

Appointment
Commissionate
Court (No)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 12 OF 1989.
~~Exhibit~~

DATE OF DECISION 18-2-1992.

Haneed Hamid, Petitioner

Mr. B.B. Gogia, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.Y. Pradhikar, Administrative Member.

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

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?

Haneef Hamid
 Aged 22, Adult
 Address: C/o. B.B. Gogia,
 10, Junction Plot,
 Rajkot.

.... Applicant.

(Advocate: Mr. B.B. Gogia)

Versus.

1. Union of India
 Owning & Representing
 Western Railway,
 Through: General Manager,
 Western Railway,
 Churchgate, Bombay.

2. Divisional Railway Manager,
 Western Railway,
 Kothi Compound,
 Rajkot.

.... Respondents.

(Advocate: Mr. B.R. Kyada)

ORAL JUDGMENT

O.A.NO. 12 OF 1989

Date: 18.2.1992.

Heard Mr. B.B. Gogia, learned advocate for the applicant and Mr. B.R. Kyada, learned advocate for the respondents.

2. The applicant Haneef Hamid, son of deceased Shri Hameed Jusub, has filed this application under section 19 of the Administrative Tribunals Act, 1985, challenging the order of D.R.M.(E) RJT's order dated 11th February, 1988 vide Annexure A-4, rejecting the request of the applicant for employment on compassionate ground on account of the death of his father in harness as illegal, null and void and for direction to respondents to appoint the applicant in any Class-IV post on compassionate ground to which he is eligible. The respondents

have filed reply resisting the application on several grounds pointing out the circulars of the railway. The applicant has filed rejoinder to it.

3. The impugned order Annexure A-4 dated 11th February, 1988 of DRM(E) RJT shows that the application of the applicant was rejected on the grounds that the case was old more than five years, that the widow mother had also re-married and hence it was regretted that the request for the applicant would not be upheld as per existing orders.

4. In the instant case, the father of the applicant was working as Gangman in Western Railway and he died on 24th February, 1977 in harness. The applicant's mother and the widow of the deceased made application on 27th April, 1977 for her appointment on compassionate ground to which the respondents replied vide Annexure R-1 dated 2nd/4th May, 1977 that on account of non-availability of vacancies and also due to ~~which~~ large number of women applicants awaiting their turn for appointment, the request of the widow would not be ~~acceded~~ ^{referred} at present, but in future her case may come up for consideration and her name had been noted. The respondents have produced at Ann.R-2 the subsequent letter dated 26th March, 1984

from the respondents to the applicant that her name was examined in turn and she was advised to ~~left~~ the office ^{let} know as to whether she was willing to work as L/Safaiwala in any department at any station to the division concerned and if she was willing to work, she should show her willingness in writing.

Thereafter the present applicant made an application dated Nil vide Annexure R-3 received by the respondents on 16th November, 1987 requesting for employment on compassionate ground but the same was rejected. The learned advocate for the applicant submitted that the mother of the applicant remarried in January 1985 and ~~went to~~ left with her new husband. The applicant had become major by that time and he made an application for the appointment on compassionate ground. The learned advocate for the applicant submitted that the grounds on which the application of the applicant was rejected were arbitrary and not supported by any rules. He invited our attention to Annexure A-5 produced by the applicant about the appointment of one Kum. Sobhana Jayantilal Vyas after the death of her father in 1962 and the appointment of the daughter was made in 1987. We do not know under what circumstances and facts such an order was passed ^{be} and that order could not ~~found~~ be the basis for the relief prayed by the applicant. The learned

advocate for the applicant then drew our attention to Annexure A-6, the confidential policy letter dated 31st July, 1978 from the General Manager and Annexure A-7 dated 22nd June, 1978. The learned advocate has put emphasis on condition No.3 of Annexure A-7 in which it is mentioned that there will not be any time limit after which appointment will not be given particularly in cases where immediately after the employee's death, the children are minor and not employable. The learned advocate Mr. Kyada does not dispute this proposition. He submitted that the applicant never made an application for appointment before 1987. He submitted that the mother of the applicant made an application and she was offered the appointment in 1984. He submitted that at the time of this offer, ~~he~~ had not re-married as it appears very clear from the application of the applicant produced at Annexure R-III in which he has stated that his mother re-married on 16th January, 1985. Mr. Gogia submitted that the re-marriage was under contemplation and atleast from 15th January, 1985 the position was that ~~the applicant and his~~ three ~~minor~~ brothers were minors when the application was made by the applicant. The applicant's birth date has mentioned by him in this application is 20th June 1968, therefore, according to Mr. Kyada he ought to have

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written
made application ~~after~~ six months after he became
major and secondly that the mother whom the offer
was made had not re-married when the offer was
made. He also submitted that the circulars
produced by the applicant do not suggest that the
offer ~~was~~ on compassionate ground should be made
to the widow and if she refuses then to the other
spouses or child. We have heard the learned
advocates in details and we find that the
respondents may take into consideration the fact
that the deceased was Class IV servant, another
man
fact that the applicant ~~could~~ ~~has~~ three brothers
men
are in ~~such~~ a position ~~whether~~ their mother have
remained
left them due to ~~re-married~~ and therefore the
re to
respondents ~~take~~ into consideration if they deem
this factor
fit by relaxing the rule which comes in the way
L
of the applicant. The applicant has studied upto
Standard 10 and if the respondents are satisfied
him
~~that~~ *with* this is a fit case in which they should
relax the rule looking to the extent of the family
of the applicant which consists of three younger
they may do it
brothers, the financial position etc, The
impugned order of the respondents produced at
Annexure A-2 is quashed with the above directions.

pw

O R D E R

The application is partly allowed. The impugned order Annexure A-2 of the D.R.M. Rajkot is quashed. He is directed to take into consideration the above factors mentioned in our judgment sympathetically and may also consider if the rule can be relaxed. The D.R.M. may consider the question of relaxation of rule after referring the case to the General Manager and if ~~he is~~ satisfied then he may consider the question of appointment accordingly of the applicant on the post commensurate with his educational qualification. The decision be taken by the DRM or his delegatee on this point within four months from the date of the receipt of the judgment. The application is disposed of accordingly. There is no order as to costs.

Nesrul

(R.C.Bhatt)
Member (J)

W
(M.Y.Priolkar)
Member (A)

MA st 255/92

OA / ¹² ~~200~~ / 89.

Date	Office Report	ORDER
22-09-1992	9 Supply	Court was adjourned as a mark of respect to late Ex-Chief Justice of India Shri M. Hidayatullah of India. Call on 13/10/1992.
(10) 13.10.92		Mr. B.R.Kyada for the original respondents, who have filed M.A. 255/92 seeking extension of time till 4-10-1992. As that date xx has already passed ^{expired} , The M.A. has xx become infructuous.
		<i>AC</i> (R.C. Bhatt) Member (J) <i>AC</i> (N.V. Krishnan) Vice Chairman

vtc.