be,
 E is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. We do not propose to burden this judgment with reference to a long line of decisions of this Court on the point. However, in order to recapitulate the
 F factors to be taken into consideration while examining the claim for appointment on compassionate ground, we may refer to a few decisions.

G 16. In *Umesh Kumar Nagpal Vs. State of Haryana & Ors.*¹, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Class III and IV, this Court had observed that:

H "The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis.

1. (1994) 4 SCC 138.

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The object is not to give a member of such family a post A
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 B
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 to meet
the crisis that a job is to be offered to the eligible member
of the family. The posts in Classes III and IV are the lowest C
posts in non-manual and manual categories and hence they
alone can be offered on compassionate grounds, the
object being to relieve the family, of the financial destitution
and to help it get over the emergency. The provision of D
employment in such lowest posts by making an exception
to the rule is justifiable and valid since it is not
discriminatory. The favourable treatment given to such
dependant of the deceased employee in such posts has
a rational nexus with the object sought to be achieved, viz.,
relief against destitution. No other posts are expected or
required to be given by the public authorities for the E
purpose. It must be remembered in this connection that as
against the destitute family of the deceased there are
millions of other families which are equally, if not more
destitute. The exception to the rule made in favour of the
family of the deceased employee is in consideration of the F
services rendered by him and the legitimate expectations,
and the change in the status and affairs, of the family
engendered by the erstwhile employment which are
suddenly upturned."

17. Similarly, in *Steel Authority of India Limited Vs. G*
*Madhusudan Das & Ors.*², this Court has observed that:

"This Court in a large number of decisions has held that
the appointment on compassionate ground cannot be

2. (2008) 15 SCC 560.

A claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.” (See also: *General Manager, State Bank of India & Ors. Vs. Anju Jain*³.)

D 18. In *V. Sivamurthy Vs. State of Andhra Pradesh & Ors.*⁴, this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well recognized exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule :

F “(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

G (ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.”

19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

3. (2008) 8 SCC 475.

H 4. (2008) 13 SCC 730.

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(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

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(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

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(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

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20. Tested on the touchstone of these broad guidelines governing appointment on compassionate ground, we are of the opinion that the appellant has made out a case for such appointment. It is manifest that in terms of circular dated 29th November, 2001 only those employees, who have been totally incapacitated from performing any service after 29th April, 1999 were entitled to seek compassionate employment for their wards. In the instant case, appellant's father retired on 30th August, 1999 i.e. after 29th April, 1999, but was not offered alternative employment in terms of the Circular dated 29th April, 1999.

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A 21. The circular/letter dated 29th November, 2001, on
which reliance was placed while rejecting appellant's claim has
to be understood in its correct perspective. Evidently, it seeks
to limit the benefit of compassionate employment to only those
incapacitated employees who had been retired after 29th April,
B 1999, as in case of employees who were found fit for performing
services in a lower category, Circular dated 29th April, 1999
would be applicable, and the Railways was bound to offer
alternative employment to such employees. It flows therefrom
that after 29th April 1999, those employees who did not accept
C the alternative employment, and opted for voluntary retirement
could not be given the benefit of compassionate employment
for their wards.

D 22. In the instant case, the respondents have not placed
any material on record to establish that the appellant's father
was offered any alternative employment in terms of Circular
dated 29th April, 1999. On the contrary, it appears that the
Standing Committee recommended his retirement. Having
denied appellant's father the benefit of Circular dated 29th
E November, 2001 was applicable to appellant's father,
disentitling him from seeking employment on compassionate
ground for his son as he was not totally incapacitated and had
sought voluntary retirement. It is clear from the retirement order
dated 30th August, 1999 that the appellant's father was retired
F from service pursuant to the recommendation of the Standing
Committee.

G 23. In light of the fact that Circular dated 29th November,
2001 was not applicable in the case of appellant's father,
inasmuch as the benefit of the 29th April, 1999 Circular was
not extended to him, and he was made to retire from service,
we are of the opinion that the earlier circular dated 22nd
September, 1995 is applicable in the instant case.
Consequently, the appellant would be entitled to employment
H on compassionate ground as the said Circular contemplates

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compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being de-categorized, appellant's father had opted for voluntary retirement. A
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24. In light of the foregoing discussion, the appeal is allowed; the impugned judgment is set aside and it is directed that the appellant shall be granted employment on compassionate ground within three months of the receipt of copy of this judgment, subject to his complying with other eligibility conditions, as applicable on 1st September, 1999. However, for all intents and purposes, he shall be deemed to be in service from the date of actual joining. C

25. In the facts and circumstances of the case, there shall be no order as to costs. D

N.J.

Appeal allowed.