

C.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 28th day of April 2003.

QUORUM : HON. MRS. MEERA CHHIBBER, J.M.

O.A. No. 809 of 1998

Pradeep Kumar Shama S/O Late Govind Prakash Shama R/O Vill.
and Post Office Marshalpur, Tehsil & Dist. Karoli, Rajasthan

..... Applicant.

Counsel for applicant : Sri R.K. Awasthi.

Versus

1. Union of India through Secretary Ministry of Railways,
New Delhi.
2. Central Railway, Bombay Head Office through its General
Manager.
3. Central Railway, Jhansi through its Div. Railway Manager.
4. Chief Workshop Manager, Central Railway, Jhansi.


..... Respondents.

Counsel for respondents : Sri P. Mathur.

O R D E R (ORAL)

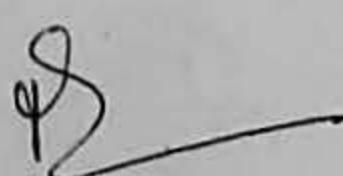
BY HON. MRS. MEERA CHHIBBER, J.M.

By this O.A., the applicant has sought the following
reliefs :-

- "i) Issue a writ order or direction in the nature
of mandamus commanding Respondents to appoint
the petitioner on compassionate ground in place
of his father Late Govind Prasad Shama, the
then Senior Clerk under Token No.00652362 in
the Central Railway Workshop of Central Railway,
Jhansi.
 - (ii) Issue a writ order or direction in the nature
of mandamus commanding respondents to decide
the representation of the petitioner in the
matter of his appointment on compassionate
ground on an appropriate post in place of the
Petitioner's father.
 - (iii) Issue any such and further writ order or
direction as this Hon'ble Tribunal deems fit
and proper in the circumstances of the case.
 - (iv) Award costs to the petitioner."
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2. It is submitted by the applicant that the applicant is a young man of 27 years who passed his intermediate examination in the year 1992 at Bundelkhand University, Jhansi but he discontinued his education because of financial constraints. His father Late Sri Govind Prasad Shama, while working as Senior Clerk in the Central Railway Workshop, died in harness on 20.11.1974, and at that time, the applicant was a minor aged about four years. The deceased left behind him his wife Smt. Vidyawati, Akhilesh Kumar, aged about 12 years and three daughters who are all married. It is submitted by him that his elder brother Akhilesh Kumar was adopted by Sri Prabhu Dayal on 24.6.1974 during the life time of father of the petitioner (Annexure-4). When the applicant attained majority, his mother gave an application for compassionate appointment in favour of the applicant which was followed by number of reminders. By letter dated 6.1.1992, respondents asked the petitioner to file all the papers relating to the adoption of Sri Akhilesh Kumar (Annexure-6) which was duly supplied to the department, and vide letter dated 7.5.1994, the applicant was again informed that the matter is under consideration at Head office but thereafter since no reply was given to the applicant, he gave representation to the ministry concerned and ultimately finding no response from the authorities, had to file the present O.A. for seeking the reliefs as stated above.


3. This O.A. is opposed by the respondents who have taken preliminary objection ^{to the 12} ~~for~~ maintainability of the O.A. itself on the ground that this O.A. is liable to be dismissed as it is barred by limitation as according to them, the deceased Late Sri Govind Prasad Shama had expired on 20.11.74 and his elder son Sri Akhilesh Kumar had attained majority on 21.11.1991 but inspite applying for Sri Akhilesh Kumar, mother applied for compassionate appointment in favour of her second son 10.6.1998 i.e. after laps of seven years.



As per the rules, if there are more than one minor sons, it is only the elder minor son, who is to be considered for compassionate appointment on attaining majority. As such, the second son could not have been considered for compassionate appointment. Moreover, this application was made 14 years after the death of the deceased employee. Therefore, the applicant was informed vide order dated 18.6.1998 that her claim is rejected (Annexure CA-1). Thereafter she gave a representation to the State Minister of Railways in 1998 where upon a detailed report was called for by deputing a Senior Personal Inspector to ascertain the position and as per the report sent from the Office of Chief Personnel Officer following position emerged :-

- i) Elder son of deceased employee is already having his own business.
- ii) Widow is getting family pension of Rs.460/=-, which was revised by 5th Pay Commission and at present she is drawing about Rs.1600 per month.
- iii) All daughters are married and settled. Therefore, there was no special instance to grant compassionate appointment to the applicant.

