

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.1574 of 1999.

Allahabad this the 20th day of Feb, 2004.

Hon'ble Mr. A.K. Bhatnagar, Member-J.

1. Smt. Banto Devi
W/o Late Sri Khairuddin.
2. Jawahar Khan,
S/o Late Sri Khair-uddin.
Both Resident of Village Sitarauli,
Post Hatharas Junction, District Hatharas.

.....Applicants.

(By Advocates : Sri Anand Kumar/
Sri C.P. Gupta)

Versus.

1. Union of India
through General Manager,
Northern Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway,
Izatnagar.

.....Respondents.

(By Advocate : Sri Avnish Tripathi)

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(By Hon'ble Mr. A.K. Bhatnagar, J.M.)

This O.A. has been filed under section 19 of Administrative Tribunal Act, 1985 alongwith Delay Condonation Application No.5769 of 1999 reiterating the same facts in the O.A.

2. By this O.A. filed under section 19 of Administrative Tribunal Act, 1985, the applicants have prayed for quashing the impugned letter dated 28.12.1993 (Annexure A-1) issued by the Divisional Railway Manager

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(P) Izatnagar by which the applicant No.2 was denied the appointment on compassionate ground. They have further prayed for issuing a direction to respondents to appoint the applicant No.2 on compassionate ground on a suitable post vide his father late Sri Khairuddin.

3. The case in brief as per the applicant is that father of applicant No.2 Sri Khairuddin expired on 18.04.1969 while he was working as Keyman in Gang No.16 of Mathura Cantt under Permanent Way Inspector, Mathura Cantt. When applicant No.2 became major the applicants represented to the respondents several times for compassionate appointment but nothing was done then applicant No.1 represented on 02.04.1985 to respondents requesting to appoint her son on compassionate ground (Annexure A-2). It is also claimed that when no response was made for a long time, the applicants again represented on 30.09.1991 and 04.12.1992 (Annexures A-3 and 4) Vide letter dated 28.12.1993 issued by the office of Divisional Railway Manager, Izatnagar she was informed that Headquarters has not considered the appointment of her son Sri Jawahar Khan on compassionate ground (Annexure A-1). Applicants further kept on representing through Member of Parliament, a copy of which dated 24.08.1994 has been filed as Annexure A-5. It is also claimed that on the direction of respondents, the Personnel Inspector of Mathura Cantt submitted his investigation report after enquiry of the family of the applicants and submitted in the Office of Divisional Railway Manager, Izatnagar on 15.12.1994 (Annexure A-6) but till date nothing has been done in this matter by the respondents. Aggrieved by the action of the respondents, applicant filed this O.A.

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4. Learned counsel for the applicants invited the attention of this Court on Annexure A-1 and submitted that the order is non-speaking, unreasoned and has been passed without application of mind and thus deserves to be quashed. It is further submitted that inspite of the report of Personnel Inspector of Mathura Cantt recommending the case of the applicant on compassionate appointment, the respondents did not take any action on it. The learned counsel also relied on Annexure A-8 letter dated 09.09.1996 sent by Sheela Gautam, Member of Parliament to the then Railway Minister recommending the case of the applicant for appointment on compassionate ground. Learned counsel for the applicant placed reliance on the following cases:-

- (a) Nirmala Devi Vs. Union of India and Ors. 2002(1) A.T.J. 261.
- (b) Smt. Anar Kali and Anr. Vs. Union of India Ors. 2001(2) A.T.J. 387.
- (c) Uma Shanker Dwivedi Vs. Union of India, in in O.A. No.415 of 1993 decided on 08.05.1993.

It is also submitted that Delay Condonation Application has also been filed with the O.A., which is supported by the judgment of Madras High Court in the case of M Jayalakshmi (Mrs.) Vs. Union of India and Ors. A.T.J. 2002 (3) 374.

