

$\frac{A_2}{1}$
 $\frac{180}{7}$

Chandra Shekhar

... Applicant

Vs.

Union of India and another

... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma)

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 has been filed by the applicant for a direction to the respondents to treat his father having died in harness and to accept his application ^{for service &} in place of his father on compassionate grounds.

2. It is alleged that Ram Charan Raikwar, father of the applicant³ was employed in the Mechanical Workshop of the Central Railway Jhansi and he was not traceable from 23.5.1976. On 17.9.1982, the applicant approached the Dy.CME (Workshop) Jhansi for providing him some job treating his father to have died in harness. The Addl.CME vide his letter dated 11.11.1983 informed the applicant that as his father was removed from service for unauthorised absence the question of his taking in service in his place did not arise. The applicant moved an application on 9.12.83 to the Addl. CME (W) pointing out that his father could not be treated to be dead before the expiry of 7 years from the date of his disappearance and the order of his removal from service could not be passed without serving him with a notice. The Addl. CME (W) rejected the contention of the applicant vide his letter dated 7.1.1986 reiterating that Ram Charan Raikwar was removed from service for his absence and there was no question of applicant's being given a job. It is also alleged that a sum of Rs.8774 was due to the applicant's father and the applicant filed a civil suit for the recovery of the same which was decreed in appeal on 18.10.1985 and his father was presumed to be dead. The applicant is said to have made one more representation in April 1988 to the DRM and one to ACME (W) Jhansi for providing him some job but when he did not receive any reply, he filed this petition on 15.11.1988 for the reliefs stated above.

(3)

A2
3

2. The learned counsel for the applicant was heard at the ~~time of~~ admission stage. Section 108 of the Evidence Act provides that where the question is whether a man is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. The law is however well settled that if a person has not been heard of for 7 years there is a presumption of law that he is dead ; but at what time within that period he died is not a ^{matter of} presumption but of evidence, and the onus of proving that the death took place at any particular time within the seven years lies upon the person who claims a right to the establishment of which that fact is essential. In view of this legal position, we are of the view that if the father of the applicant was not heard of by his family members since 23.5.76, there could be a presumption after the expiry of 7 years on 24.5.83 that he was dead. But it is for the applicant to establish as to when he had actually died. This is necessary to establish his right to take the job on compassionate ground as well as for the purpose of limitation. In case, he was removed/dismissed from service rightly or wrongly before his actual death or in the absence of any evidence regarding date of death, the legal presumption regarding his death could be available after the expiry of 7 years, the applicant cannot get any appointment on compassionate ground as his father had not died in harness but after his removal from service. The applicant was informed 5 years ago by ^{me} ACME vide his letter dated 11.11.1983 that his father was removed for his unauthorised absence and the question of giving work to the applicant did not arise. Since then he has not taken any step to get the order of removal of his father set aside. The applicant was again informed about this fact by the ACME on 7.1.86 vide copy annexure 5. Even in the present petition the applicant has not sought any relief for getting the order of the removal of his father set aside. The relief claimed by him for treating his father to have died in harness is not comprehensive enough to get the order of his removal from service set aside or declared void in the absence of any allegation regarding the date of his death.

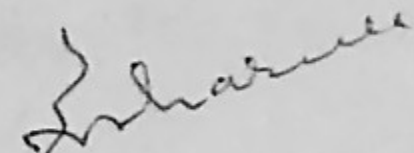
(4)

A2
3

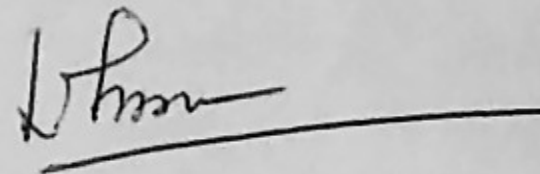
4. The applicant was refused the appointment on compassionate ground first on 11.11.1983 and then on 7.1.1986 on his own showing. He having approached this Tribunal much after the statutory period of limitation prescribed by S.21 of the Act, his petition is barred by limitation. The representations alleged to have been made by the applicant in April 1988 to the DRM and ACME (W) did not extent the period of limitation. In our opinion, the applicant should have approached the Tribunal atleast within a year after his suit was decreed in appeal and his father was presumed to be dead or in any case within 1 year from 7.1.1986 when even after the Civil Court decree the ACME refused the employment to him.

5. The learned counsel for the applicant requested us to consider the case of the applicant with compassion and mercy on the ground that he has lost his father. We have given our anxious consideration to the points raised in this petition and are of the view that it is not a fit case for adjudication and is also barred by limitation and we are unable to extend any help to the applicant.

6. The petition is accordingly dismissed at the admission stage.



MEMBER (J)



MEMBER (A)

Dated: 30th Nov. 1988

k kb