

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 06th day of February 2020

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Original Application No. 330/00885/2015

Asif, son of Late Rasheed Khan, R/o Azad Nagar Bhattagaon, District Jhansi.

.....Applicant

By Advocate: Shri S. M. Ali

Versus

1. Union of India, Through General Manager, North Central Railway, Allahabad.
2. D. R. M. North Central Railway, Jhansi.
3. Superintendent, Carriage & Wagon Department North Central Railway, Jhansi

.....Respondents

By Advocate: Shri P. Mathur

ORDER

1. The present O.A. has been filed by applicant Asif seeking the following relief(s):-

- i. *To quash the impugned order dated 07.11.2014 (Annexure A-1)*
- ii. *To consider the case of the applicant for compassionate appointment in the light of Rules Circular dated 28.07.2000*
- iii. *To pass any such and further order as deem fit in the facts and circumstances of the case.*
- iv. *To issue award cost and compensation in favour of applicants.*

2. Case of applicant is that his father Rasheed Khan while working in the respondents department died on 30.11.1997 leaving behind a wife, 5 daughters and one son. That, DRM, Jhansi issued letter dated 04.06.1999 (Annexure A-4) informed the mother of applicant that since no vacancy is available at Jhansi, her case can be sent for appointment at Bhusawal, Solapur and Mumbai. In reply, mother of applicant sent a communication dated 15.06.1999 (Annexure A-5) to the respondents that since it is difficult for her to work at any other place except Jhansi and since she has 5 daughters and one minor son to maintain, the compassionate appointment be kept for her minor son (applicant) under rules. On attaining age of majority on 30.06.2011, application dated 16.07.2011 (Annexure A-7) was moved for providing compassionate appointment the applicant.

3. It is the further case of the applicant that the respondents have not taken any action in the matter of his compassionate appointment but that as per circular covered by RBE No. 144/2000 issued by the Railway Department, the General Manager are empowered to consider time barred cases which are upto 20 years old from the date of death of Railway Employee provided the application is submitted within two years of attaining the age of majority by the candidate. That applicant filed a representation dated 23.05.2014 (Annexure A-9) which was directed by the Tribunal in O.A. No. 1123/2014 to be considered by the respondents

by way of a reasoned and speaking order. However, the respondents vide impugned order dated 07.11.2014 rejected his representation for compassionate appointment on the grounds mentioned in the impugned order. It would be pertinent to extract the relevant portion of the impugned order dated 07.11.2014 which is as under :-

"Accordingly, settlement papers in F/o Smt. Mushtari Begum were filled up and payment of settlement dues was arranged to her. Welfare Inspector Inquiry for appointment on compassionate ground was also got conducted in her favour. After approval of competent authority, she was screened on 09.04.1999 for appointment on compassionate grounds.

However, vide DRM(P)/JHS letter no. P/161/Daya/Bharti dated 04/09.06.1999 she was asked to submit her willingness (within 15 days) for appointment in Bhusawal, Solapur or Mumbai Divisions of Central Railway since there was no vacancy in Jhansi division at that time.

She submitted her willingness for being appointed in Bhopal Division vide her application dated 31.05.1999. On her own request she was allotted post of Safaiwali and asked to report up to 25.02.2000. She reported to this office and was sent for medical examination, in which she was found UNFIT vide medical certificate no. 280677 dated 26.04.2000.

As per record available in this office, after being declared medically unfit for appointment, Smt. Mushtari Begum neither submitted any application for her medical re-examination nor for appointment of her then major daughter Ku. Shama (whose date of birth is 15.01.1979), nor for other daughters, who became major thereafter time to time.

The representation of Smt. Mushtari Begum dated 15.06.1999, (filed as annexure A-4 in O.A.) is incorrect and unacceptable and not available on records. In this letter she had requested to register the case for compassionate appointment in favour of minor son Shri Asif under rules. But

then how could she herself proceed for her own appointment in the light of the fact that she had attended medical examination and was declared unfit on a latter date i.e. 26.04.2000.

Also, there is discrepancy in your date of birth as available in your school certificate (filed as Annexure A-5 in above O.A) according to which it is 01.07.1993 whereas, the affidavit dated 03.06.98 submitted by your mother Smt. Mushtari Begum depicts your date of birth to be of 03.05.1990. As such no claim in this regard stands tenable in this case.

This case is more than 16 years old from the date of death of employee and 06 years from the date of your attaining majority. Your mother (Smt. Mushtari Begum wife of late Shri Rashid Khan) was screened for appointment for the post of Safaiwali, but she was declared medically unfit. Her statement in representations dated 15.06.1999 and 16.07.2011, (annexure-4 & 6 with O.A.) are incorrect and not available on records, hence not tenable.

Moreover, as per Railway Board letter no. E(NG)III/78/RC-I/1 dated 07.04.1983, normally all appointment on compassionate ground should be made within a period of 5 years from date of occurrence of the event.

Therefore, in view of the above observations and contradictions which have come to light, I find that your case lacks merit and does not come within the purview of Railway Boards letter dated 07.04.1983 & 28.07.2000."

4. In the counter affidavit the stand of respondents is that as per record Mustari Begum W/o Rasheed Khan was considered for compassionate appointment in Bhopal Division as there was no vacancy available in Jhansi Division and she was declared unfit by the medical authority vide medical certificate no. 28077 dated 26.04.2000 but that on being declared medically unfit, she did not file any application for

consideration of compassionate appointment for other family members.

