

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 454/92
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DATE OF DECISION 12.07.97.


Smt. Sarabjot Kaur Applicant(s)

Versus

U.T.I. & Ors. Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? YES
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO


(Dr. A. V. Valli)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.454/92

New Delhi this the 10th day of July, 1997.

Hon'ble Mr. K. Muthukumar, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

Smt. Naresh Bala,
Widow of late Shri Pradeep Kumar,
S/o Shri Ajit Singh,
R/o 20-A/3A, Tilak Nagar,
New Delhi. ...Applicant

(By Advocate Shri B.S. Charya)

-Versus-

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Superintendent,
Printing & Stationery,
Northern Railway Printing Press,
Shakurbasti, Delhi.
3. Union of India,
Ministry of Railways
Govt. of India,
New Delhi through
its Secretary. ...Respondents

(By Advocate Shri K.K. Patel)

O R D E R
(Hon'ble Dr. A. Vedavalli, Member (J))

The applicant Smt. Naresh Bala, widow of Pradeep Kumar, who was employed as a Khalasi in the Northern Railway Printing Press, Delhi, is aggrieved by the inaction of the respondents regarding her representations seeking compassionate appointment to the post of a clerk.

2. The facts of the case briefly stated are as under:-



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3. The applicant's husband was working as a Khalasi since 1976. He was discharged from duty with effect from 13.3.87 by an exparte order of the respondents dated 24.3.87 (Annexure P-1) as a result of the disciplinary proceedings taken against him under the relevant Railway Servants (Discipline & Appeal) Rules for absconding from duty from 18.3.85. No appeal was preferred against the said order within the prescribed period of 45 days. Pradeep Kumar died on 7.10.88.

4. The Original Application was filed by the applicant on 9.12.91. So far as the challenge to the impugned order of discharge dated 24.3.87 is concerned, it was held to be hopelessly barred by limitation by an order of this Tribunal dated 1.9.92. The other prayer in the OA regarding direction to the respondents to appoint the applicant on compassionate grounds after hearing the respondents also was held to be a matter of adjudication by the said order and the OA was admitted only in respect of that prayer. In view of this, MP-546/92 for condonation of delay was disposed of as infructuous. As directed, the applicant filed the amended OA.

5. The applicant in the amended OA seeks a direction to the respondents to give her an appointment on compassionate grounds as a Clerk. She claims that she is a matriculate and fulfils all the eligibility conditions for the said post. She submits

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that she is in acute financial difficulty as there is no earning member in the family and she has to support her minor children also.

6. Applicant sought the aforesaid relief on the ground that she had given a representation on 18.12.96, i.e., during the life time of her husband and before his discharge from service for appointment on compassionate grounds since he was suffering from mental illness. She submits that he was under treatment and was unable to attend the duty. Notwithstanding the illegalities and the infirmities in the aforesaid order of discharge dated 24.3.87 she claims that she has submitted another representation on 31.3.87 and is entitled to be given an appointment on compassionate grounds in place of her husband and the respondents' inaction in this matter is arbitrary, improper and unreasonable.

7. The O.A. is contested by the respondents who have filed their counter-affidavit in reply to the amended OA. A rejoinder has been filed by the applicant generally denying the averments made in the counter-affidavit and broadly reiterating the various grounds raised in the amended OA.

8. The only question which is to be considered now for adjudication is whether the applicant is entitled for appointment on compassionate grounds to the post of a clerk in the peculiar circumstances of this case.

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9. It is noticed that the applicant has not filed copies of relevant rules, instructions etc., if any, which support the relief which she seeks in her amended OA, neither has she filed copies of the representations dated 18.12.86 and 31.3.87 stated to have been submitted to the respondents along with the amended OA. Learned counsel for the applicant during the course of his arguments submitted that as per the relevant rules and instructions the applicant is entitled for appointment on compassionate grounds. However, he did not produce copies of the said rules etc.

