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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~XXXXXX~~

386 OF 1989

DATE OF DECISION 10.02.1992.

Shri Jayanti Jivraj, Petitioner

Mr.P.H.Pathak. Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Mr. 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? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Shri Jayanti Jivraj,
Post Village Modpur,
Dist. Jamnagar.

...Applicant.

(Advocate : Mr.P.H.Pathak,)

Versus

1. Union of India
Notice to be served through
The Divisional Railway Manager (Est.),
Kothi Compound,
Rajkot.
2. The General Manager,
Western Railway
Churchgate,
Bombay. ...Respondents.

(Advocate : Mr.B.R.Kyada)

JUDGMENT
O.A. NO. 386 OF 1989

Date : 10.02.1992.

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

The applicant, is son of the deceased Railway employee who was working under the respondents at Village Bhopalka, under the permanent Way Inspector, Khamhalia, who died on 10th April, 1981, in harness, has filed this application under Section-19 of the Administrative Tribunals Act, 1985, for a declaration that the decision of the respondent no.1, Divisional Railway Manager, Rajkot, dated 17th April, 1989, produced at Annexure-A/2, rejecting the appointment of the applicant on compassionate ground as illegal, invalid and in-operative in law and the same be quashed and set aside, and the respondents be directed to give employment to the applicant on compassionate ground.

2. It is the case of the applicant as pleaded in his application that he was minor at the time of the death of his father on 10th April, 1981, as the date of birth of the applicant is 15th December, 1968. It is alleged in the application that the applicant's father Mr. Jivabhai Chanabha was working as a gangman that after his death in harness, the applicant's mother gave an application to give employment on compassionate ground but as the post of gangman is not of a nature where his mother could work, she was advised by the Railway department to apply as and when her son attained the age of maturity. It is alleged in the application that after the applicant became major he made representation, Annexure-A, dated 14th December, 1987, that now he has become major and has passed Gujarati VIII Std. and so he may be appointed in the post as per his qualification, that he is a very poor-man and there is no ---- earning member in his family. It is alleged by the applicant that again he made reminder by the letter dated April, 1988, for his appointment on compassionate ground. It is the case of the applicant that the respondents did not pay any heed to it and hence he gave a notice dated 30th March, 1989, vide Annexure-A/1, to the respondent No.1, through his advocate Mr. P. H. Pathak, to appoint the applicant on compassionate ground. It is mentioned in this notice-Annexure/A/1, that the applicant's representation was rejected on the ground of delay by the respondents vide letter dated 9th September, 1988. But according to the applicant there was no delay and

in any case there was no such a delay by which his representation should have been rejected on that ground. In response to the said notice-Annexure-A/1, the respondent no.1, vide letter dated 17th April, 1989, which is a impugned order by the respondent no.1, intimated to the applicant that as the candidate did not apply immediately after completing 18 years, the case did not fall within the perview of Rule for relaxation, and that the ignorance of law or ^{an} Rules was not ~~an~~ excuse and therefore, the representation of the applicant was correctly rejected.

3. According to the applicant his deceased father was a Class IV employee, and there is no educated member in the family who can guide the family of the applicant for making application for appointment on compassionate ground that there is no such strict rules or instruction that such an application can not be entertained if due to sufficient reason, there was delay in making the application. The applicant has in his application reproduced the contents of the paragraphs of the Railway Board circular in case of "time limit for making compassionate appointment". It is also alleged that the powers regarding relaxation are with the General Manager, therefore, the respondent no.1, ^{red} ought to have refer/to the respondent no.2, the General Manager, because the respondent no.1, has no authority to take the decision about the relaxation of the period of ^{the} limitation, hence the impugned order is without jurisdiction and without the application of mind. It is further alleged that the respondents have

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totally forgetton the aim and object of this scheme of providing the employment on compassionate grounds. It is alleged that there is no earning member in the family of the applicant and that as he is the eldest son and the burden of maintaining all the family members is on the shoulders of the applicant, and he is facing great hardship.

