

service would be warranted in the case or even in cases where prosecution is contemplated or has been launched against the railway servant. The only rider in such a condition is that it would require the approval of the Minister in charge in regard to Group 'A' & 'B' railway servants and that of the General Manager in the cases of Group 'C' & 'D' railway servants. The acceptance of a request for voluntary retirement shall be presumed and the retirement shall be effective in terms of the notice, unless the competent authority issues an order to the contrary, before the expiry of the period of notice.

17. The Master Circular No. 35 does not provide that the request of voluntary retirement of a person who has been awarded a minor punishment, cannot be accepted.

18. The respondent has sought voluntary retirement on the ground that he is not keeping good health. Previously, two charge-sheets were issued to him for his unauthorized absence from duty. On 18.02.2020, two separate punishment orders were passed for negligence in performance of duties. One order imposed the punishment of withholding of increment for one year without cumulative effect and the other order punished him with withholding of increment for one year and 2 months without cumulative effect. Apparently, the respondent has already been punished for his unauthorized absence from duty and that punishment does not provided that the periods during which the opposite party remained absent, shall not be counted in his service or that he shall not be paid salary for those periods. In these circumstances, no other adverse consequence will follow due to the

respondent's absence for the aforesaid period.

19. In view of the foregoing discussion, we are of the considered opinion that there is no illegality in the impugned orders passed by the Central Administrative Tribunal allowing the original application filed by the respondent. The Writ Petition lacks merit and the same is hereby **dismissed** at the admission stage.

(2025) 2 ILRA 441

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 18.02.2025

BEFORE

**THE HON'BLE ATTAU RAHMAN MASOODI, J.
THE HON'BLE SUBHASH VIDYARTHI, J.**

Writ-A No. 1977 of 2025

**U.O.I. & Ors. ...Petitioners
Versus
Sri Santosh Kumar & Anr. ...Respondents**

Counsel for the Petitioners:
Vinay Tripathi

Counsel for the Respondents:

A. Service Law – Compassionate appointment – Relaxation in qualification – Master Circular No. 16 and Office Memorandum dated 11.12.2009 – Entitlement of sole child after successive death of the parent – Railway claimed that relaxation can be granted only to the widow not to the rest dependent – Permissibility – Held, the provision contained in the Master Circular issued by the Railway Board is applicable to all persons who were dependent on a deceased employee and that is not limited in its application to the widows of the deceased employees – High Court found

the facts of the case prima facie making exceptional circumstances, which ought to have been taken into consideration while considering his claim for compassionate appointment by granting relaxation of education qualification in view of the aforesaid provisions contained in the Office Memorandum dated 11.12.2009. (Para 17 and 18)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Udit Narain Singh Malpaharia Vs Addl. Member Board of Revenue; AIR 1963 SC 786
2. Savitri Devi Vs D.J., Gorakhpur; (1999) 2 SCC 577
3. Jogendrasinhji Vijaysinghji Vs St. of Guj.; (2015) 9 SCC 1

(Delivered by Hon'ble Attau Rahman
Masoodi, J.
&
Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Vinay Tripathi, learned counsel for the petitioners - Union of India.

2. By means of the instant Writ Petition, the petitioners have challenged the validity of the judgment and order dated 29.11.2024 passed by the Central Administrative Tribunal, Lucknow Bench, Lucknow, in Original Application No. 332/00317 of 2021.

3. At the outset, we noted that the Central Administrative Tribunal, Lucknow Bench, Lucknow has been arrayed as the respondent no. 2 in this Writ Petition, although the practice of impleading Courts and Tribunals has been deprecated repetitively.

4. In Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue: AIR

1963 SC 786, a Bench consisting of four Hon'ble Judges of the Hon'ble Supreme Court had held that in a Writ of Certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties.

5. However, in **Savitri Devi v. District Judge, Gorakhpur:** (1999) 2 SCC 577, a Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court had observed as follows:—

*“14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. **There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.**”*

(Emphasis added)

6. It is relevant to note that the aforesaid observations were made by the Bench consisting of two Hon'ble Judges of the Supreme Court in **Savitri Devi** (Supra) without referring to the earlier decision in **Udit Narain Singh Malpaharia** (Supra) given by a larger Bench consisting of four Hon'ble Judges of the Hon'ble Supreme Court.

7. In **JogendrasinhjiVijaysinghji v. State of Gujarat**: (2015) 9 SCC 1, another Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court discussed numerous precedents on the issue, including the judgments in the cases of **Udit Narain Singh Malpaharia and Savitri Devi** (Supra) and explained the law as follows:—

“43. As we notice, the decisions rendered in *Hari Vishnu Kamath* [AIR 1955 SC 233], *Udit Narain Singh* [AIR 1963 SC 786] and *Savitri Devi* [(1999) 2 SCC 577] have to be properly understood. In *Hari Vishnu Kamath*, the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In *Udit Narain Singh*, the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In *Savitri Devi*, the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case have to be understood in proper perspective. The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before

*the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite a few examples: the tribunals constituted under the Administrative Tribunals Act, 1985, the Customs, Excise and Service Tax Appellate Tribunal, the Income Tax Appellate Tribunal, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different from that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. **There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties.** To give another example : in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court,*

even if required to call for the records, the District Judge need not be a party...