It is further averred in the counter affidavit that since there was no vacancy in Jhansi, Mustari Begum vide letter dated 31.05.1999 (Annexure CR-2) submitted her willingness for being given the compassionate appointment at Bhopal but that she was declared unfit for appointment vide physical fitness certificate dated 26.04.2000 (Annexure No. 2 to the CA). Respondents have denied the receipt of application dated 15.06.1999 and submitted that even contents of the letter dated 15.06.1999 would reveal that Mustari Begum submitted her willingness on 31.05.1999 and was medically examined on 26.04.2000, as such the letter dated 15.06.1999 is unreliable. It is also the stand of respondents that the case of Mustari Begum on her application had already been accepted after fulfilling all necessary paper formalities for appointment on compassionate appointment but as she was found unfit in the requisite medical category and below category, as such, she could not be offered appointment. That there is no explanation for keeping the case of compassionate appointment pending for a considerable long period specially when the elder daughter of the applicant was already attained majority and kept the case pending for appointment of the applicant till he becomes major. It is further stated in the counter affidavit that the impugned order has been passed after considering the case of applicant and the O.A. being meritless be dismissed.

5. In the rejoinder while denying the contention of the respondents in the counter affidavit, the applicant has reiterated the pleas taken in the O.A.

6. I have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.

7. Learned counsel for applicant submitted that Mustari Begum mother of applicant could not accept the offer of compassionate appointment for personal reasons and vide communication dated 15.06.1999 (Annexure A-5) requested the respondents to keep the appointment for her minor son (applicant) under rules and on attaining age of majority on 30.06.2011, application dated 16.07.2011 (Annexure A-7) for providing compassionate appointment to applicant was filed before the respondents which for untenable reasons has been wrongly rejected by the respondents. It has been further argued by learned counsel for applicant that as per circular covered by RBE No. 144/2000 issued by the Railway Department, the General Manager are empowered to consider time barred cases which are upto 20 years old from the date of death of Railway Employee provided the application is submitted within two years of attaining the age of majority by the candidate and which conditions have been fulfilled by applicant. Therefore, request for compassionate appointment request has been wrongly and arbitrarily rejected by the respondents and the O.A. be allowed.

8. On the other hand, learned counsel for respondents opposing the prayer of applicant argued that, as per, record Mustari Begum W/o Rasheed Khan was considered for compassionate appointment in Bhopal Division was declared unfit by the medical authority vide medical certificate no. 28077 dated 26.04.2000 but that on being declared medically unfit, she did not file any application for consideration of compassionate appointment for other family members and denied the receipt of application dated 15.06.1999 and that she submitted her willingness on 31.05.1999 and was medically examined on 26.04.2000, as such the letter dated 15.06.1999 is unreliable. It was further argued by learned counsel for respondents there is no explanation for keeping the case of compassionate appointment pending for a considerable long period specially when the elder daughter of the applicant had already attained majority and that the O.A. is barred by period of limitation and under no circumstances, the representation filed in the year 2014 extend the period of limitation and the O.A. being meritless deserves dismissal.

9. Respondents have denied the receipt of letter dated 15.06.1999 (Annexure No. A5). Other than the copy of Annexure No. A5 placed on record, there is no material on record to show that the said letter dated 15.06.1999 was ever received by the respondents. In view of the denial of receipt by respondents, applicant was bound to place on record some material to show that the said letter was in fact received by the

respondents which he has failed to do so. Apart from this feature of the case, respondents have placed on record letter dated 31.05.1999 (Annexure No. CR2) which is an application of Mustari Begum giving her consent to serve in Bhopal and averment regarding Annexure CR2 has not been denied by the applicant. The fact that the medical check up of Mustari Begum took place in the year 2000 also falsifies the claim of applicant regarding letter dated 15.06.1999 (Annexure No. A5).

10. Applicant has relied upon Circular dated 28.06.2000 (RBE No. 144/2000) issued by the Railway Board to submit that the request of applicant for compassionate appointment is bound to be considered by the respondents as the circular lays down that the officer of the department can consider time barred cases which are upto 20 years old from the date of death of the Railway employee, provided appointment is sought for the first son/first daughter and that application for appointment is submitted within 2 years of attaining the age of majority by the candidate and that the General Manager can consider the case of an applicant more than 2 years after the candidate becomes major. It has been argued by learned counsel that as per the Circular, respondents were bound to consider his case, as per, the circular and not rejected it on the basis of Railway Board Letter No. E(NG)III/78/RC-I/I dated 07.04.1983.

11. The contention of applicant regarding the applicability of Circular of 2000 is devoid of force of law and to be rejected. In the letter dated 15.06.1999 (Annexure No. A5), mother of applicant has referred to the fact of her having five daughters and one minor son after the death of her husband Rasheed Khan. Therefore, it is apparent that as on 16.06.1999, the daughters of Mustari Begum were major. The circular speaks of first son/first daughter. Therefore, the circular is of no avail to the applicant since his sister was a major in 1999 and ought to have filed application for compassionate appointment. The contention of applicant that he has the right to file the application for compassionate appointment on attaining the age of majority which is to be considered by the respondents, as per, the circular of 2000 cannot be accepted and therefore rejected.

12. In view of the facts and circumstances of the case, I am of the view that the impugned order dated 07.11.2014 is in accordance with law and calls for no interference. The O.A. being meritless is dismissed. No costs.

**(RAKESH SAGAR JAIN)
Member (J)**

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