

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRUCIT SITTING: GWALIOR

Original Application No.202/00229/2016

Jabalpur, this Friday, the 03rd day of January, 2020

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Charan Prakash Kushwaha
S/o Shri Ram Singh Kushwaha
Aged 29 years
Occupation Unemployed
Resident of Gram Bhadrauli Tehsil
and District Gwalior and at present
Jhanda Dhaari Hanuman Wali Gali,
New Railway Colony,
Basti Tansen Road,
Gwalior (MP) 474002
(By Advocate –**Shri A.K. Nirankari**)

-Applicant

V e r s u s

1. Union of India,
Through its General Manager,
North Central Railways,
Allahabad (UP) 211 001

2. Mandal Railway Manager,
Habibganj,
Bhopal (MP) 462039

3. Deputy Chief Engineer (Construction),
North Central Railway
Gwalior (MP) 474001

- Respondents

(By Advocate –**Shri Raja Sharma**)
(Date of reserving the order:06.02.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the impugned order dated 21.01.2016 passed by the Deputy Chief Engineer (Construction), Gwalior, North Central Railway, Gwalior District Gwalior (MP) whereby the Deputy Chief Engineer vide order dated 21.01.2016 rejected the applicant's representation, which was filed by the applicant in pursuance to the order passed by this Tribunal in O.A. No.633/2013.

2. The applicant has sought for the following reliefs:-

“8.1 That, the impugned order dated 21.01.2016 (A-1) passed by the Dy. Chief Engineer North Central Railway (Construction), Gwalior may kindly be set-aside/quashed.

8.2 That, the non-applicants may kindly directed to give the compassionate appointment to the applicant in the railway department at suitable post considering the legitimate right to employment as observed by the Hon'ble High Court of Madhya Pradesh.

8.3 That, any other suitable order or direction may kindly be issued in favour of the applicant for doing justice in the matter.”

3. Precisely the case of the applicant is that applicant's father's land bearing survey No.87 area 0.627 hectare situated in Gram Bhadrauli Tehsil and District Gwalior was acquired on 19.07.1989 for the purpose of laying down Guna-Etawah Board gauge railway line vide notice no.19/A-82/88-89 issued by Collector Land Acquisition, District Gwalior and award was granted for the said acquisition on 06.10.1995. Due to the said acquisition of entire land of applicant's father, no source of livelihood has been left to the applicant's family. Vide circular dated 01.01.1983 and circular dated 10.11.2003 were issued by the Railway Board for grant of appointment in Railways to members of the family displaced as a result of acquisition of land for establishment of projects. Copy of which are annexed at Annexure A/5 and A/6 respectively.

4. The applicant being the son of Shri Ram Singh whose land has been acquired for the purpose of laying down Guna-Etawah Railway Line, after attaining the higher secondary school education certificate (10 + 2),

applied for compassionate appointment before the respondents, but even after receiving said application, respondents have not taken any action. Despite several applications the respondents has not considered the case of the applicant. At the last in year 2012, the Assistant Zonal Engineer vide letter dated 17.12.2012 forwarded the claim of the applicant to the Deputy Chief Engineer (Construction), Gwalior for taking applicant's claim for consideration. After receiving the said application the case of the applicant was not decided within the reasonable time. Then the applicant sent a detailed representation through his counsel on 15.06.2013. In reply to the said, respondents vide order dated 31.07.2013 informed that the claim of the applicant has been rejected only on the ground of delayed submission of his claim. Copy of legal notice dated 15.06.2013 and letter dated 31.07.2015 are annexed as Annexure A/7 and A/8. The main grounds for challenging the impugned order are that the similarly situated persons have filed Writ Petition No.2558/2009

and W.P. No.3513/2009 before the Hon'ble High Court of Madhya Pradesh Bench at Gwalior. The Hon'ble High Court vide order dated 24.11.2011 disposed off the said writ petitions and directed the respondents to reconsider their case for compassionate appointment. Copy of order dated 24.11.2011 is annexed at Annexure A/9. The applicant has also submitted that the applicant has filed Original Application before this Tribunal vide O.A. No.633/2013 and the same was disposed of vide order dated 19.08.2015 with a direction to decide the case of applicant afresh in accordance with the prevailing circular of respondents. Even despite the fact that the applicant had made detailed representation dated 11.01.2016 (Annexure A/10) in compliance of the order passed by Tribunal, but the respondent department has rejected the case of the applicant by non considering the claim of the applicant on merit but rejected the claim of applicant on the ground of delay.

5. The respondents have filed their reply to the O.A. It has been submitted by the replying respondents that the order Annexure A/1 is sustainable in the eyes of law as the application submitted by the applicant for the compassionate appointment is barred by limitation because the applicant became major in the year 2004 as he was born on 27.08.1986. The applicant has approached this Tribunal in the year 2013 and apart from that he has send the legal notice in the year 2013. Prior to that, no application was ever submitted by the applicant for appointment and as such the order Annexure A/1 has been rightly passed. It has been specifically submitted by the replying respondents that no application for compassionate appointment was ever received in the office of answering respondents and the same has been mentioned in the order Annexure A/8. It has been further submitted by the replying respondents that the application of the applicant was not dismissed on the ground of delay but the same has been dismissed on the ground that the applicant never

submitted any application in the office of answering respondent meaning thereby no application was ever received and the claim of the applicant was turned down.

6. We have heard the learned counsel for the parties and have also gone through the document attached with the pleadings.

