

NO
Appointment
Compassionate
Sound

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
NEXXEXXX

(4)

O.A. No. 63 OF 1989
~~XXX No.~~

DATE OF DECISION 20.08.1991

Shri Amratlal Bhagwanji

Petitioner

Mr. B.B. Gogia

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. M.M. Singh : Administrative Member

The Hon'ble Mr. S.Santhana Krishnan : Judicial Member

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? *Yes*

Shri Amratlal Bhagwanji,
C/o. Shri Popatbhai,
"Alankar Power Laundry,"
Junction Road,
OPP. In Gate of Junction
Railway Station,
RAJKOT.

... Applicant.

(Advocate : Mr. B. B. Gogia)
Versus

1. Union of India
Owning & Representing
Western Railway,
Through :
General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020.

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

... Respondents.

(Advocate : Mr. B. R. Kyada)

O.A. NO. 63 OF 1989.

JUDGMENT

Date : 20-08-1991

Per : Hon'ble Mr. S. Santhana Krishnan : Judicial Member

The applicant has come forward with this application as per Section 19 of the Administrative Tribunals Act, 1985.

2. The case of the applicant as we see from his application is as follows :

The applicant's father was working as a Lampman, under the second respondent and he expired on 3.1.1974, while in service. The applicant made several representations for appointment on compassionate grounds and ultimately his application was rejected on the ground of limitation



...3...

as per the order dated 26/29.2.1983. Hence this application for setting aside the order and also requiring the respondents to consider his application on compassionate grounds.

3. The respondents in their reply claim that they have not received the applications as mentioned by the applicant in his application. Hence the present application is time barred. They also claim that they received an application on 29.1.1988 for the first time from the applicant. But as the same was received after 14 years after the death of the applicants' father, it is rightly rejected as belated.

4. The applicant also filed a rejoinder wherein he reiterates that he has sent several previous applications and it is not true to state that he sent the application only for the first time in 1988.

5. Heard counsel Mr. B. B. Gogia for the applicant and Mr. B. R. Kyada, counsel for the respondents. Records are perused.

6. The fact that the applicants' father was working as a Lampman, under the second respondent and that he expired on 3.1.1974, and that the applicant is the son of the above said Lampman, is not disputed. The applicant produces Annexure-A/1, whereby he claims that he had sent an application claiming the appointment on compassionate ground on 28.2.1974. Though he has produced the xerox copy of the acknowledgement, as rightly pointed out by the respondent's this is dated 22.1.1975. Hence, this cannot be the acknowledgement for the application dated 28.2.1974.



This is addressed to DPO, RAJKOT. The applicant produces another copy of the application dated 18.1.1975, addressed to General Manager, Railway Head Office, Churchgate, Bombay. The applicant produces the acknowledgement dated 22.1.1975, addressed to General Manager, which clearly establish that the General Manager received the representation. In the reply, the respondents tries to claim that when the applicant himself say that the applicant first application is made on 28.2.1974, the question of sending early application on 18th January, 1975, does not arise. This is factually not correct. Annexure-A/2, the application was sent on 18.1.1975, after 28.2.1974, (Annexure-A/1), and as such this is not an earlier application. Merely because the applicant has not mentioned the date of Annexure-A/1, in Annexure-A/2, it will not establish that Annexure-A/2, is not genuine. The respondents failed to establish why they failed to send any reply for Annexure-A/2. Annexure-A/2, was sent to the General Manager, within the period prescribed (Viz.), within 5 years from the death of the applicant's father. The applicant also produces Annexure-A/3, to show that even on 20.1.1975, he tried to contact his Superior Officer one Mr.A.K.Saxena. This is a copy of the visit memo. The respondents reply to the same is that one Mr.Saxena, is not a person who is to deal with the application on compassionate ground. The applicant nowhere states in the application that he is the Officer in-charge of application on compassionate ground. The applicant produces another copy of the application Annexure-A/4, dated 11.3.1987, addressed to The DPO, Rajkot. He has not chosen to produce any acknowledgement.



7. The applicant is not a literate person and as such we cannot expect him to keep all the copies of the acknowledgement. Annexure-A/5, is the order in dispute, passed by DPO, Rajkot. In fact, it is admitted even in the reply that the General Manager, is competent to consider and relax the time limit and yet the application was not referred to him. In this order no mention is made about the application dated 18.1.1975, received by the General Manager as discussed already.

8. The respondents admit in their reply that vacancies are available for Male candidates in Class-IV cadre at or about the time of Annexure-A/2. The contention of the respondents that they have not received any representation from the applicant prior to 21.7.1988, is shown to be false by the applicant by producing Annexure-A/2. The respondents have produced Annexure-R/2, which clearly show that the General Manager, has got powers to relax the 5 years, 'time limit' and the same shall be exercised personally by the General Manager. Annexure-R/3, only show that applications received after inordinate delay cannot be considered.

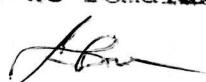
9. The applicant has established that he is the son of Shri Bhagwanji Keshavji, and that he died while in service under the second respondent on 3.1.1974. The applicant has also established that he has sent an application to the General Manager within a year from the date of the death of his father. Though the respondents contend in their reply that this Court has no jurisdiction to consider the case of appointment on compassionate ground, the learned counsel appearing for the applicant placed



reliance on a decision reported in 1991, L.I.C., P. 392, Sc, (Smt. Phoolwati, Vs. Union of India and Ors.), wherein it is pointed out that the Court has got powers to direct the authorities to consider the case of the applicant on compassionate ground. In OA/30/90, this Tribunal on 31.08.1990, considered the case of the applicant on compassionate ground which is rejected as time barred. The Tribunal points out that the Railway Board has got power to consider such case up to 5 years and the General Manager may personally authorise the relaxation of 5 years limit in deserving cases. Further there was no evidence to establish in that case that the matter was placed before the General Manager and he personally considered the same. Hence, the Tribunal, in a similar case directed the General Manager to consider the application of the applicant on compassionate grounds. This directly applies to the facts of our case.

10. As the applicant has established that he has sent an application within 5 years from the date of the death of his father and as the order in dispute do not show that this was placed before the General Manager and considered by him, we find no option but to set aside the order dated 26/29-2-1988. We are also of the view that the case of the applicant deserves to be considered on compassionate grounds.

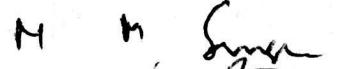
11. In view of the above discussion the order dated 26/29-2-1988, is set aside and we hold and direct that this is a fit case to be considered by the General Manager, on compassionate grounds. We remanded the matter



for consideration of the General Manager, of Railways and he is directed to consider the application on compassionate grounds on merits within 3 months from the date of the receipt of the order. The application is disposed of, accordingly. There will be no order as to costs.



S. Santhana Krishnan)
Judicial Member



(M.M. Singh 25784)
Administrative Member