

Denial of
Compassionate
Appointment & death
Retirement & benefit

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
TAXNOX

457 OF 1988

DATE OF DECISION 30th Jan. 1992.

Smt. Amratben Devji and Ors. Petitioner

Shri B.B.Gogia Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri B.R.Kyada. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R.C.Bhatt : Judicial Member

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

- 1) Amratben Devji
- 2) Pravin
- 3) Bharat,
- 4) Jaishree

Shaktipara,
Wankaner.

...Applicants.

(Advocate : Mr.B.B.Gogia)

Versus

1. Union of India
Through : General Manager,
Western Railway,
BOMBAY.
2. Divl. Railway Manager,
Western Railway,
RAJKOT.

...Respondents.

(Advocate : Mr.B.R.Kyada)

JUDGMENT

O.A. NO. 457 OF 1988.

Date : 30.01.1992

Per : Hon'ble Mr.R.C.Bhatt : Judicial Member

The applicant No.1, for herself and as next friend and guardian for minor applicants no.2,3, and 4, have filed this application under Section-19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to appoint the applicant no.1, Amrataben Devji, on compassionate grounds in any suitable post release according to her qualification and to 1 terminal benefits available to the applicants on account of the death of Shri Devji Damji, who was working with the Railways. Shri Devji Damji, since deceased was the husband of the applicant no.1, and father of applicants no.2,3, and 4.

...3..

It is alleged by the applicants in this application that the deceased Devji Damji was appointed as a substitute with temporary status on 15th March, 1978, who was initially appointed on 31st August, 1975, and he continued in the service of the respondents Railways till his death. The applicants have produced at Annexure-A/1, Memorandum dated 8th July, 1987, showing the details of the service of the deceased Devji Damji. The applicants have produced at Annexure-A/2, the memorandum dated 16th July, 1987, to show that the deceased was appointed as Points ^{man} and posted at the Station shown against his name in the list. It is not a dispute that before this Memorandum of the Divisional Office, Rajkot, dated 16th July, 1987, the deceased Devji Damji, expired on 2nd July, 1987.

2. It is the case of the applicants that they are legal heirs of the deceased Devji Damji and they are entitled to have the terminal benefits under the Rules, such as Gratuity, Provident Fund, Insurance, payment of family pension etc., and one of the heirs is also entitled to the appointment on the compassionate ground. The applicants have produced at Annexure-A/3, the reply given to the applicant's application dated 3rd August, 1987, by which the General Manager of the Western Railway, regretted to consider the case of the applicants for engagement on compassionate grounds. The applicants have not produced the application dated 3rd August, 1987, made by them to the Railways, the reference of which is given by the respondents in Annexure-A/3. It is the case of the applicants that the

decision of the respondents dated 8th February, 1988, Annexure/A/3, is illegal and bad because neither it gives any reason nor it is in consonance with the scheme framed for the purpose. The applicants have produced at Annexure-A/4, the copy of undated application by the applicant no.1, to the Divisional Railway Manager, Rajkot, requesting him to ^{appoint} her on compassionate grounds.

3. The respondents no.2, Divisional Railway Manager, Western Railway, has filed reply, in which it is admitted that the deceased Devji Damji, was granted temporary status with effect from 15th March, 1978. But it is contended that till his death he was working as a Substitute and not as a regular employee. It is contended that the deceased Devji Damji had appeared in the Screening which was held in the year 1982, at Rajkot, and thereafter, the deceased was placed on panel ^{list} Z which was finally issued by the Divisional Office, Rajkot by 12th March, 1985. The copy of the panel list dated 12th March, 1985, is produced at R/1, which shows the name of the deceased Devji Damji at Sl. No.168. This was a panel of 244, Substitutes placed in the order of seniority, and the action was taken to issue regular appointment orders in favour of these persons placed in the panel in the orders of seniority to the extent of vacancies available. It is contended that on 16th July, 1987, as per Annexure-A/2, regular appointment order was issued for 17 Substitutes and

R/2

the name of the deceased was in that list at Sl. No. 8, but unfortunately the deceased expired on 2nd July, 1987. The respondents have contended that the intimation of the same was received by the Office only on 8th July, 1987, and therefore, at the time of publication of the list at Annexure-A/2, dated 16th July, 1987, the said message of his death had not reached the Office of the respondents and therefore, the list Annexure-A/2, containing the names of 17 Substitutes for appointment as Pointsman includes the name of the deceased and ~~XXXXXX~~ the deceased could not be considered as a permanent employee and the name of the deceased was also cancelled by order dated 23rd July, 1987, produced at Annexure-R/2. It is contended by the respondents that till the death of the deceased, he was a substitute and was not made a permanent employee and the General Manager, has considered the application of the applicant no.1, on compassionate ground and has regretted to give the appointment to applicant no.1. It is also contended by the respondents that till the substitutes who are engaged for vacancies occurred in Class-IV categories for time being, are not regularly appointed. They are not entitled for permanent absorption or benefits for employment until they get posting against the permanent vacancy in their ^{existing} regular turn. It is contended that as per ~~Z~~ rules the substitutes are not entitled even for death gratuity or family pension, but the widow of the deceased is entitled for 15 days wages for every completed year of services as one time settlement which has been arranged

in this case. The respondents have also produced the copy of the letter dated 31st December, 1986, at Annexure-R-III, to show that as per the Railway Board's letter the powers are delegated to the General Manager to decide any request for appointment on compassionate ground. It is contended by the respondents that as the deceased Devji Damji, was not appointed as regular employee of the Western Railway, but was working as substitute at the time of his death no terminal benefits or benefits on compassionate ground can be given to the applicants as mentioned in their application.

