

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

HON'BLE MR.A.K. GAUR, MEMBER (J).

Original Application Number. 1369 OF 2005.

ALLAHABAD this the 5 day of 12, 2008.

Sunil Kumar Kushwaha, S/o Late Raja Ram Kushwaha, R/o House No. 245, Nayi Basti, City and District- Jhansi.

.....Applicant.

VE R S U S

1. Union of India through General Manager, North Central Railway at Allahabad.
2. Divisional Railway Manager, Jhansi.
3. Divisional Railway Manager, North Central Railway, Allahabad.

.....Respondents

Advocate for the applicant:

Sri Rishikesh Tripathi

Advocate for the Respondents:

Sri Prashant Mathur

O R D E R

Through this O.A the applicant has prayed for issuance of a direction to the authorities concerned to appoint the applicant on a suitable post as a dependent of his late father Raja Ram, who died in harness on 27.05.1998 working as Parcel Porter in the office of Railway Superintendent, Gwalior. The applicant by subsequent amendment in relief, has also challenged the order dated 17.09.2004 rejecting the application of the applicant dated 25.10.2004 seeking compassionate appointment (Annexure- 1 of Amendment Application) and order dated 23.02.2005 rejecting the Review Appeal dated 04.01.2005 (Annexure- 2 of Amendment Application) passed by the Divisional Railway Manager (P), Jhansi.

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2. The case of the applicant, in brief, is that the father of the applicant, who was working as Parcel Porter, died on 27.05.1998 while on duty. After the death of Late Raja Ram, his elder son Chhotey Lal preferred an application for appointment on compassionate grounds in July 1998 alongwith requisite documents. According to the learned counsel for the applicant, when no response was received, Sri Chhotey Lal presented himself in the office of the authority concerned at Bhopal on 11.10.1999 with necessary documents. Learned counsel further alleges that after examining the documents, Sri Chhotey Lal was told that because he is over aged, therefore, could not be appointed and this way, his application for appointment was turned down. Thereafter wife of the deceased preferred an application in the month of November 1999 seeking appointment on compassionate ground in favour of Sri Sunil Kumar Kushwaha (the applicant). The applicant thereafter continued to move reminders dated 21.08.2002, 11.09.2002, 27.09.2002, 06.06.2003, 16.02.2004 and 02.04.2004 (Annexure- 3 of O.A) but the authorities concerned did not pay any heed to the prayer of the applicant. In support of his claim, the applicant has filed Delay Condonation Application No. 4618/05 duly supported with an Affidavit.

3. On notice, the respondents have filed Counter Reply to said Delay Condonation Application stating therein that the claim of the applicant is not only excessively time barred but also liable to be dismissed for concealment of material information as after the death of deceased employee, the wife Smt. Mankoo Bai had applied for compassionate appointment in favour of her son Shri Chhotey Lal who had submitted School Certificate alongwith other documents. On verification, the School Certificates[✓] were found fake and as such the request for

compassionate appointment in favour of Shri Chhotey Lal was rejected on 17.9.2001. The guilt was also admitted by Shri Chhotey Lal. Learned counsel for the respondents has further submitted that Smt. Mankoo Bai had again applied for compassionate appointment in favour of Shri Sunil Kumar Kushwaha (the applicant), which was duly considered and decision of the competent authority was duly communicated vide office letter dated 17.9.2004. The mother of the applicant had again made a representation dated 4.1.2005 which was duly considered and rejected by the competent authority on 23.2.2005. Learned counsel for the respondents alleges that aforesaid both the orders have not been brought on record for the reasons best known to him and sought for dismissal of the OA on the ground of delay and concealment of material information.

3. Applicant has filed rejoinder affidavit reiterated the facts what he has stated in the original application.

4. During the pendency of this O.A, the applicant has filed amendment application No.2546/06 challenging the legality of Orders dated 17.09.2004 and 23.02.2005 (Annexure -1 and 2 respectively of Amendment Application), in which notice was issued to the respondents on 08.11.2007 to file objection to the said Amendment Application. When the matter was taken up on 24.10.2008, there was no objection whatsoever on behalf of respondents to the said Amendment Application. Accordingly Amendment Application was allowed and learned counsel for the applicant was permitted to incorporate the necessary amendments during the course of the day.

5. I have heard rival contentions and perused the pleadings as well as documents relied on by either side carefully.

6. Having heard learned counsel for the parties, I am firmly of the opinion that the father of the applicant, who was working as Parcel Porter died on 27.5.1998 and the family has survived during this period and in view of the decisions rendered by Hon'ble Supreme Court in the case of **United Bank of India Vs. M.T. Latheesh 2006 (7) SCC 350**, **State of J&K and Ors. Vs. Sajad Ahmed Mir (2006)5 SCC 766** and **2007(1) SCC (L&S) 668**, **National Institute of Technology Vs. Manoj Kumar Singh**, the appointment on compassionate ground cannot be granted to the applicant after lapse of sufficient time of the death of an employee. As per the decision of Hon'ble Apex Court rendered in State of J&K (supra), in which it has been held that 'once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interests of several others ignoring the mandate of Art. 14 of the Constitution'. In the instant case, the father of the applicant has died long back in the year 1998. It is also settled Principles of law that repeated representations will not confer the benefit of limitation and this view gets full support from the following decisions :-

- (a) **Shiv Das Vs. U.O.I. & ors. - 2007(2) Scale 325**
- (b) **Gian Singh Mann Vs. The High Court of Punjab and Haryana & another - AIR 1980 SC 1894.**
- (c) **State of Orissa etc. Vs. Shri Arun Kumar Patnaik & another - AIR 1976 SC 1639.**
- (d) **State of Orissa Vs. Pyarimohan Samantaray & ors.- AIR 1976 SC 2617.**

(2e)

7. In view of the aforesaid observation and law laid down by Apex Court, the applicant has failed to make out any case for interference. Accordingly the O.A is dismissed being devoid of merit.
8. There will be no order as to costs.

Anil Agarwal
MEMBER- J.

/Anand/