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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 501 of 1988

Allahabad this the 18th day of Sept. 1995

Hon'ble Dr. R.K. Saxena, Member (J)

Beni Madhav Tiwari, S/o Late Sri Mukut Behari
Tiwari R/o 239, Collonelganj, Allahabad.

APPLICANT

By Advocate Shri C.M. Pandey

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Kamta Prasad Tiwari, adopted son of Late Mukut Behari Tiwari, Gateeman Nandganj C/o D.R.M., N.E.Rly. Varanasi, presently posted as Pointsman at Allahabad City Station Rambagh, Allahabad, N.E.Rly,

RESPONDENTS.

By Advocate Shri V.K. Goel.

O R D E R

By Hon'ble Dr. R.K. Saxena, J.M.

This O.A. has been filed with the prayer that respondents be directed to provide a job on compassionate ground in place of his deceased father Late Mukut Behari Tiwari and to decide the representation made in this connection.

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Additional relief was also sought and it was prayed that the order of appointment dated 24.4.86 of respondent no.3 be quashed.

2. The brief facts of the case are that Late Mukut Behari Tiwari was serving under the respondent no.1 and 2 as Fitter and was posted at Jaunpur. The said Mukut Behari Tiwari fell ill in January 1983 and was hospitalised. Ultimately, he was declared unfit on 12.4.1984 and was retired from service w.e.f. the said date i.e. 12.4.1984. Ultimately, he died on 09.11.1986. The applicant claims to be the only son of his father and he had applied for appointment on compassionate ground. He was informed vide letter dated 20.6.1983(Annexure-2) that his name was registered at serial no. 272 and he would be informed about the matter. It is said that the applicant moved several applications but, no reply was given. He, therefore, moved this O.A. In the year 1994, he learned that Shri Kamta Prasad respondent no.3 was given appointment on compassionate ground treating him to be the adopted son of Late Mukut Behari Tiwari. Therefore, the appointment of Kamta Prasad, respondent no.3 was also challenged.

3. The respondent no.1 and 2 contested the case on the grounds that the application is time-barred and that Late Mukut Behari Tiwari was declared

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medically unfit on 01.12.1983 and was retired w.e.f. the said date. His death on 09.12.1986 is also admitted. The respondents came with the plea that Late Mukut Behari Tiwari had moved an application during his life-time that his adopted son (respondent no.3) be given appointment on compassionate ground; and accordingly the appointment was given to respondent no.3 vide annexure-2 attached with the Counter-reply. It appears that the respondent no.3 had joined service on 26.4.1986. The case of the respondents is also to the effect that when Kamta Prasad was appointed on compassionate ground, there was no question of the applicant being given appointment.

4. Shri Kamta Prasad, respondent no.3 has also filed the reply, stating that Late Mukut Behari Tiwari was deserted by the members of his family namely wife and son and, therefore, he (Kamta Prasad) had been serving Late M.B. Tiwari who ultimately adopted him as his son. It is also averred that Smt. Kalyani Devi-widow of Late M.B. Tiwari was in service and was living separately. It is also contended that the registration at serial no.272, as alleged by the applicant, was actually in the name of respondent no.3. Late M.B. Tiwari had moved to the department for his appointment and, therefore, he was given appointment as adopted son of Late M.B. Tiwari and he was discharging duties properly.

5. In reply, the applicant filed rejoinder pg.4/

indicating that the father of the applicant was no doubt posted at Jaunpur and his mother Smt. Kalyani Devi was a nurse in Sarojini Naidu Hostel of Allahabad University and was living in Collonelganj, Allahabad but, at the ~~fa~~g end of the life, the father was brought for treatment to Allahabad where he ultimately died on 09.11.1986. It is also contended that last rites were performed by him(the applicant).

6. I have heard the learned counsel for the applicant and the respondent no.1 and 2. None appeared for the respondent no.3 for arguments. The record is also perused.

7. There is no dispute that the applicant was the natural son of Late M.B. Tiwari who had been working as Fitter under the respondent no. 1 and 2. It is also not in dispute that Late M.B. Tiwari was declared medically unfit and was retired. According to the applicant, the date of his father being declared medically unfit and retired, was 12.4.1984 but, according to the respondent no.1 and 2 it was 01.12.1983. The death of Late M.B. Tiwari in the year 1986 is also not in dispute except, that the date according to the applicant was 09.11.1986 and according to the respondent no.1 and 2 was 09.12.1986. Since, the respondent no.1 and 2 were the employer of Late M.B. Tiwari, I am

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inclined to accept the date of his being declared medically unfit and retired, as 01.12.1983. So far as the date of death is concerned, the applicant has filed the photostat copy of the death certificate in which it is mentioned as 09.11.1986. Therefore, the date of death of Late Mukut Behari Tiwari was 09.11.1986.

