

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.139/2019

Date of decision: 03.03.2020

Coram : R. Vijaykumar, Member (A) .

Mohmed Hanif Ibrahim Shaikh
Aged 24 years,
R/o. Room No.2,
Abdul Masjid Panwala Chawl,
Kurla (W), Mumbai-400 070.

...Applicant.

(By Advocate Shri Nigel Quraishi) .

Versus

1. Union of India
(Through)
General Manager,
Central Railway,
CSMT Mumbai-400 001.
2. principal Chief Personnel Officer
Central Railway,
CSMT Mumbai-400 001.
3. Divisional Railway Manager,
Central Railway, Mumbai Division,
CSMT, Mumbai-400 001.
4. Senior Divisional Personnel Officer,
Central Railway, Mumbai Division,
CSTM, Mumbai-400 001.

... Respondents.

(By Advocate Shri D. A. Dube) .

O R D E R (O R A L)

Per : R. Vijaykumar, Member (A)

1. When the case is called out, heard Shri Joe D'Souza, learned counsel on behalf of Shri Nigel Quraishi, learned counsel for the applicant and Shri D. A. Dube, learned counsel for the

respondents.

2. This OA has been filed on 29.01.2019 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"A. This Honourable Tribunal be pleased to quash and set aside the office order No.BB/P/Wel/16/ECG/CL/III/4177 dated 01.08.2016 issued by the Respondent No.3 and which has rejected the compassionate appointment to him.

B. This Honourable Tribunal be pleased to quash and set aside the communication No.P/CR/HQ/REC/122/CGA/245/CRMS PNM 15/2017-A dated 21.01.2018 issued by the Respondent No.2 accepting the Voluntary Retirement Application of the Applicant's father but denying the compassionate ground appointment to the Applicant.

C. This Honourable Tribunal be pleased to direct the respondent No.1 to process the application of the Applicant on compassionate ground.

D. The Hon'ble Tribunal be pleased to direct the respondents to pay the cost of the application.

E. Any other relief which this Hon'ble Tribunal deems fit in the interest of justice and to which the applicant is found entitled to may be granted in favour of the Applicant."

3. The applicant's father was working as Commission Vendor and by virtue of the orders of

the Railway Board was absorbed in regular Railway Service on 08.02.2007 by the respondents (Annexure A-4). He continued to serve till 26.09.2015 when he was medically incapacitated after examination by the Railway Doctor who recorded him as "unfit for all categories on 22.09.2015" in an MC dated 27.09.2015" wherein it is recorded that the employee was 59 years of age. The applicant applied for Voluntary Retirement on 30.09.2015 (Annexure A-8) stating that he was suffering from kidney problems and he has been declared medically unfit and requested voluntary retirement on medical grounds against the appointment of his son by virtue of his medical incapacitation. The applicant's father, who was the employee, was allowed to retire w.e.f. 22.12.2015 (Annexure A-9) in advance of his normal date of superannuation i.e. 30.06.2016. Subsequently, in the impugned orders of the respondents dated 01.08.2016, the applicant was informed that the Competent Authority had noted that he had married a second wife even when the first wife was alive without obtaining any permission for taking the second marriage and he had now applied for appointment on compassionate grounds in favour of the child of

the second wife. They refer to their RBE No.1/92 dated 02.01.1992 for rejecting the application on behalf of his son who is the current applicant and have recorded that, " thus case lacks merit and had not warrant any comparison."

4. At the outset, the preliminary aspect of limitation has been considered. No MA for condonation of delay has been filed by the applicant although the delay in this case needs to be computed from 01.08.2016 to the date of filing i.e. 29.01.2019 and is beyond 18 months after the date by which, the OA should have been filed. No explanation is available from the applicant for the delay even though this matter was raised in Court. However, the impugned order refers to an RBE No.1/92 which, the learned counsel for the applicant submits, had been set aside by the Hon'ble High Court of Calcutta in judgment dated 01.02.2010 reported in 2010(1) CALJ 264 dated 01.02.2010. Therefore, when the order itself relies on an RBE that has been quashed in a judgment of the Hon'ble High Court of Calcutta which is binding on this Tribunal, the aspect of limitation cannot be said to be held against the applicant.

