Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.1159 of 1999.

Allahabad this the 25th day of February 2004.

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

Kaushal Kumar
s/o late Ishwar Saran Sinha
r/o Hatwan, Yard No.1, post Bhatni,
District Deoria.

.....Applicant.

(By Advocate : Sri S.K. Om)

Versus.

1. Union of India
through General Manager,
North Eastern Railway,
Gorakhpur.

2. Senior Divisional Personnel Officer,
North Eastern Railway,
now known as East Central Railway,
Samastipur.

3. Senior Medical Engineer,
East Central Railway,
Samastipur.

.....Respondents.

(By Advocate : Sri P Mathur)

_O_R_D_E_R_

This O.A. has been filed under section 19 of Administrative Tribunals Act 1985 alongwith Delay Condonation Application No.4604/99 for condoning the delay in filing this O.A., by which the applicant has prayed for issuing a direction to respondents to appoint the applicant on compassionate ground on any suitable post for which he is eligible with a further direction to the respondents to pay family pension to the applicant's mother and arrears of Provident Fund, Gratuity, NIS etc alongwith the interest @ 18%.

2. The brief facts giving rise to this O.A. as per the applicant/that the father of the applicant late Ishwar Saran Sinha was appointed on 27th October 1972 as Carriage Khalasi in North Eastern Railway, Samastipur. On 18th November 1981, the applicant's father was sent for periodical medical checkup wherein he was declared 'unfit' in B-1 category. On his representation to Higher Authorities/they sent him for medical examination by Medical Board who declared the applicant 'Unfit' in all categories by letter dated 15.06.1988 (Annexure 2). Ultimately on 18.09.1991, the applicant's father expired due to heart failure leaving behind applicant's mother, two unmarried sisters and applicant. The applicant's mother moved an application for requesting the authorities to pay the terminal benefits of her husband such as family pension etc. and also requested the respondents to consider the appointment for compassionate grounds on any suitable post by representation dated 03.10.1991 (Annexure 4). Since than the applicant and his mother were sending repeated representations but respondents did not pay any heed to the request of the applicant or his mother. When no action was taken by the respondents so he filed this O.A.

3. Learned counsel for the applicant submitted that father of the applicant was medically decategorised in the year 1988, therefore, he was entitled for salary from January 1981 to June 1988. After the death of applicant's father his mother is legally entitled for family pension, provident fund etc. which have not been paid by the respondents. He further submitted that as the applicant's father died in harness during the course of service, therefore, the applicant is entitled for compassionate appointment on any suitable post. Learned counsel finally submitted that action of the respondents in not considering the

applicant for compassionate appointment and in not paying the family pension, balance of provident fund etc. is wholly arbitrary and is violative of Article 14 and 16 Constitution of India.

4. Learned counsel for the applicant placed reliance on the following cases in support of his claim:-

(i) State of Bihar and others Vs. Kameshwar Prasad Singh and another reported in 2000 (3) E.S.C. 1765 (S.C.)

(ii) Vijay Vishnu Pawar Vs. Zilla Parishad Bhandara and others reported in 2000 (3) E.S.C. 1955 (Bom.).

(iii) Neelam Saxena Vs. State of U.P. and others reported in E.S.C. Allahabad page 115.

5. Resisting the claim of the applicant, respondents filed counter affidavit against which rejoinder reply was filed by the applicant. Learned counsel for the respondents raised preliminary objection and submitted that the applicant has sought two reliefs in the present O.A. which is in contravention to Rule 10 of Central Administrative Tribunal (Procedure) Rules 1987 and is not maintainable due to plural remedies. At this juncture, the learned counsel for the applicant submitted that he is ready to forego the first relief claimed by the applicant and press the second relief for appointment on compassionate ground so now the only controversy which is to be adjudicated upon is of compassionate appointment of the applicant ~~only~~. Learned counsel further submitted that the entire settlement dues of the applicant have already been paid to the legal claimant and certain over-payment was made inadvertantly by the Administration which has already been recovered from the mother of the applicant. He contended that the applicant's father was declared 'unfit' in the initial medical examination before his regularisation and was declared 'Unfit' for all categories as such his status remained as substitute and no legal

right whatsoever accrued to the individual for claiming any compassionate appointment which, in fact, is for immediate assistance to the aggrieved family to overcome their agony and it cannot be claimed as a matter of right. Learned counsel further contended that the cause of action, if any, had ~~been~~ accrued in the year 1991 and the present Delay Condonation Application has been filed in the year 1999 with the grounds which are not sufficient so the same is liable to be dismissed as excessively time barred. He further contended that the deceased was a substitute and was subjected to medical examination for regularisation but was declared 'Unfit' in all categories by the Medical Board so whatever settlement dues which the deceased was entitled for, were given, which were admissible to the substitute. He further contended that as stated in para 10 of the counter affidavit, there is no provision for extending the benefit of compassionate appointment to the substitute prior to 31.12.1986 and in para 13 of the counter affidavit, the detailed chart of payments made to the applicant's mother has been given.

6. Learned counsel for the respondents placed reliance on the case of Union of India and others Vs. Rabia Bikaner and others reported in 1997 Supreme Court Cases (L&S) 1524 and Udham Singh Kamal Vs. Ramesh Chandra Sharma reported in 2002 (2) A.I.S.L.J. page 89.

7. I have heard counsel for the parties and perused the records.

8. Admittedly, the father of the applicant was medically decategorised by the Medical Board by Medical Report dated 15.06.1988. It is also evident from Annexure A-1 and Annexure A-2 that the applicant was working as Carriage Khalasi who ultimately died on 18.09.1991 so

the cause of action arose at the most in 1991 while the O.A. has been filed on 24.09.1999 alongwith the delay condonation application No.4604/99 after a lapse of 8 years from the death of applicant's father. It is also evident from the affidavit filed by the applicant that he was 29 years of age when the affidavit was filed by the applicant alongwith delay condonation application. Applicant was about 21 year's of age at the time of death of applicant's father and he could have filed this O.A. within a reasonable period. It is also mentioned in para 5 of the affidavit filed alongwith delay condonation application that he filed an application for compassionate appointment after death of his father in 1991. In paras 6 and 7 of the same, it is mentioned that since than the applicant was sending representations to Higher Authorities including the Railway Minister and was approaching M.L.A. and M.L.Cs for recommendation of his case. It is also stated in this affidavit that the applicant filed a petition before National Human Rights Commission in the year 1999, which was rejected by order dated 16.04.1999 on the ground that as it is a service matter so no action can be taken by the Commission. It is a well settled principle of service law that repeated representations do not cover the period of limitation as provided under section 21 of Administration Tribunals Act 1985. I am not satisfied with the grounds taken in the affidavit filed alongwith Delay Condonation Application for condoning the delay. The applicant was major at the time of death of his father and he could have approached the Court well within time. The applicant has, thus failed to give reasonable explanation for delay of eight years in filing the O.A.

9. Under the facts and circumstances and the aforesaid discussions and placing reliance on the case of Udham Singh

Kamal (supra), I am of the view that the O.A. is liable to be dismissed on the ground of limitation only.

10. Accordingly, the Delay Condonation Application is rejected and the O.A. is dismissed being grossly time barred.

No order as to costs.

Member-J.

Manish/-