4. No rejoinder is filed by the applicants.

5. The learned advocate for the respondents has taken the preliminary objection about the maintainability of this application on the ground that the applicants have demanded plural reliefs namely, terminal benefits as heirs of deceased Devji Damji and the applicant no.1, has sought her appointment on compassionate ground. He submitted that as per Rule-10, of Central Administrative Tribunal, (Procedure) Rules-1987, the application should be based upon a single cause of action and may seek one or more reliefs provided they are consequential to one another. He submitted that in this case neither of the reliefs is consequential to other and hence the applicants can choose only one relief and they cannot seek both the reliefs. The learned advocate Mr. B.B.Gogia, for the applicants submitted that this application is based upon a single cause of action i.e., the death of deceased Devji Damji, is true, that the reliefs sought

by the applicants are based upon the death of the deceased Devji Damji, but the reliefs which are sought should be one or more, provided they are consequential to one another. The reliefs sought are not consequential to one another. The Annexure-A/4, which is undated produced by the applicants also shows the subject "Request for service to dependents of Employee died in service." As observed earlier, the applicants have not produced the application dated 3rd August, 1987, made by them to the Divisional Railway Manager, Rajkot to know the contents of that application. Though I agree, with the submission of the learned advocate Mr.B.R.Kyada, for the respondents that the present application would be hit by Rule-10, of Central Administrative Tribunal, (Procedure) Rules - 1987, because the applicants have sought more than one relief which is not consequential to one another, looking to the facts that the applicant no.1, is a young widow who was 30 in the year 1988, when this application was made, and applicants no.2, 3, and 4, being minor children of the deceased and that this application is of 1988, I, proceed to consider both the reliefs demanded by the applicants as a special case which should not be cited or treated as precedent as this is treated as an exceptional case having regard to the facts of this case.

6. I will first deal with the question of the release of terminal benefits available to the applicants on account of the death of Shri Devji Damji. The Annexure-R/1, dated 12th March, 1985, which is a list of final panel of the substitutes shows that the **substitutes** empanelled in the list were to be offered appointment as

per panel on availability of the clear vacancies subject
to fulfil ^{ing} the conditions laid down for appointment.

It is not indisputed that the name of the deceased
appeared in this panel at Sl. No. 168, Annexure-R/1,
further, shows that the substitutes of this panel should
have passed medical examination. Regular appointment
order issued on 16 th July, 1987, Annexure-A/2, shows
the name of the deceased Devji Damji at Sl. No.8, This
was the appointment order of 17 approved substitutes as
Pointsman . Their appointment were subject to the
conditions - 8, mentioned in that Annexure-A/2, It is
undisputed that the deceased expired on 2nd July, 1987,
before this appointment - Annexure-A/2, that is why
his name also ^{was} subsequently deleted from the panel
as per Annexure-R/2.. The case of the applicants is
that the deceased was a substitute from the 15th March,
1973, that he was selected in final panel as back as
in 1985 and unfortunately he expired before his
appointment. The applicants have alleged in the
application that as per Railway Board's letter dated
22nd July, 1970, the services of the Substitutes counts
for pensionary benefits from the date of completion of
six months continuous service as Substitute provided
it is followed by absorption in regular Class-III/
Class-IV, service without break. The applicants
relying on the name of the deceased at Sl.No.168, in
the panel Annexure-R/1, alleged that this placement of
the name of the deceased was in continuation of his
working continuously against regular posts after he
was given temporary status as substitute and hence

the applicants as heirs of the deceased were entitled to the terminal benefits which the deceased would have got in the status of substitute that is latest from 15th March, 1978, when he was given temporary service. The learned advocate for the applicants has also placed reliance in Rule-304(2) of Manual of Railway Pension Rules-1958, and also on Chapter - 23, of the Indian Railway Establishment Manual-Volume-II, Para No. 2318, regarding Rights and Privileges admissible to the Substitutes. However, the note below it requires to be closely read which says that "the conferment of temporary status on the Substitutes on completion of six months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts."

Learned advocate for the applicants submitted that there was delay on the part of the respondents in making appointment of the deceased in regular post, while learned advocate Mr. B. R. Kyada, for the respondents submitted that there was no such delay because the panel of 1985, -x-xx at Annexure-R/1, shows the name of the deceased at Sl. No. 168, and the appointments were to be made on the availability of the clear vacancies and even the appointment of 17 approved substitutes in 1987, Annexure-A/2, dated 16th July, 1987, (when the deceased was not alive) shows the name of the deceased at Sl. No. 8. He submitted that there was no delay because the appointments were to be made on clear vacancies and the deceased in due turn did get that appointment but on that he unfortunately expired. He submitted that it is not the

case of the applicants that the respondents had ignored the deceased and had given the appointments to the juniors.