5. The learned counsel for the applicant submits that the said orders of the Division Bench of the Hon'ble High Court of Calcutta in Namita Goldar Vs. Union of India decided on 01.02.2020 reported in 1(2020) 1 Cal.LJ 464 has been upheld by the subsequent decision of the Hon'ble Apex Court in Rameshwari Devi State of Bihar reported in 2000(2) SCC 431 and further has been cited with approval by the Hon'ble Apex Court in OA No.12015/2015 dated 11.12.2018 of Union of India and Another Vs. V. R. Tripathi which records its orders in regard to a letter/circular of the Railway Board dated 03.04.2013 reiterating its previous circular RBE No.1/92 as below:

"20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcutta High Court in *Namita Goldar (supra)* and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular dated 2 January, 1992 even after the decision in *Namita Goldar (supra)*, which attained finality."

6. Further, the Hon'ble Apex Court held as under:

"23. In view of the judgment delivered today in companion Civil Appeal No.12015 of 2018 and since the second marriage was in any event permissible under Muslim Personal Law, there is no merit in the appeal. The authorities shall be entitled to scrutinize whether the application for compassionate appointment fulfills all other requirements, in accordance with law. The process of consideration of the application shall be completed within a period of three months from today."

7. The learned counsel for the applicant contends that in view of the law as laid down even earlier by the Hon'ble High Court of Calcutta and now confirmed by the Hon'ble Apex Court, the impugned orders are not in conformance with the law as laid down. Further, he refers to respondents Circular RBE No.218/19 dated 30.12.2019 which adopts and passes orders to abide by the judgments of the Hon'ble Apex Court in case of **V. R. Tripathi (supra)**.

8. The learned counsel for the respondents refers to his reply in which it has been stated that the applicant who had filed Attestation Forms at the time of being regularized make no disclosure as required about his second wife to

whom he had allegedly married even before this date. The absence of such a declaration is suggestive of falsity of such a fact and hence, he argues that a false declaration of this kind would attract the penalty held as attracted by the Hon'ble Apex Court in R. Vishwanath Pillai Vs. State of Kerala and others reported in 2004 (2) AISLJ page (1) wherein the Hon'ble Apex Court had held that appointment de hors the rule is null in the eye of the law. He also submits that the applicant had filed his application for voluntary retirement on 30.09.2015 barely 09 months prior to his superannuation and therefore, such a case invites suspicion and it cannot fall within the Rules and prescription for considering Compassionate Appointment. He was not, however, able to explain how the respondents did not decline VRS even at that point in time on this basis and could not instead have continued to applicant until his superannuation under the Disabilities Act, 1995 or under their own provisions in various RBE circulars. In such circumstances, the applicant's father was also denied wages and other allowances for the period from the date of acceptance of VRS to the expected

date of superannuation.

9. The matter has been carefully heard. This Tribunal is bound by the judgment of the Hon'ble High Court of Calcutta striking down RBE No.1/92 and its subsequent amendment in 2013 of the respondents.

10. In these circumstances that these orders have been issued using RBE No.1/92 as a basis, the orders are plainly incorrect and need to be quashed.

11. However, reference to the judgment of the Hon'ble Apex Court in **V. R. Tripathi (supra)** at para-23 extracted above shows that the authorities shall be entitled to scrutinize the application for Compassionate Appointment and determine if it fulfils all other requirements in accordance with law and rules. By this is meant not only the state of indigence and need for immediate response from the respondents to the family in distress but also acceptance of other rules of Compassionate Appointment as in the case of persons when the employees had died in harness including the aspect of those who are applying for such a privilege at the verge of retirement. These matters have not been considered by the respondents and will need

to be done before judicial review can be attempted.

12. In these circumstances, the impugned order of the respondents dated 01.08.2016 are quashed and set aside. The respondents are directed to re-examine the case of the applicant and the applicant's father with reference to the extant rules and keeping the law as set out by the Hon'ble Apex Court and provide reliefs as eligible including any consequential benefits and for that purpose, pass a reasoned and speaking order in this matter within a period of three months from the date of receipt of a certified copy of these orders.

13. In these circumstances, the OA is allowed in the above terms without any order as to costs.

(R. Vijaykumar)
Member (A)

V.

JD
2/10/2