4. The respondents have filed the reply contending that the applicant after having become major, if he was without any job and was willing to take employment on compassionate ground, it was his duty to apply within time as per the Railway Board's direction, but ⁱⁿ that is not done/time and therefore, the application was not considered. It is further contended that ignorance of Rules or law on the part of the applicant would be no excuse not to apply within time and the Railway authority cannot make departure from that procedure or rules. The respondents have denied that there is no delay on the part of the applicant in making representation and contended that -- every day's delay should have been explained. It is further contended that in the reply dated 17th April, 1989, Annexure-A/2, the Divisional Railway Manager, Western Railway, Rajkot, had advised to the widow of the deceased worker of the Railway that she had to apply immediately after her son attained the age of 18 years. The said advise was given to the mother of the applicant when she came for enquiry about the vacancy for appointment on compassionate ground.

It is contended that the applicant completed the age of 18 years on 15th September, 1986, but he first made the application for appointment on 14th December, 1987, Annexure-A/7, when he was 19 years and 3 months. It is contended that neither the applicant nor his mother has applied in time within six months, after the applicant attaining the age of 18 years, and hence the request of the applicant was rightly rejected.

5. The applicant has filed rejoinder contraverting the contentions of the respondents in reply contending that substantial justice should prevail over the technical objection, as per the decision of the Hon'ble Supreme Court. It is stated in the rejoinder that there is no valid reason for not giving the compassionate employment to the applicant. He has stated that there is a provision for relaxing the rule in certain cases and he has referred to the decision in the case of Sushma Gosain, 1989, LIC, Page No.2014.

6. The learned advocate for the applicant submitted that if the impugned order dated 17th April, 1989, at Annexure-A/2, is perused, it would be found that the main ground on which the application of the applicant for appointment on compassionate ground was rejected was, that though the applicant completed 18 years of age on 15th September, 1986, his application was received by the office on 14th December, 1987. Thus, according to the respondents the application was submitted one year and three months after the

applicant became major which cannot be termed immediately after 18 years. The respondents in their reply have contended that the application ought to have been made within six months from the date on which the applicant became major and hence the application was rightly rejected. Learned advocate for the applicant submitted that if the applicant had to apply within six months after he became major on 15th September 1986, i.e., by 15th March, 1987, and if the application was made on 14th December, 1987, the delay would be of about nine months. The respondent no.1, ought not have rejected the application on the ground of delay and the delay ought to have been condoned in relaxation of the rule, because the applicant was a son of a gangman Class IV servant and he was residing in the interior village that no literate person was in his family and that he has studied up to VIIIth standard, and the aim and object of the scheme to appoint his dependent or spouse on compassionate ground would be frustrated if technical view of delay is taken by the respondents. The learned advocate for the applicant relied on the judgment of Collector, Land Acquisition, Anantnag and another, Versus Mst. Katiji and others, reported in AIR 1987, Supreme Court, P.1353, in which it is held that, "Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties." It was also held that, "Every day's delay must be explained", does not mean that a pedantic approach should be made. It is

also held that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides, and if substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. It is also held that the Court should adopt liberal approach in condonation of delay. Having regard to the fact that the applicant was the son of Class-IV, servant residing in the interior village and condition was that there was no earning member in the family and that he was the eldest son, the respondents ought to have condoned the delay, by relaxing the rule. Moreover the powers to make appointment on compassionate ground are with the General Manager and it is not shown by the respondents that the Divisional Railway Manager has power to consider such appointment and therefore, also the order of the respondent no.1, would be bad.

7. The learned advocate for the respondents submitted that the widow of the deceased employee ought to have made the application on compassionate ground and she could have been considered by the respondents. The contention in para-6, of the reply of the respondents as well as in the impugned order at Annexure-A/2, shows that it had been clearly advised to the widow of the deceased worker of the Railway that she had to apply immediately after her son attained the age of 18 years and the said advise was given when she came for enquiry whether there was any vacancy for appointment on compassionate ground, or not.

