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OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.1044 of 2006

Allahabad, this the 2<sup>nd</sup> day of April, 2008

**Hon'ble Mr. Justice Khem Karan, Vice-Chairman**

1. Smt. Godhani Devi aged about 63 years, widow of Late Vishwanath Prasad, Ex-Gangman, Bharwari Village & P.O. Amni-Lokipur near Bharwari, District Kaushambi, (Allahabad).
2. Brij Lal alias Brij Mohan, aged about 40 years, Son of Late Vishwanath Prasad, Ex-Gangman Bharwari Village & P.O. Amni Lokipur, Bharwari, District- Kaushambi, Allahabad.

....Applicants.

(By Advocate : Shri Z.A. Faruqui  
Shri K.N. Katiyar

**Versus**

1. The Union of India through General Manager, N.C. Railway, Allahabad.
2. The Divisional Railway Manager, N.C. Railway, Allahabad.
3. The Sr. Divisional Personnel Officer, N.C. Railway, Allahabad.
4. The Chairman, Railway Board, Ministry of Railway, Rail Bhawan, New Delhi.

...Respondents.

(By Advocate : Shri A.K. Pandey)

**ORDER**

The applicant No.1, Smt. Godhani Devi is widow and applicant No.2 Brij Lal is son of Late Shri Vishwanath Prasad, who died in 1975, while still working as a Gangman in the Railway. As the applicant No.2 was then a minor, so the request for compassionate appointment came in 1985 from the side of applicant No.I for giving compassionate appointment to the applicant No.II. There is no dispute that this request was turned down vide communication dated 15.3.1985 on the ground that request should have come within a period of five years from the

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death of the servant concerned. It appears, the applicant did not ~~come by~~ give up the hope and continued making further representations to the authorities concerned. It appears from perusal of the OA, subsequent request was again turned down vide communication dated 17.7.2000. The applicant submitted other representation and the matter was taken up in open Adalat for considering the cases of compassionate appointment and it was again rejected on 9.11.2005. This OA was filed on 14.9.2006 with an application under <sup>Sub-</sup> Section (3) of 21 of Administrative Tribunal Act, 1985 requesting the Tribunal to admit the OA after condoning the delay and to quash the said rejection order dated 15.3.1985, 17.7.2000 and 9.11.2005. Several grounds have been taken in the OA ~~and these~~ <sup>including one</sup> calculated that under the then existing orders/instructions such a request even if coming after a period of five years of the death, ~~when~~ <sup>could</sup> have been entertained by the General Manager, within a period of 20 years and by Railway Board even after 20 years. It is said that the rejection of the request of the applicant on the technical ground that the same had not come, within a period of five years of the death of servant, was totally in disregard of the above instructions and in all fairness, the request ought to have been entertained and accepted.

2. The respondents have contested the claim supporting their rejection. They say that the OA is highly time barred and the delay being inordinate cannot be condoned.

3. I have heard Shri Z.A. Faruqui, learned counsel for the applicant and Shri A.K. Pandey, learned counsel for the respondents and perused the entire material on record.

4. The first question that ~~raised~~ <sup>arises</sup> for consideration is as to whether the delay can be condoned ~~in~~ <sup>under</sup> Sub-Section (3) of Section 21. Learned counsel for the applicant has

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submitted that since the department entertained the ~~second~~ and subsequent requests for compassionate appointment and since the applicant ~~towards~~ kept busy in pursuing their matter at the administrative level, so the delay deserves to be condoned. Learned counsel for the applicant has drawn the contention of the Tribunal towards those observations of the Apex Court made in Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others- AIR 1987 SC 1353 where it was said that delay should be condoned with a view to secure the substantial justice and technical pleas of limitation should not come in the way. Learned counsel for the applicant has also cited decision dated 1.3.2001 of this Bench in OA No.165/99 Smt.Savitri Devi & ors. Vs. Union of India & ors. and decision dated 15.12.2006 of this Bench in OA No.88/03 Smt. Mehmudan Begum and another Vs. Union of India & ors, ~~so~~ as to say that in those cases also, death had taken place long back in seventees but the question of limitation did not come in the way of this Tribunal in issuing necessary directions for considering the cases of the compassionate appointment.

5. Learned counsel for the respondents has submitted that the facts of the case in hand are totally different and the law cited by the learned counsel for the applicant cannot be applied here. He has said that in the case in hand request for compassionate appointment was rejected long back firstly on 1985 and secondly in 2000. He argues, that subsequent representations or orders passed thereon will not be sufficient enough to condone the delay in filing the OA.

6. I have considered the respective submissions in the light of law so cited by the applicant and material available on record.

7. In the instant case, the request for compassionate appointment was firstly rejected long back in the year 1985. It is never the contention of the applicants that



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they did not have knowledge of that rejection. What they ~~said~~<sup>say</sup> is that they made another representations in the year 1988 on the basis of certain instructions of the Railway Board and that remained pending. It is said that the second rejection came in 2000. I have not been able to persuade myself to accept the arguments of Shri Faruqui that the applicants had no cause of action to come to this Tribunal or to the proper forum earlier <sup>to</sup> 2000 or soon after 2000, when the request was rejected second time. Giving ~~after~~<sup>of</sup> the representation even after those rejections will not extend the period of limitation and will not <sup>be</sup> sufficient to condone the delay. The facts in the case, so cited in the Savitri Devi and Mehmudan Begum were different in nature. <sup>in</sup> None of those cases, the OA had been filed after about 20 years of the rejection of the request of the applicant for compassionate appointment. After a period of almost 25 years of the first rejection, the applicants are coming to this Tribunal. It is true that in suitable cases delay can be condoned <sup>for</sup> doing substantial ~~but~~<sup>justice</sup> ~~case~~ but this does appear to one where such a view <sup>could be</sup> ~~is~~ taken. <sup>in</sup> To my mind, the applicants ~~were~~ not vigilant enough in coming to this Tribunal in time. The cause shown for condoning the delay is not sufficient. So, the request under Sub-Section (3) of Section 21 for condoning the delay is rejected. There is no need <sup>to</sup> enter into the merits of the case. So, the OA deserves to be time barred and it is accordingly dismissed as time barred. <sup>in</sup> No costs.

1, Jan '04  
02/01/08  
Vice-Chairman

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