8. It is an admitted fact to the respondents that Shri Kamta Prasad, respondent no.3 was given appointment on compassionate ground because Late Mukut Behari Tiwari had moved vide application (Annexure-1) to the counter-reply of the respondents, for appointment being given to Kamta Prasad who was alleged by Late Mukut Behari Tiwari as his adopted son. Consequently, the appointment letter dated 24.4.1986 annexure-2 to the counter-reply was issued and Kamta Prasad has joined on 26.4.1986. The contention of the learned counsel for the applicant is that Late Mukut Behari Tiwari had admitted in Annexure-1 of counter-reply that he (Late M.B. Tiwari) had one natural son who was handicapped and was unable to work for the respondents. What is contended on behalf of the applicant is that in view of this admission that Late M.B. Tiwari had one natural son, the respondent no.1 and 2 ought not ~~to~~ have accepted the plea of the deceased employee who was retired at the time making application(annexure-1) of counter-reply

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that Kamta Prasad was his adopted son. He emphatically contends that no adoption can take place when a son or a daughter is surviving. There is no doubt in the legal position of this fact. The respondent no.1 and 2 were required to have made an inquiry in this connection.

9. The question arises whether the appointment which had taken place in the year 1986, can be challenged now and whether the application for appointment on compassionate ground is maintainable. In this connection, it has been pleaded on behalf of the applicant that he got his name registered vide annexure-2 of application and since no reply about his pending application/representations was received, he got the extended time of limitation. The registration for appointment on compassionate ground can be sought only on the death of the employee or on his being declared medically unfit. I have already considered this fact and held that Late M.B. Tiwari was declared medically unfit and retired from service on that ground on 01.12.1983. The applicant, as was already mentioned, had disclosed this date as 12.4.1984. In any case, the date of annexure-2 of O.A. preceded the date of retirement of Late Mukut Behari Tiwari. This annexure-2 was dated 20.6.1983. It is not understandable as to how the appointment on compassionate ground can be sought prior to the employee having been declared medically unfit and retired. Any-way, the father of the applicant had retired from service on 01.12.1983 and had died on 09.11.86.

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The application ought to have been moved within the period prescribed under Section 21 of Administrative Tribunals Act, 1985. The normal period of filing an application under Section 19 of the Act is one year from the date of impugned order or if, no order is passed then on expiry of six months from such period. Looking from this angle, it is clear that the period of limitation had started from 01.12.1983. The representation annexure-3 of O.A. was made on 22.7.1985. It was made after the lapse of about 2 years from the date when the father of the applicant was declared medically unfit and retired. The repeated representations will not extend the period of limitation. Thus, from every angle the O.A. has been filed beyond the period of limitation. Also no application for condonation of delay has been moved. Thus, the O.A. is not maintainable on this account.

10. Even on merits, it is to be seen if, the applicant was really indigent person. It has come in the reply of respondent no.3 and also from the affidavit of the applicant which was brought on record in reply to the counter of respondent no.3 that the applicant was living with his mother who was serving as nurse in Sarojni Naidu Hostel, Allahabad University. He was, therefore, neither dependant on the deceased employee Late M.B. Tiwari nor was an indigent person. The appointment on compassionate ground is made to tide over the financial

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crisis which is created because of the sudden death or of retirement on medical ground such as of Late M.B. Tiwari. In the present case, as is seen from the above conclusions, the applicant was neither dependant on the deceased employee nor was indigent person. He was of 29 years of age as is disclosed in annexure-3 of the O.A. in the year 1985 and he lived without any financial crisis for such a long period of 10 years. These facts do not make him entitled for appointment on compassionate ground.

11. The next question arises if, the appointment of respondent no.3 who had been serving under the respondent no.1 and 2 for the last 8 or 9 years, should be declared invalid. and be removed from the job. In my opinion at this juncture, it would not be proper to take such an action. In similar circumstances, the same view was taken by their Lordships in 'Udai Bhan Rai Vs. State of U.P. (1994) 28 A.T.C. 420'. Therefore, the appointment of respondent no.3 is not declared invalid.

12. In view of the facts and circumstances

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of the case as discussed above, I am of the view that there is no merit in the case of the applicant. It is also time-barred. The O.A. is, therefore, dismissed. No order as to costs.

Dandekar
Member (J)

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