

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.75/2021

This the 10th day of March, 2021

**COROM : Hon'ble Shri Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

1. Shri Sunil M.Patil
Male, Aged – Adult, 57 years
Residing at : 103, 1st Floor, B-6 Tower
Mahabal Residency, Behind Rajdeep Complex,
Tarsali, Vadodara. 390 009.

2. Vanraj B. Chavda
Male, Aged – Adult, 57 years
Residing at : A-27, Pramukh Swami Kutir Society,
Behind Sayrang Heights, Atladra,
Vadodara. 390 012. Applicants

(By Advocate Shri V.V.Goswamy)

VERSUS

1. Union of India,
The General Manager,
Western Railway, HQ Office,
Churchgate, Mumbai – 400 020.

2. The Divisional Railway Manager,
O/o. DRM Western Railway
Divisional Office, Pratapnagar
Vadodara Division, BRC,
Vadodara 391 740. Respondents

O R D E R (ORAL)

Per : Hon'ble Shri A.K. Dubey, Member (A)

The present OA has been filed by the applicants under Section 19
of the A.T. Act, 1985 seeking the following reliefs :

*(a) The Hon'ble Tribunal be pleased to admit and allow
this application;*

(b) The Hon'ble Tribunal may be pleased to quash and set aside the impugned communication dated 07.01.2021 at Annexure A-1.

(c) The Hon'ble Tribunal may be pleased to direct the Respondent to consider the representation of the applicant dated 11.10.2019 at Annexure A-4 and direct them to accord the benefit of the Circular at Annexure A-2 from the date of appointment, along with all consequential benefits.

(d) The grant the any other and further relief/s as may be deemed fit in the interest of justice.

2. It is noticed that the applicants were appointed by the respondents as Junior Clerk on 25.04.1990 and 05.02.1991 respectively on compassionate ground.

3. It is stated that the applicants are Graduates and holding the degree of B.Com, LLB at the relevant time. It is contended that in the year 2019, they became aware about the appointment of one Smt. Kanta Sharma, who was appointed on compassionate ground in the year 2000 to the post of Sr. Clerk in terms of policy laid down under the Master Circular No.16 (Annexure A-2). As per the Para VII (aa) of the said circular, in the matter of the appointment on compassionate grounds to the various posts including the post of Sr. Clerk etc., the minimum qualification prescribed as University Degree to be insisted upon. Referring to said stipulation, reference of the circular No.E(NG)II/82/RSC-25 dated 06.5.1982 has been given. It is the grievance of the applicants that even though they possessed the Graduate Degree from the recognised University, they were not offered

or considered for the post of Sr. Clerk and instead, they were appointed as Junior Clerk. Respondents had extended the benefits of said circular to said Smt. Kanta Sharma (she took voluntarily retirement on 24.09.2020). Therefore, it is the grievance of the applicants that though they were appointed before the said Smt. Kanta Sharma, the respondents have not extended the benefits of provisions stipulated in the Master Circular No.16 (Annexure A-2) to them. The applicants who are working as Chief Law Assistant in the respondent department since last 30 years, preferred representation dated 11.10.2019 (Annexure A-2) claiming the benefits identical to what was extended to Smt. Kanta Sharma, who was appointed as Sr. Clerk on compassionate ground in 2000.

4. In response to the representation of the applicants, the respondent department issued impugned communication dated 07.01.2021 wherein it has been categorically stated that both the applicants were recruited on compassionate ground during the year 1990 and 1991 respectively and their record of being 20 years old were not traceable. This impugned letter also states that it may possible that there was no vacancy of Sr. Clerk at that relevant time.

5. Shri M.J.Patel, Standing counsel for the Railway appears and submits that he had been supplied with an advance copy of this OA. He submits that belated claim that too of more than three decades cannot be

entertained. He requests to reject the prayer of the applicants at the threshold.

6. The applicants have admitted that they have knocked the doors of the respondents after 30 years of their appointment to avail the benefits as Senior Clerk instead of Junior Clerk under the provisions of Master Circular which was published in the year 1982. The applicants have stated that they are working as Chief Law Assistant with the respondent department. Counsel for the applicants argues that till 2019, they were not aware about the publication of the Master Circular No.16 issued by the Railway Board. It is noticed that they had accepted their appointment in the year 1990 & 1991 respectively as Junior Clerk and have been working since last 30 years. The respondents in their impugned order have indicated that it may be possible that there were no vacancy of Senior Clerk at the relevant time and now the records of beyond past 20 years are not traceable. Learned counsel for the applicants submitted that the respondents have rejected their representation by stating that there was possibility that there was no vacancy of Senior Clerk at the relevant time which meant that their case was rejected on a presumption by the respondents. We are not inclined to accept the said submission because the grounds raised by the applicants itself are not firm. There is no explanation, whatsoever, as to why for three decades, the applicant did not care to agitate this issue. Ignorance of the provisions or terms of appointment cannot be accepted

as a valid reason for not taking up the issue within time, particularly from educated persons and law graduates. We are also aware that mere possession of requisite educational qualification may not *per se* entitles the applicant to claim right to be appointed in a particular scale or grade. We also see that parity claim by the applicants has not been established. It is noticed that said Smt. Kanta Sharma was appointed in the year 2000 whereas the applicants were appointed in the year 1990 & 1991 respectively. At the time of their compassionate appointment, the provisions quoted from Master Circular No.16 were in force. This belated claim for appointment to a particular grade on compassionate ground in terms of Master circular No.16 which was published in the year 1982 cannot be entertained after this inordinate delay. Further, the appointment *per se* has not been challenged. We do not find any infirmity or discrimination in the impugned decision. Accordingly, the OA stands dismissed at the admission stage itself.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

nk