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So this contention in para-6, of the reply filed by the additional Railway Manager shows that, the mother of the applicant was advised to apply when her son becomes major, but the only fault of the applicant was that he made the application not within six months from the date of attaining maturity, but after one year and three months. There is no absolute rule that such a delay could not be condoned, and the respondents should have condoned such delay having regard to the circumstances of the applicant.

8. The learned advocate for the applicant has also relied on the decision in Smt. Sushma Gosain and others Versus Union of India and others, AIR, 1989, Supreme Court-P.1976, in which it is held that delay in appointment and rejection of application in view of ban subsequently imposed on appointment of ladies to post, was arbitrary and had to be set aside. This decision does not directly help the applicant. The third decision relied on by the applicant was K.Raja and Karnataka Electricity Board, 1990 (1), I.L.L.J. Page.129. The Karnataka High Court had considering the language of the official Memorandum dated April, 16, 1986, of the Karnataka Electricity Board, on the point of appointment on compassionate ground of the deceased employer dying in harness held that if the employee's another son was already in employment of the Board prior to such death, the application for appointment on compassionate ground for the other dependent can not be rejected.

9. In this case, the respondents have neither considered the financial position of the family of the applicant nor that he is the eldest son and that the deceased was a Class-IV, servant and the whole burden of maintaining the family is on the shoulders of the applicant and without considering these facts, the representation and the application of the applicant was rejected on the ground of delay. In my view, this was a very technical and unjudicious approach of the authority concerned. The purpose of providing appointment on compassionate ground is to minimise the great hardship due to death of bread earner in the family, and the respondents ought to have kept this factor in mind and ought to have considered the case of the applicant within the purview of the relaxation on the ground of extreme hardship. In the result the impugned order, dated 17th April, 1989, Annexure-A/2, is quashed and set aside, and the following order is passed :

ORDER

The application is partially allowed. The decision of the respondent no.1, dated 17th April, 1989, rejected the request of the applicant is quashed and set aside and the respondent no.2, or his delegate authorised to consider the question of appointment of the applicant on the compassionate ground to consider and to decide the

request of the applicant for the post, looking
~~reduce~~
to his additional qualification, financial
position of the family, size of the family,
etc., and considering the fact that this is a
case of extreme hardship of the applicant. The
concerned officer to decide the question of
appointment of the applicant sympathetically
on the above grounds, after giving opportunity
to the applicant of hearing. The officer
authorised and empowered to decide this question
within four months from the date of the receipt
of this Judgment, without any further delay.
The application is disposed of. No order as
to costs.

Resd

(R.C.Bhatt)
Judicial Member

AIT

(15)

M.A. 320/92

in

O.A. 386/89

Date	Office Report	ORDER
(15) 8.10.92		<p>Mr. Kyada for the original respondent who have filed M.A. 320/92 seeking time after 21.10.92 to comply the original order. Mr. Pathak for the original applicant states that this might be allowed <u>be delayed as</u> but be sought Pathak said that last opportunity for compliance.</p> <p>2. In the circumstances M.A. is allowed. Compliance may be made before 21.10.92.</p> <p><i>Mr.</i> (R.C.Bhatt) Member (J)</p> <p><i>Mr.</i> (N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>

5/10/92

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M.A. ~~xxxxxx~~ in O.A. 386/89 /~~xxx~~
320/92

Date	Office Report	ORDER
(4) 3.11.92	<p>filed Salvietti The M.A. is already aliqued as per order of the Court of 8/10/92. No action is necessary. 24/11</p>	<p>Present : The learned counsel for the respondents who has filed M.A. 320/92 for extension of time, submits that the period for is already expired. So the M.A. has become infructuous and it is dismissed.</p> <p><u>Ch</u></p> <p><u>Ne</u> (R.C. Bhatt) Member (J)</p> <p><u>N.V.Krishnan</u> (N.V.Krishnan) Vice Chairman</p> <p>vtc.</p>