7. As per Annexure A/1 dated 21.01.2016, the replying respondents have rejected the case of the applicant with the reasons that as on 29.02.1992 the cut of date of notification, the applicant was minor/under age and was not eligible for government job. It has been further intimated vide Annexure A/1 that as per record the applicant has become major in the year 2004 and approached the administration in the year 2013. So no rule permits to entertain such delayed claim. It is pertinent to mention that in this impugned order it has come that the applicant had made the request of appointment in railway service on account of land acquired on 19.07.1989 but on the other hand in the reply of the respondent department it

has specifically submitted in Para 6.5 that any application for the compassionate appointment was never received in the office of answering respondents. So the reply submitted by the replying respondents and the averments made in the impugned order are total contrary and the submissions of the replying respondents cannot be believed at all. So it is evident clear from the pleadings that the applicant has become major in the year 2004. It is also clear from Annexure A/3 that the applicant has passed the High School Certificate and same has been given to the applicant in the year 2006 and thereafter the applicant also passed the +2 examination in the year 2008 which is clear from Annexure A/3 collectively. It has been specifically submitted by the applicant that after attaining the High School Certificate Examination, the applicant applied for compassionate appointment before the respondent-department but the respondents did not give any response which is clear as per submissions made in the Para 4.5 of the O.A. coupled with Annexure A/3. It is evident clear

that the applicant has passed +2 examination in the year 2008. As per Annexure A/7 the legal notice was served upon the respondent-department through advocate on 15.06.2013. But in Para 4.6 and 4.7 it has been specifically mentioned by the applicant that despite several applications the respondents had not considered the case of the applicant and resultantly the applicant was forced to file O.A. No.633/2013 which was disposed of vide order dated 19.08.2015 by this Tribunal with a direction to the respondent authority to verify the case of the applicant apropos warranting for eligibility conditions incorporated in the Circular/Notice dated 01.01.1983, 10.11.1989 as well as 1992 and consider the case of the applicant for compassionate appointment as per law. In furtherance of order of this Tribunal, the applicant has filed detailed representation to the respondents vide Annexure A/10, which the applicant has specifically submitted in Para 4.11 of the O.A. We find that representation has been sent through registered post on 11.01.2016 to the replying

respondents. From the order of this Tribunal Annexure A/2 dated 19.08.2015, direction has been given to the respondent-department to consider the case of the applicant for grant of compassionate appointment. The respondents have passed the impugned order dated Annexure A/1 on 21.01.2016 and rejected the claim of the applicant on the point of delay application.

8. In response to para 4.5 of the O.A. the respondent department has only submitted that the applicant has attained the majority on 2004 and has approached this Tribunal in the year 2013. But from the pleadings itself, it is clear that the applicant passed the 10+2 examination in the year 2008 and thereafter the applicant has applied for compassionate appointment but in view of the contrary stand taken by the respondents, that no application has been made is warranted at all from the reply of the respondents with the impugned order. The respondent department has specifically submitted that the request for appointment in railway service on account of land acquired

on 19.07.1989 for the purpose of laying down Gwalior-Guna-Etawah broad gauge railway line has not been received.

9. The applicant has also relied upon the judgment passed by the Hon'ble High Court of Madhya Pradesh in W.P. (S) No.2558/2009 on the similar facts whereby the petitioner in the said case has approached the Hon'ble High Court and the Hon'ble High Court has observed that the right to consider the compassionate appointment accrued in favour of the petitioners in year 1992 when the policy dated 23rd January 1990 was in vogue. The Hon'ble High Court has also placed reliance on the judgment of Hon'ble Apex Court in the matter of ***Narmada Bachao Andolan*** vs. ***State of Madhya Pradesh and another*** reported in AIR 2011 SC 1989, and the relevant portion of the said judgment is as under:-

“9. From the aforesaid judgment, it is clear, that the persons whose land has been acquired, has a right to compassionate appointment in accordance with the policy. In this view of the matter, the petitioners are entitled to be considered for compassionate appointment in accordance with the

communication dated 23rd of January 1990. It is further observed that the point of age and other factors could not be considered because the right to employment accrued to the petitioner in the year 1992.

10. Consequently, the petition of the petitioners is disposed of with the following directions:-

(1) The impugned order dated 18.03.2009 passed by the Central Administrative Tribunal is hereby quashed.

(2) The respondent, Railway Board is directed to consider the case of the petitioners for compassionate appointment in accordance with the communication dated 23rd January 1990 and the educational qualifications and age of the petitioners shall be taken in to consideration from the date when the petitioners applied for compassionate appointment.

(3) It is further directed that non-availability of posts should not be a criteria for denying appointment to the petitioners.

(4) Necessary orders in this regard be passed within a period of three months from the date of receipt of a copy of this order.

(5) No order as to costs."

10. Moreover, this Tribunal in O.A. No.633/2013 (Annexure A/2) has specifically directed the respondents to consider the case of the applicant for compassionate

appointment but the respondent-department has rejected the case of the applicant on the basis of delay. Needless to say that the policy to provide compassionate appointment in view of the land acquired, is a beneficial scheme and shall be interpreted liberally and further in view of the order passed by the Hon'ble High Court specifically while quoting judgment of the Hon'ble Apex court in the matter of *Narmada Bachhao Andolan* (supra) it has been held that the point of age and other factors could not be considered because the right to employment accrued to the applicant at the relevant time. So the delay does not come in the way while considering the case of the applicant coupled with attaining age of majority.

11. In view of the above, the annexure A/1 is quashed and set aside and the respondents are directed to reconsider the case of the applicant for appointment on compassionate grounds in lieu of acquisition of land of father of the applicant bearing survey No.87 area 0.627 hectare situated in Gram Bhadrauli Tehsil and District Gwalior acquired on

19.07.1989 for the purpose of laying down Guna-Etawah Board gauge railway line vide notice no.19/A-82/88-89 issued by Collector Land Acquisition, District Gwalior. The said exercise shall be done within 60 days from the day of receiving the copy of this order.

12. Accordingly, this Original Application is allowed in terms of above directions. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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