

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

HON'BLE MR. A.K. GAUR, MEMBER (J).

Original Application Number. 1281 OF 2006.

ALLAHABAD this the 28 day of January, 2009.

1. Chandra Deo Singh, S/o Late Ganpati Singh
2. Balmiki Singh, S/o Chandra Deo Singh

R/o Village- Sinha Tola Bagahi, Post- Simraon, Tahsil-
Hathuwaraj, P.S. Mirganj, District- Gopalganj, Bihar. Presently
residing at Vishal Shamiayana, C/o Er. R.P. Singh, Road No. 15,
Mohalla Saharanpur Colony-1, District- Gorakhpur.

.....Applicants.

VE R S U S

1. Union of India through General Manager (Karmik), North East Railway, Gorakhpur.
2. Executive Director (P.G) Office of Minister for Railway, New Delhi.
3. Secretary (Sthapana), Rail Parishad, New Delhi.

.....Respondents

Advocate for the applicant: Sri V.S. Mishra

Sri M.P. Mishra

Advocate for the Respondents: Sri A.K. Pandey

OR D E R

The applicants Through this O.A filed under section 19 of
Administrative Tribunals Act, 1985 have prayed for issuance of direction
commanding the respondent No. 1 to issue appointment letter in favour
of the applicant No. 2 (Balmiki Singh) on any Group 'D' post and other
relief(s).

2. The factual matrix of the case is that applicant No. 1, who was working as Builder having its Ticket/Token No. 129, while discharging his duties, met with an accident and got serious injuries on his head, ✓

hands and legs and as a consequence of which became permanently incapacitated. Applicant No. 1 could not be promoted and ultimately he has been retired from service in the year 1984. After his retirement, applicant No. 1 moved an application dated 27.09.1993 before respondent No. 1 to appoint his son in Indian Railway as Group 'D' employee on the basis of accident. Having received no response, applicant No. 1 preferred another application before respondent No. 3 for seeking a direction to the respondent No. 1 to proceed further with the proceedings for appointment of his son Balmiki Singh (applicant No. 2) and on the said applicant, the respondent No. 2 issued a letter /order to Rail Parishad for compliance of letter No. 4672 regarding the employment of applicant No. 2. According to the applicants, in the said letter, the respondent No. 1 has directed ~~to~~ the respondent No. 2 to issue immediate joining letter to the applicant No. 2 on suitable post according to his educational qualification but no action has been taken by the respondent No. 1, therefore, he approached to the Office of Rail Minister praying therein to issue joining letter, on which Railway Minister has passed an order to appoint the applicant No. 2 in the Railways .

3. In support of their claim, applicants invited my attention to order/circular letter R.B's No. E(14G)II/84/EC-1/51 dated 19.09.1984 , which provided :

"(a) *The following should be order of priority to be followed while making appointment on compassionate grounds :*

- (i). *Dependents of employees who died or permanently crippled in the course of duty;*
- (ii). *Dependents of employee who died in harness as a result of Rialway or other accidents when off duty;*
- (iii). *Dependents of employees who*

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- (a). *Die in service or are totally incapacitated while in service irrespective of period of service left to reach the age of superannuation of earning retirement benefit in full, or*
- (b). *are medically de-categorized with less than 30 years of qualifying service for pensionary benefit /30 years service of service for SC to P.F, competent authority should be kept the effect that the candidate was selected for a Group 'C' post but appointment to a Group 'D' post for want of a vacancy in Group 'C' because the candidate needs employment immediately and that he will be considered for a vacancy in Group 'C' as early as possible when a vacancy arises therein subject to his being found medically fit for the post for which he is considered;*
- (d) *At time limit of one month should be observed within which appointment should be given in priority (i) cases and three months in cases relating to priority(ii), (iii) and (iv) subject to the vacancies being available."*

4. Based on the letter dated 19.09.1994 particularly para (a)(iii) (referred to above), learned counsel for the applicants submitted that the applicant No. 2 is entitled for issuance of appointment letter on Group 'D' post. Learned counsel for the applicants would further contend that in view of the Full Bench decision of Hon'ble High Court in case of Tara Prasad, wherein it is clearly mentioned that any order or direction issued by superior officer to the subordinate officer, the subordinate officers are duty bound to obey the same, but in the instant case, inspite of specific direction issued by higher/superior officers of Railway Department including Minister of Railways, the subordinate officer is not obeying /following the same.