(Emphasis added)

8. The Central Administrative Tribunal, which decides a matter, is not entitled to defend its order before this Court and, therefore, applying the law as it stands clarified by the Hon'ble Supreme Court in **JogendrasinhjiVijaysinghji** (Supra), the Central Administrative Tribunal should not be impleaded as an opposite party to a Writ Petition filed against its order. Therefore, this petition suffers from the defect of mis-joinder of parties.

9. However, as the aforesaid defect is a curable defect, we proceed to examine the merits of the case to ascertain whether the petition deserves to be admitted.

10. The aforesaid Original Application has been filed by the respondent no. 1 seeking compassionate appointment consequent to death of his father on 17.04.2021 while he was working as a Bearer under the petitioner authorities. The father of the respondent no. 1 had died leaving behind his widow and son but unfortunately the mother of the respondent no. 1 also passed away on 23.04.2021. On 10.05.2021, the respondent no.1 submitted an application for compassionate appointment and subsequently he submitted reminders also. When no action was taken thereon, he filed the aforesaid original application.

11. The petitioners contended before the Tribunal that the respondent no. 1 is merely a class 8th pass whereas the minimum educational qualification for recruitment to any post is having passed class 10th examination.

12. The Tribunal referred to an Office Memorandum dated 11.12.2009 issued by the Department of the Personnel and

Training, Government of India, which states that modification of the then existing scheme for compassionate appointment was considered in light of the recommendations of the 6th Central Pay Commission and it was decided in consultation with the Department of Expenditure that for appointment on compassionate ground, in exceptional circumstances, the government may consider recruiting persons not immediately meeting the minimum educational standards. The government may engage them as trainee, who will be given the regular pay-band and grade-pay only after acquiring the minimum qualification prescribed under the recruitment rules.

13. The learned counsel for the petitioners has submitted that as per the Circular dated 09.12.2011 issued by the Railway Board, only widow / wife of the deceased employee can be given compassionate appointment even if she does not possess the prescribed educational qualification. The minimum educational qualification was enhanced from class 8th to class 10th in the year 2013 and since then the relaxation in the minimum educational qualification has been given only for the widows of railway employees and to no other person.

14. We have considered the aforesaid submissions of the learned counsel for the petitioners.

15. The Office Memorandum dated 11.12.2009 issued by the Department of Personal and Training specifically provides that: -

“for appointment on compassionate grounds, in exceptional circumstances

Government may consider recruiting persons not immediately meeting the minimum educational qualification standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules”.

16. Master Circular No. 16 issued by the Railway Board contained a provision for relaxation of educational qualification which says that: -

“The educational qualification prescribed for the post should not relaxed. However, if on the merits of the individual case, General Manger feels such a relaxation on the minimum qualification absolutely necessary, such cases may be referred to the Ministry of Railways. The Railway Board will consider these cases on merits subject to the stipulation that the candidates shall acquire the requisite qualification within the prescribed time limit. Such cases will carry the following stipulations, in the offer of appointment: -

(i) The period to be allowed for acquiring the qualification will be two years.

(ii) Such a person will not be confirmed in service till he acquired the qualification.

(iii) He will not be eligible for promotion till such time he acquired the qualification.

(iv) If any junior is promoted before the senior compassionate appointee acquires the qualification, such promotion of the junior will be treated as regular. In other words, the compassionate appointee will lose seniority in the higher grade to such of his juniors as may have been promoted to the next higher grade, before he acquires the prescribed qualification.

(Emphasis added)

17. This provision contained in the Master Circular issued by the Railway

Board is applicable to all persons who were dependent on a deceased employee and that is not limited in its application to the widows of the deceased employees.

18. The respondent no. 1 was the only child of his parents. His father died on 17.04.2021 and his mother also died on 23.04.2021. The aforesaid facts prima facie make out exceptional circumstances in the case of the petitioner, which ought to have been taken into consideration while considering his claim for compassionate appointment by granting relaxation of education qualification in view of the aforesaid provisions contained in the Office Memorandum dated 11.12.2009 issued by the Department of Personal and Training and the Master Circular No. 16 issued by the Railway Board.

19. We are of the considered view that the Central Administrative Tribunal has rightly allowed the original application and has directed the petitioners to reconsider the case of the respondent no. 1 for compassionate appointment in light of the aforesaid Office Memorandum and the Master Circular.

20. Accordingly, the writ petition lacks merit and the same is **dismissed** at the admission stage.

(2025) 2 ILRA 445

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 19.02.2025

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ-A No. 2077 of 2025

Gorakhnath Shukla

...Petitioner

Versus

State of U.P. & Ors.

...Respondents