7. Learned advocate for the applicants also drew my attention to the xerox copies of the book let "Facts on Pension," issued by the Chief Personnel Officer, Western Railway, and invited my attention to item no.2, of that book let which deals with the Basic Conditions for Earning Pension. It deals with the temporary Railway employees. He also invited my attention to the decision in Joydeb Santra and Union of India and others, reported in ATR 1988 (2) CAT 483. The facts involved in that case were completely different from the facts involved in this case. A casual labour in that case though had acquired temporary status could not get any pensionary benefits like temporary pension as his services were not regularised. The Tribunal held that it was the duty of the respondents to screen him in time according to the directions of the Railway Board and to regularise his services accordingly which has not been done in the case of the applicant for no fault of his own. In the instant case, the deceased after being screened was empanelled as per Annexure-R/1, but he could not get appointment because his Sl.No. was 168, and his turn did not come till he died. There was no fault of respondents. Therefore, the above decision does not help the applicants.

8. So far the appointment of the applicant no.1, on compassionate ground is concerned the respondents should consider her appointment most sympathetically looking to her young age and looking to the facts that she has to maintain the minor children and she has no

means to maintain them. She has studied upto vernacular IVth class. Learned advocate for the applicants submitted that an order should be passed by this Tribunal directing the respondents to appoint the applicant no.1, on compassionate ground in a suitable post as per her qualification. He submitted that as per the Railway Board's letter and policy dated 25th March, 1986, the Widow's of the deceased Railway Servant should be given this type of appointment as Water Women, Cinder Picking Women, Retiring Room Attendants, Sweeper Women, C & W Khallasi, Ayahs, etc., He submitted that even the applicant no.1, is entitled to such appointment on compassionate ground in terms of Railway Board's letter dated 7th April, 1983. The learned advocate for the respondents, on the other hand, submitted that as per Railway Board's letter dated 31st December, 1986, vide Annexure-R/3, the powers are delegated to the General Manager, to decide any requests for appointment on compassionate grounds.

9. Learned advocate Mr.B.R.Kyada, for the respondents invited my attention to Clause-3 to 8, of the said letter, dated 31st December, 1986. Clause-5, of this letter is important which reads as under :

5. "Ministry of Railways have now decided that if a casual labourer with temporary status dies in harness, i.e. during his employment with Railways, and if the case presents features constituting extreme hardship, meriting special consideration, the General Manager could exercise his personal discretionary power for giving appointment to eligible and suitable ward of such casual labour on compassionate grounds."

Clause-3, shows that individual cases of extreme -

hardship can be considered on merits. In the instant case, the legal heirs of the deceased Devji Damji are not only in hopeless financial conditions but looking to the age of the widow and the minor children the General Manager of the authority empowered to decide such appointment should have considered the appointment of the applicant no.1, taking the case of the applicant no.1, of extreme hardship. The decision in this case at Annexure-A/3, dated 8th February, 1988, by the respondent no.2, does not show the reasons to reject the application of the applicant no.1. The respondents of any of them who has power to give appointment on compassionate ground should exercise the discretion about the question of appointment of applicant no.1, on compassionate ground. The respondents also should considered the question of giving the terminal benefit available to the applicants on account of the death of Shri Devji Damji, considering para-2301 and 2318, of Chapter-23, of the Indian Railway Establishment Manual, and also para-304 (2) (II)(B) of Manual of Railway Pension Rules-1958, Chapter-3. The respondents to give opportunity to the applicant to place materials on their two above demands if they so desire and then to dispose of the application of the applicant no.1, on compassionate ground, and the question of the pensionary benefits available to Mr.Devji Damji. Having considered the facts of the case, and the documentary evidence and the relevant Rules, the following order is passed :

Ans

ORDER

The order of respondent no.2, at Annexure-A/3, is quashed and set aside. The ~~respondents~~ ^{the} ~~empower~~ ^{ed} respondents or any of the respondent~~s~~ ^{to} empower ~~to~~ decide the case of the appointment of the applicant no.1, on compassionate ground is directed to dispose of the applicant no.1's application demanding her appointment on compassionate grounds most sympathetically, considering hopeless financial position of the applicants, the age of the applicant no.1, and the age of the minor children and if possible the respondents may use the discretion to consider the case of the applicant no.1, of extreme hardship. The respondents are also directed to decide the question of pensionary benefits available to deceased Devji Damji keeping in mind Rule-304 (2) (II) (B) of Chapter-3, of the Manual of Railway Pensionary Rules-1958 and para-2301 and 2138 of Chapter-23, of the Indian Railway Establishment Manual. The liberty be given to the applicants to produce the documents in support of the demands if they so desire. The respondents are directed to decide the above points within four months from the receipt of the Judgment of this Tribunal. The application is disposed of accordingly. No order as to costs.



(R.C.Bhatt)
Member (J)