5. On notice, respondents filed Counter Reply denying the claim of the applicants taking preliminary objection that the O.A is highly time

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barred . Learned counsel for the respondents submitted that applicant was aggrieved in the year 1984 while he met with an accident and filed application seeking compassionate appointment on 27.09.1993 and after more than 10 years, Writ Petition No. 43898 of 2003 was filed by the applicant before Hon'ble High Court, Allahabad , which was dismissed vide order dated 18.08.2006 on the ground of alternative remedy. Learned counsel for the respondents vehemently argued that mere dismissal of W.P. on 18.08.2006 cannot be said to be the ground of condonation of delay as undisputedly, the applicant met with an accident in the year 1984 and he filed his application in the year 1993 i.e. after 9 years and thereafter filed W.P. in the year 2003 i.e. after 19 years of his accident. It has further been contended by the learned counsel for the respondents that the applicant in his O.A no where has stated or placed documentary evidence to establish that whether he was retired on being declared medically unfit. Learned counsel for the respondents would further contend that the applicant also failed to show the contents of latter No. 4672 , as alleged in para 4(iv) of O.A, and submitted that the grounds on which the claim of the applicant has been assailed are not supported by any documentary evidence and sought for dismissal of O.A

6. Applicant has filed rejoinder affidavit reiterated the facts what he has stated in the original application.

7. I have heard rival contentions and perused the pleadings as well as documents relied on by either side carefully.

8. Having heard learned counsel for the parties, I am firmly of the opinion that applicant No. 1, who was working as Builder having its Ticket/Token No. 129, while discharging his duties, met with an accident and got serious injuries on his head, hands and legs and has been

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retired from service in the year 1984. No where in the O.A, it has been stated by the applicant whether he was retired on being declared medically unfit and also failed to place any document in this regard. Further after his retirement, applicant No. 1 moved an application dated 27.09.1993 and thereafter continued to approach several authorities.

9. Admittedly the applicant No. 1 retired in the year 1984 but it is not evident whether he was retired on being declared medically unfit. Even assuming but not admitting that the applicant was retired on medical grounds, the family has survived during this period and in view of the decisions rendered by Hon'ble Supreme Court in the case of **United Bank of India Vs. M.T. Latheesh 2006 (7) SCC 350, State of J&K and Ors. Vs. Sajad Ahmed Mir (2006)5 SCC 766 and 2007(1) SCC (L&S) 668, National Institute of Technology Vs. Manoj Kumar Singh**, the appointment on compassionate ground cannot be granted to the applicant after lapse of sufficient time. As per the decision of Hon'ble Apex Court rendered in State of J&K (supra), in which it has been held that '**once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interests of several others ignoring the mandate of Art. 14 of the Constitution**'. It is also settled Principles of law that repeated representations will not confer the benefit of limitation and this view gets full support from the following decisions :-

(a) **Shiv Das Vs. U.O.I. & ors. - 2007(2) Scale 325**

(b) **Gian Singh Mann Vs. The High Court of Punjab and Haryana & another - AIR 1980 SC 1894.**

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- (c) **State of Orissa etc. Vs. Shri Arun Kumar Patnaik & another – AIR 1976 SC 1639.**
- (d) **State of Orissa Vs. Pyarimohan Samantaray & ors.- AIR 1976 SC 2617.**

10. In view of the aforesaid observation and law laid down by Apex Court, the applicant has failed to make out any case for interference. Accordingly the O.A is dismissed being inordinately time barred as well as being devoid of merit.

10. There will be no order as to costs.

Anand
MEMBER- J.

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