

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The 12th Day Of May 2000

Original Application No. 65 of 1996

CORAM:

Hon'ble Mr. S. Biswas, (A.M.)

Bashir Khan aged about 46 years son of Shri Abdul
Rehman resident of 52/2 Subhash Nagar, Chhola Road

Phoota Makbara, Bhopal (M.P.)

.....Applicant

(BY Adv: Shri R.K. Nigam)

VS.

1- Union Of India through General Manager. General
Manager. Central Railway Bombay V.T.

2- Divisional Railway Manager, Central Railway, Jhansi.

3- Secretary Railway Board Rail Bhawan, New Delhi.

..... Respondents

(By Adv: Sri A.K. Gaur)

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1- The applicant has sought appointment in the Railways on compassionate ground; his father, Abdual Rehman was a Railway employee under Jhansi Division but decategorised on medical ground and died on 01-04-1978 in harness. Initially when the applicant approached for a compassionate appointment, his request was turned down. He, therefore, obtained an order from the Hon'ble CAT in O.A. 974/89 on 13-11-92.

2- The applicant was accordingly called by the respondents for suitability test on 06-08-93. They earmarked a suitable post, but the G.M. informed on 23-5-95 that the Railway has turned down the proposal dated 28-10-94 of the Head quarter office for condonation or relaxation of the overage of the applicant. This was communicated to the applicant by the Rail Authority on 8-08-95. The applicant has, therefore, come up with a fresh O.A. 65/96 (Diary) 17-01-96 seeking the following remedies-

- i) Quashing of communication of the order of the Railway authority dt. 8-8-95.
- ii) The respondents 2nd and 3rd be directed to provide an appointment to the applicant on compassionate ground in group C category in the payscale of Rs. 950-1500 within time bound period.

Heard the counsels and have gone through the submissions.

3- The respondents counsel impugned the statement that the applicant's father died in harness on 1-4-78. The father of the petitioner, Abdul Rehman, a Railway employee, was found medically unfit on 9-5-60 at the age of forty six years. He resigned from service. He did not expire in harness, long there after he died on

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2-4-78, leaving behind his widow and 3 major son, his elder son, Bashir Khan had requested in 1978 for employment on compassionate ground. It was turned down as not covered by the Railway instructions. For employee retiring on the ground of medical unfitness request for compassionate appointment from widow or major child/son is entertained within five years of unfitness. The widow was available for compassionate appointment but she did not apply.

4- In pursuance of Hon'ble CAT's order dt. 13-11-92 (DA 974/89) the respondents reopened the case, took eligibility test and found the applicant suitable for appointment in TNC Gr. (Rs. 950-1500 scale) but he was found grossly overaged for the job. In otherwise, because of his overage, he was not suitable. The respondents, therefore, took up the case with the Railway Board to relax the age of the applicant.

5- The Railway employee, Late Abdul Rehman was declared medically unfit on 9-5-60. The applicant requested for compassionate appointment after 19 years of the incident and after 12 years of his becoming major.

6- Through it was within the priority III category, it was a case of more than 10 years even then, A proposal was sent to the ministry of Railway on 17-5-94 to condone the delay and relax the age for a suitable post. The Board turned down request for relaxation, stating that it is not permissible as per rules.

7- It is obvious that the respondents have shown no hesitation to reconsider the case for compassionate appointment of the applicant. At no stage the compassion had dried up.

8- The eligibility for compassionate appointment was open

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upto 1965 i.e. 5 years of decategorisation. The applicant made the petition after 19 years. The applicant is presently 49 years of age. Though a suitable post was found, but he is grossly overaged for the same. In the absence of any provision to condone the overage, the Railway Board has turned down the same.

9- It is noticed that applicant has filed this fresh application 65/96 on the same subject and cause of action, without going for contempt as he has alleged that the OA 974/89 dated 13-11-93 has not been complied. No cause of action arises for a fresh complaint from non-compliance of an earlier order of the Tribunal. The legal course open for the applicant was to move a contempt. For reasons best known to him, a fresh application has been moved on the same grounds which is not legally maintainable.

10- The Hon'ble CAT had given appropriate direction in O.A. 974/89, to the respondents to consider the application of the petition for a suitable compassionate appointment within 3 months against an available vacancy. The Hon'ble C.A.T. had further directed "Although the applicant has attained a particular age, the respondents even now can consider this case as compassionate appointment on some post on which a person of his age can be accommodated."

11- If this order was not complied within 3 months, the applicant should have moved a contempt which as he has defaulted. Besides, the railways deptt. made all efforts to accommodate a grossly overaged, time barred case as per Hon'ble C.A.T.'s direction, but failed to do so. The applicant was found suitable for a post, which required condonation of overage. Evidently for his age no

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suitable post was found.

12- On all these counts, the case is not legally
maintainable and has no merits, O.A. is dismissed with no *cost*
~~case.~~

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Member-A

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