

Appointee
on Compensation
(No) **IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

8

AHMEDABAD BENCH

O.A. No. 392 of 1989
~~Case No.~~

DATE OF DECISION 11.2.1992

Shri Bachoo Mohammed Petitioner

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

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. R.C. Bhatt : Member (J)

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?

(6)

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1. Shri Bachoo Mohammed
Sheri No. 2,
Laxmipara,
Dudhrej Road,
SURENDRANAGAR.

2. Shri Hanif Bachoo,
Sheri No. 2,
Laxmipara,
Dudhrej Road,
SURENDRANAGAR.

: Applicants

(Advocate : Shri B.B. Gogia)

VS.

1. Union of India, through
General Manager,
Western Railway,
Churchgate,
BOMBAY.

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

: Respondents

(Advocate : Shri B.R. Kyada)

O R A L - J U D G E M E N T

O.A. No. 392 of 1989

Date : 11.2.1992

Per : Hon'ble Shri R.C. Bhatt

: Member (J)

Heard Shri B.B. Gogia, learned advocate for the applicant and Shri B.R. Kyada, learned advocate for the respondents. This application under Section 19 of the Administrative Tribunals Act, 1985, is filed by applicant no.1 and is son applicant no.2, praying that the respondents be directed to give appointment to applicant no.2 on suitable post according to his qualifica-

tion on compassionate ground and the order passed by the respondents vide annexure A/6, dated 3/4.12.1987, rejecting the application of the applicant to give appointment to applicant no.2 on compassionate ground, be quashed and set aside.

2. The applicant no.1 was working as Fireman 'A' in Loco Department in Surendranagar and had put 30 years of service at his credit. The applicant was directed for medical examination by the respondents on 16.7.1986 and was found unfit. The copy of the letter dated 16.10.1986 issued by the Divisional Medical Officer, Western Railway, Rajkot, is produced at annexure A/1. The applicant no. 1 by his application dated 12.11.1986 addressed to the DRM (E), Rajkot, requested for giving him suitable alternative job according to the rules, vide annexure A/2, but there was no response to this request. It is alleged that however the applicant no. 1 was being orally told to accept the post of peon. The applicant no. 1 did not accept it because it would have been very much adverse to his pensionary benefits after retirement and also other benefits including salary, and hence, he made the application dated 20.11.1986 asking for voluntary retirement on the said reason of medical de-categorisation, the copy of which is produced at annexure A/3. The applicant no. 1 then expected that if he makes application for appointment

of his son, applicant no.2, on compassionate ground, the respondents would accept that request. The applicant's voluntary retirement was accepted by respondents vide their order dated 14.2.1987, annexure A/4, The applicant no. 1 then made an application dated 3.7.1987 vide annexure A/5, to the Divisional Railway Manager, Western Railway, Rajkot, requesting for employment on compassionate ground in favour of applicant no.2 in any class IV service. and he had also approached the Welfare Inspector on 11.11.1987 and gave copy of the application to which he received a reply which is the impugned order, annexure A/6, dated 3/4.12.1987 by the Divisional Railway Manager, Rajkot which says that since the applicant no. 1 had voluntarily retired, his case did not fall under the Rules for employment on compassionate ground and hence his request for appointment in favour of his son was not considered.

3. Learned advocate Shri B.B. Gogia for the applicant drew my attention to the circular No.E(NG)11/86/RC-I/ Policy dated 20.4.1988, which says among others about compassionate appointment. Item 3 of this circular reads as under :-

"3. The legal adoption process has been completed and has become valid before the date of death/medical decategorisation/medical incapacitation of ex-employees."

Learned advocate Mr. Gogia therefore submitted that, as

Under this condition the applicant no. 1, who was medically de-categorised, was entitled to the benefit of getting appointment of his son, the applicant no. 2, on compassionate ground and hence the impugned order rejecting the application of the applicant was bad in law.

4. No reply is filed by the respondents.
5. Learned advocate Shri B.R. Kyada for the respondents submitted and produced one letter dated 2.11.1989 from the Divisional Railway Manager (E), Rajkot, addressed to the learned advocate for the respondents in which it is mentioned that the applicant no. 1's son, Hanif Bachoo, was called for interview to consider his suitability for his employment on compassionate ground. It is also mentioned in this letter that the posting orders will be issued after his passing the medical examination. Learned advocate Mr. Kyada for the respondents submitted that this letter be treated as reply.
6. The impugned order, annexure A/6, was passed on 4.12.1987 and the present application was filed on 14.3.1989 and hence there was delay of about three months in filing this application. However, the applicant had filed miscellaneous application no.226 of 1989 for condonation of delay and the Tribunal had passed an order to consider this question of condonation of delay along

with the merits of the case. Considering the averments in the miscellaneous application and affidavit filed along with it and in absence of reply on that point by the respondents, the delay is condoned.

7. In view of the letter produced today by learned advocate Mr. Kyada, the impugned order deserves to be quashed and set aside. The respondents to give appointment to the applicant no.2 on compassionate ground in class IV service according to his qualification if he is found suitable and on passing the medical examination. Hence the following order is passed :-

O R D E R

The application is allowed. The impugned order, annexure A/6, rejecting the application of applicant no.1 is set aside. The respondents are directed to make appointment of applicant no.2 in class IV service looking to his educational qualification if he is found suitable and on passing medical examination. This direction be carried out within three months from the date of receipt of this judgement by the respondents. The application is disposed of. No order as to costs.

Roshan
(R.C. Bhatt)
Member (J)