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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 1024/95

Hon'ble Shri R.K. Ahooja, Member(A)

New Delhi, this 5<sup>th</sup> day of Feb., 1996

1. Jugga  
aged about 70 years  
s/o Shri Shibbey; and
2. Gurdayal  
s/o Shri Jugga  
aged about 29 years  
c/o Ramesh Chandra  
Village Mitraon  
Police Station - Nazafgarh  
Delhi.

Applicants

(By Shri H.P. Chakravorti, Advocate)

Versus

Union of India through

1. The Principal Secretary  
Ministry of Railways  
Chairman Railway Board  
Rail Bhawan  
New Delhi
2. The General Manager  
Central Railway  
Bombay VT.
3. The Divisional Railway Manager  
Central Railway  
Jhansi.

Respondents

(By Shri H.K. Gangwani, Advocate)

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The applicant joined the Railways as Khallasi on 5.2.1949 and in due course rose to the rank of Fireman Grade-B. On 29.10.1980, he was directed to undergo the periodical medical checkup. According to the applicant, he was certified as fit in A-I (A-One) category on 20.4.1981. The respondents, however, state that the applicant was declared unfit in category A-I but was declared fit in category A-III with glasses. In December, 1981, the applicant filed a Payment of Wages case No.181/81 but according to the version of the applicant No.1, he withdrew that case on the persuasion of the Department, on 19.12.1988. The applicant No.1 is aggrieved

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that on submitting the pension papers, he was given terminal benefits amounting to Rs.19589/- on 12.12.1989. According to the applicant, he had opted for the family pension claim, but the benefit of that was not given to him since his personal file along with his option had been lost by the respondents.

2. In the present application, the applicant No.1 has sought relief on two grounds. Firstly, he wants pension as per his alleged option and secondly, that either he should be treated as fit in terms of the original certificate granted to him at the time of medical board or in the alternative if he is considered to have been de-categorised, then his son, who attained majority in May, 1983 should be given a compassionate appointment as per rules.

3. The respondents to whom the notice was issued have denied the claim of the applicant. They claim that the applicant No.1 was correctly de-categorised but thereafter, he remained absent from duty, that he failed to appear for the screening test for an alternative job, that he did not give any option for the new rules for family pension, and further that the applicant No.2, his son is not entitled to compassionate appointment.

4. The learned counsel on both sides having agreed that the matter may be disposed finally at the admission stage itself, they were both heard on the merit of the case. The first question which arises <sup>or</sup> for ~~adjudication~~ is whether the applicant can agitate this matter at this distance of time <sup>or</sup> ~~limitation~~ when the medical board in question concluded in 1981, the final settlement of pensionary benefits were made on 17.4.1989 and the applicant No.2 attained majority on 18th May, 1983. The learned counsel for the applicant has cited two orders of this

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Tribunal to show that matters of retirement and terminal benefits are not time barred. In the first case in OA No.879/87 (Smt. Gena Bai Versus General Manager & another) - the applicant had sought two directions - one: that her husband who was born in 1920 should be declared to have retired in 1978 instead of 1971 on the basis of proof of age. After considering the earlier service records of deceased husband of the applicant, a direction was given that the deceased husband would be deemed to be in service till the time of his death but no back wages nor any monetary benefits or increased pensionary benefits shall accrue to the applicants. At the same time, on the second question the respondents were asked to consider the case of compassionate appointment of the son of the deceased official keeping in view the service rules.

5. In OA No.1367/92 (Smt. Ram Devi Chaubey & Others Versus Union of India and Others) a direction for compassionate appointment was sought on account of the death of the husband of the applicant No.1 on 1.3.1972. The son, who was applicant No.2 was born on 15.8.1966 and had thus attained majority on 15.8.1984. The Tribunal held that the case was not time barred for compassionate appointment since the railway authorities allowed five years i.e. upto the age of 23 years of the son to be considered and in any case, powers had been exercised by the General Manager(Railways) in other cases for relaxing this limit.

6. After carefully considering the pleadings and the aforesaid citations submitted by the learned counsel for the applicant, I am of the view that the ratio of above cited cases does not apply and the present case has no merit. The claim of the applicant for his proper categorisation as a result of the medical examination held in 1980-81 is clearly time barred as

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is the case for alternative appointment of the benefit of compassionate appointment in favour of his son. The applicant No.1 accepted the settlement of his terminal benefits in 1988-89. He cannot now come after an interval of seven years, to agitate that he was not retired in the proper capacity or that he had a different option regarding his terminal benefits. It is not his case that he did not accept the terminal benefits which were extended to him. It cannot be argued that since the loss of family pension is a recurring loss, the matter can be agitated at any time. That plea could have been raised if it were a question of amount of pension or a pension at all was due instead of a different form of terminal benefits, which had been accepted, however, unwillingly by the applicant No.1

7. As for the claim of compassionate appointment of applicant No.2 is concerned, it cannot be considered account of latches as well as on merit. The applicant No.2 attained majority on 18.5.1983 at which time even the final settlement of the terminal benefits of the applicant had not been made. It is claimed that the rules permitted the consideration of such cases even after five years and in deserving cases, the General Manager is authorised to relax and extend this limit. In this case even that five years period was over in 1989, and even if the applicant may have continued to make representations to the respondents, they chose to come to the Tribunal only in 1995 i.e. after a lapse of another six years. The Hon'ble Supreme Court has recently held in Union of India and Others Vs. Bhagvan Singh ((1995)31 ATC 736)) - that normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence

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of the event entitling the eligible persons to be appointed.

In the present case, the application was filed after 12 years and is thus clearly time barred.

8. In view of the what has been stated above, I find no merit in this application which is dismissed under Section 21 of the Administrative Tribunals Act, 1985. No order as to costs.

*R. K. Ahooja*  
(R.K.AHOOJA)  
MEMBER(A)

/RAO/