Thus, it ^{is R} ~~was~~ clear that there ^{is R} ~~was~~ no merit in the O.A. and the same is liable to be dismissed. They also took an objection for maintainability of the O.A. on the ground of jurisdiction as according to them applicant is resident of District Karoli (Rajasthan) and the territorial jurisdiction lies with Rajasthan Bench of the Tribunal. They also submitted that at no point of time widow had declared her elder son Sri Akhilesh Kumar having been adopted by Sri Prabhu Dayal during the life time of the deceased nor had the deceased given any such declaration in the office regarding the adoption of his elder son. They have, thus, submitted that this O.A. may be dismissed with cost.



4. I have heard both the counsel and perused the pleadings as well. In para 4.3 applicant has stated that late Sri Govind Prasad Shama, on his death, was survived by his wife Smt. Vidyawati, Akhilesh Kumar, aged about 12 years and three daughters who are all married meaning thereby that he considered Akhilesh Kumar to be very much a member of the family of Late Sri Govind Prasad Shama. Moreover, the respondents have also clarified in para 10 of the reply that even the widow of the deceased had mentioned the name of Sri Akhilesh Kumar as her son at the time of final settlement. Therefore, both these averments clearly shows that Akhilesh Kumar was very much elder son of deceased employee and no such declaration was given by the deceased employee in the office with regard to his son having taken on adoption by Sri Prabhu Dayal as stated above. As per applicant's own averment, the applicant herein i.e. second son attained majority on 5.5.1988 whereas the elder son had attained the majority on 20.11.1981 itself. Therefore, the application for compassionate appointment should have been made by the widow immediately after 1981 in favour of Sri Akhilesh Kumar as she herself claimed ^{him to} to be her ~~the~~ elder son. No such application was made in favour of her elder son by the deceased widow. The first application was made by the widow only in the year 1988 which according to the respondents, was rejected on 18.6.1988 but according to the applicant ^{was} never communicated to them. Even if we take that the order dated 18.6.1988 rejecting the claim of compassionate appointment was not communicated to the applicant in that case also the latest applicant could have filed the O.A. within 18 months from the date of cause of action as laid down in the case of S S Rathore Vs. Union of India and others. No such O.A. was filed by the applicant but they kept giving applications and representations one after another. The present O.A. was filed only in the year 1998. Law on the question of limitation is



well settled ^{by B as} now ~~by~~ the Hon'ble Supreme Court ~~that it~~ has
~~been~~ held in ~~the~~ number of cases that repeated representation
do not ex-tend the period of limitation and the period of
limitation as laid down under section 21 of the limitation
Act is one year from the date of cause of action and in case
the representation is filed and if ^{not} ~~the~~ response ^{is B} given to the
person concerned, then within 18 months from the date of
cause of action. Therefore, this case is clearly barred by
limitation. Counsel for the applicant invited my attention
to the letters of respondents of 1993 and 1994 to suggest that
even in the year 1994 the case was under consideration with
the respondents. Even if we extend the period up to 1994
but from that date also this O.A. is not filed with the
period of limitation. Therefore, judging it from any angle,
definitely this O.A. is barred by limitation and as per the
judgment given by ^{Honble B} ~~the~~ Supreme Court, in the case of Ramesh
Chandra ^{Sharma} ~~Sharma~~ Tribunal can not ^{entertain} ~~retain~~ ^{an O.A} ~~a representation~~,
which is barred by limitation unless there is an application
for condonation of delay. In the instant O.A., no such
application was filed by the applicant. Accordingly this
case is fully covered by the judgments of Hon'ble Supreme Court.

Accordingly, the O.A. is dismissed being barred by
limitation with no order as to costs.

J.M.

Asthana/