10. Learned counsel for the respondents in reply contended that the applicant is not entitled to claim appointment on compassionate grounds, as her husband was not a Railway servant on the date of his death. He relied on the Railway Board's letter dated 30.4.1979 (Annexure-I) and the letter dated 7.4.83 (Annexure-II) in support of his contention. It was also submitted that no intimation about the sickness of the husband of the applicant was given. It was further submitted by the learned counsel that neither the representation dated 18/12/86 nor any other representation by the applicant have been received by the respondents since December, 1986 till the order of discharge from service of the applicant's husband dated 24.3.87.

[Signature]

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11. We have heard the learned counsel for both the parties. We have perused the pleadings and the material papers and the documents placed on record. We have also seen the relevant original departmental record which has been made available for our perusal by the respondents. We have considered the matter carefully.

12. It is well settled that in matters of public employment the aggrieved person, if eligible, can only claim a right to be considered for appointment. There is no vested right for an appointment to a post. However, we notice that though the respondents have denied the receipt of any representation from the applicant since December, 1986 till the issue of the order of discharge from service of the applicant's husband on 24.3.87 in their counter-affidavit to the amended OA, the receipt of the representation by the applicant dated 31.3.87, i.e., after the discharge of her husband is not specifically controverted by them. Moreover, the respondents though they have submitted that the applicant is not entitled for compassionate appointment, as her husband was not a Railway servant at the time of his death, they have not made any detailed and considered submissions on an examination of the applicant's case in the light of the two Railway Board's circulars at Annexures I & II which they have filed with their counter to the amended OA in support of their submissions in this regard. It is not known whether there are any subsequent circulars issued by the respondents regarding compassionate



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appointment. Moreover, it is noticed on a perusal of the original departmental record that a representation dated 12.7.88 regarding compassionate appointment enclosing photo copies of certain medical certificates was received by the respondents from the applicant (serial No.87). One more representation from the applicant dated 1.12.88 was also received by the respondents (serial No.89). It appears on a perusal of the departmental record that the above representations were being processed for consideration regarding the appointment of the applicant on compassionate grounds (serial No.90). Meanwhile, one more representation dated 9.1.89 was also received from the applicant and was being processed (serial No.91) and was ultimately rejected in 1989 by General Manager Northern Railway (S.No. 93). It appears that the said rejection was done only on the file since there is no endorsement/order as to communication of the same to the applicant. The applicant also appears to be unaware of the said rejection, as is seen from the tenor of her subsequent representation dated 21.8.91 (serial No.94) and another representation (date not clear) enclosing medical certificates from a Railway Doctor (serial No.95). It is not known as to whether any reply on consideration of the matter was given to the applicant regarding those representations. Earlier rejection of the representations by the General Manager, Northern Railway (serial No.93) is itself a routine and non-speaking order and the same, prima facie, does not indicate any consideration of the applicant's representation on merits after due application of

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mind. It would also be pertinent to mention here that even if no representation has been received from the applicant regarding mental sickness of her husband and prayer for compassionate appointment before his discharge from service, representations from her were received by the respondents before and after the death of her husband and information furnished in the said representations and the photo copies of the some of the medical certificates enclosed therein pertain to the period of service prior to his discharge. Moreover, certain provisions of the Railway Board's circular filed with the counter-affidavit to the amended OA, for example, para-3 of the circular dated 30/4/79 (Annexure-I) and para 1 (iv) of the circular dated 7.4.83 (Annexure-II) indicate that where the employee while in service develops serious ailments or becomes crippled or otherwise becomes medically decategorised there is a provision for offering compassionate appointment subject to the relevant conditions. Inter alia, the applicability of these provisions to the applicant's case do not appear to have been examined while rejecting the earlier representations (serial No.93).

13. In view of the peculiar circumstances of this case and in the interests of justice, the respondents are directed to dispose of all the representations made by the applicant after examining the same on merits in the light of the extant rules and instructions by a detailed and reasoned order and

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communicate the same to the applicant within a period of three months from the date of receipt of a copy of this order.

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14. In case any grievance still survives thereafter, it will be open for the applicant to agitate the same in appropriate original proceedings in accordance with law, if so advised.

15. The O.A. is disposed in terms of paras-13 & 14above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

K. Muthukumar

(K. Muthukumar)
Member (A)

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