5. Learned counsel for the respondents while resisting the claim of the applicants, ~~the~~ ^{the} filed counter affidavit against which rejoinder was filed by the applicants reiterating the facts given in the O.A. Learned counsel for the respondents submitted that admittedly father of the applicant died on 18.04.1969. Applicant No.1 applied on 22.03.1974 for appointment of her ^{eldest} son Sri Nawab Khan on compassionate ground which was duly considered by the Competent

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Authority and was rejected vide order dated 16.08.1974 under intimation to the applicant No.1. She again applied for appointment of her second son namely Sukha on compassionate ground on 26.08.1982 which was filed after a gap of five years from the date of death of her husband so it was also rejected being time barred. The applicant No.2 Sri Jawahar Khan, the third son of the deceased has filed this O.A. after a gap of more than 25 years after the death of his father and after five years of receiving of the impugned order dated 28.12.1993. In fact the applicant No.1 was informed vide order dated 16.08.1974 that her son was not fit for appointment on compassionate ground and the case of the applicants ought to have been filed within statutory limit of one year but the same has been filed after a gap of 25 years which is hopelessly time barred and is liable to be dismissed on this ground alone. Learned counsel further submitted that the case of the applicant was considered by the Competent Authority who did not find the case of the applicant, fit for compassionate appointment and she was informed accordingly vide letter dated 16.08.1974 since then the applicants are sending the representations after representations and it was not possible to decide every representation of the applicants^{and} there should be some end to it somewhere. It is finally submitted that first application of eldest son Sri Nawab Khan for compassionate appointment and thereafter representation was rejected in 1974 for which the cause of action arose in 1974 but no case was filed by the applicants. After 14 years of death of the applicants' father second son applied for appointment on compassionate ground which was rejected vide order dated 26.08.1982. Again applicant No.1 applied for her third son the present applicant No.2 for compassionate appointment in the^{year} 1990 which was also rejected by letter dated 28.12.1993.

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6. I have heard counsel for the parties, considered their submissions and perused the records.

7. I have perused Annexure A-1, it is an intimation given to the applicants that his application for compassionate appointment is not worth considering. I have also gone through Annexure A-6 dated 15.12.1994 which shows that eldest son of the applicant No.1 Sri Nawab Khan aged about 35 years was working in Northern Railway. Second son Sri Sukha aged about 33 years was working in East Northern Railway at the relevant time and third and fourth sons aged about 32 years and 28 years respectively were without job. It is also stated that as per the applicant No.1 none has been appointed on compassionate ground. It is found that nowhere the case of the applicants has been recommended by the Personnel Inspector vide his letter dated 15.12.1994 for appointment on compassionate ground as averred in para 4.6 of the O.A.

8. In rejoinder, the applicants have denied the communication of the letter of rejection of applicant No.1 in 1974 as averred in para 3 of the rejoinder. It is also stated in para 6 of the rejoinder that as per Railway Board policy issued vide letter dated 06.10.1995, the time limit for appointment on compassionate ground has been extended upto 20 years in deserving cases, where the death took place over 20 years ago or the application for appointment is made after two years after attaining the majority and powers are conferred to the General Manager of respective Railways.

9. Admittedly, the O.A. has been filed on 30.11.1999 and applicant No.2's father deceased Khairuddin died on 18.04.1969 after about 30 years of the death of the father of the applicant No.2. The main object of compassionate appointment is to help the family at the

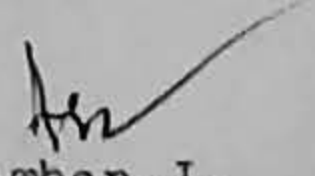
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time of distress and in indigent circumstances which the family has to undergo after the death of bread earner of the family. In this case, two elder sons of the applicant No.1 were already working in the Railway Department and the applicant No.1 was continuously applying for compassionate appointment one after the another and sending the representations after representations through various sources to the department for so many years which shows that the family of the applicant was not in indigent condition at the relevant time. I have gone through CA-1 letter dated 16.08.1974 rejecting the claim of the eldest son Sri Nawab Khan and CA-2 page 2 letter dated 14.12.1993 issued from the office of Divisional Personnel Officer, N.E. Railway, Izatnagar informing the reason for rejecting the case of the applicant No.2 Jawahar Khan on compassionate ground.

10. In view of the above submissions made by counsel for the parties and in the facts and circumstances of the case mentioned above, I find no merit in this case besides the O.A. is liable to be dismissed on the ground of limitation alone. The reliance placed by the applicant in case of M. Jayalakshmi (Mrs.) (Supra) in support of Delay Condonation Application is not applicable in the present case as the facts and circumstances are distinguishable in the present case.

11. Accordingly, the O.A. is dismissed as grossly time barred and lacking in merit also.

No costs.


Member-J.

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