

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

NO
Appointment
on Compassionate
ground

O.A. No. 426/91
~~Ex-Ax Nox~~

DATE OF DECISION 12-1-1993.

Smt. Maniben Jeevrajbhai Petitioner

Mr. K.K. Shah Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. N.V. Krishna : Vice Chairman

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

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 ?

Smt. Maniben Jeevrajbhai

.. Applicant

Vs.

1. Union of India,
The notice to be served through the
General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Bombay- 400 020.

2. The Divisional Railway Manager (E),
Divisional Office,
Kothi Compound,
Western Railway,
Rajkot.

.. Respondents

JUDGMENT

O.A. 426 of '91

Date: 12-1-1993.

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

1. Heard Mr. K.K. Shah, learned advocate for the applicant and Mr. B.R. Kyada, learned advocate for the respondents.

2. The applicant, who is widow of late Shri Jeevrajbhai who died in harness while working as Assistant Permanent Way Inspector in March, 1974, has filed this application for the compassionate appointment of her son Ramesh jeevrajbhai and for quashing the impugned order Annexure A, dated 7th June, 1988, passed by the Divisional Railway Manager (Est.) Rajkot, by which the application of the applicant dated 6th May, 1988, for compassionate appointment of her son Ramesh

was rejected and the letter dated 23rd June, 1989, addressed to the applicant by the Divisional Railway Manager (Estt.) Rajkot, by which she was asked to see the Additional Divisional Railway Manager, with the relevant record in connection with the applicant's application dated 10th April, 1989.

3. The case of the applicant is that her husband Jeevrajbhai who was serving with the respondents Railway as Assistant Permanent Way Inspector, died on 6th March, 1974, leaving behind him, the applicant and her son Ramesh who was minor then. The applicant preferred an application on 3rd Feb. 1987, to the respondents for the compassionate appointment of her son Ramesh and thereafter she made another application in May, 1988, reminding the respondents for providing job/ employment to her son. The respondent no. 2 the Divisional Railway Manager, rejected the application of the applicant dated 6th May, 1988, by order dated 7th June, 1988, on the ground that as per the Rules, case for appointment on compassionate ground is to be decided within a period of five years from the date of death of the ex-railway employee, and therefore, the applicant's application was treated as a time barred case. The other reason given in the order Annexure A was that the applicant had failed to apply for employment in favour of her son,

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immediately after he attained the age of 18 years. Thereafter, the applicant made an application/ representation dated 10th April, 1989, to the Divisional Railway Manager, Rajkot, who has given the reply dated 23rd June, 1989, vide Annexure A/1 to the applicant to see the Additional Railway Manager, Rajkot, on 3rd July, 1989, with the relevant records. It is alleged by the applicant that the General Manager ought to have passed a speaking order against the applicant's representation but, instead the applicant was directed to see the Additional Divisional Railway Manager on 3rd July, 1989, with all relevant records. According to the applicant, she went with the relevant record but, the respondents did not give any ~~xx~~ response to the said application. It is alleged by the applicant that her son is born in 1968, and the representation was made on 3rd Feb. 1987. This document dated 3rd Feb. 1987, is not found on records, however, there is a copy of the letter dated 18th September, 1987, produced by the applicant which she had addressed to the Divisional Railway Manager, seeking the appointment of her son Ramesh on the compassionate ground. Therefore, as mentioned in application dated 18th September, 1987, the date of birth of her son is 29th December, 1968. The applicant has contended in the application that even if there was delay of about one year, the respondent no. 2 should not have rejected the applicant's application on that

ground. It is contended that the respondent no. 2 is not a competent authority to decide the application of the applicant but the General Manager, Western Railway is empowered to appoint and consider the case of the applicant but the General Manager has not passed any order. It is contended that, the action of the respondents is unjust and arbitrary and it is against its own policy and circular.

4. The respondents have filed the reply contending that at the time of death of husband of the applicant, the heirs of the deceased were Shri Savashi, married son, Jituben, married daughter, and Divaliben, Vasantben, and Lilaben were unmarried daughters, and Rameshbhai. It is contended that though, the husband of the applicant died in 1974, the applicant had not made any application within the time limit for employment or sent the name of her ward for employment as per the Railway Board's letter dated 30th April, 1979, produced at Annexure R/1. The respondents called upon the applicant to produce the application made by her for employment for herself as per the said instruction. It is contended that as per the Railway Board's circular dated 18th April, 1985, when the widow cannot take up employment and the children are minor, than the case can be considered even beyond the period of five years if the conditions stipulated therein

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are fulfilled as per the clause VII of that circular, but that has not be done by the applicant. The said circular dated 18.4.1985, is produced at Annexure R/2. It is contended that Rameshbhai attained the age of 18 years on 28th December, 1986, and according to circular, the application for compassionate appointment ought to have been made before 29th June, 1987, but the applicant has made an application for the first time on 6th May, 1988, and hence, it is rejected. It is contended that at no point of time, the applicant has stated to the respondents that she is unable to accept the employment and that her son is minor and that the case should be kept pending till he attains majorhood. It is contended that the reply given by the respondent no. 2 on 2/7- July, 1988, is very clear. It is contended that the elder son Savashi and daughter Jituben of the applicant were married before the death of the ex-employee, and therefore, they must have attained the age of 18 years in the year 1979, and therefore, the circular of 1985, would not apply in the present case. It is further contended that even though, the respondents authority had sent letter dated 23rd June, 1989, requesting the applicant to approch the ADRM, Rajkot, along with the relevant documents in order to enable the applicant to convince the ADRM Rajkot on the strength of the alleged documents, the petitioner failed to

to convince the ADRM and therefore, the question of giving appointment order did not arise.

5. The contention of the respondents in para 8 of the reply is that as the applicant was not able to satisfy the ADRM, on personal hearing dated 3rd July, 1989, the question of giving appointment order did not arise. The first order dated 7th June, 1988, vide Annexure A was passed by respondent no. 2 rejecting the application of the applicant dated 6th May, 1988. Thereafter, when the applicant made representation on 10th April, 1989, the DRM directed her to see the ADRM on 3rd July, 1989, with relevant records as per the letter dated 23rd June, 1989, vide Annexure A/1. The question arises that when the DRM rejects the application of the applicant on compassionate appointment whether the representation can be considered by ADRM? The representation has to be decided by higher authority as per rules and not by ADRM. More-over no order has been passed even by ADRM on representation dated 10th April, 1989, of the applicant. Therefore, the whole approach of the respondents is not considering the question of compassionate appointment by applicant's son after hearing on personal on 3rd June, 1989, was not legal. On the contrary, the higher authority than the DRM should have passed an order on the representation of the applicant which has been not done in this case. Thus, the representation application referred to in the letter Annexure A/1 still remains undecided.

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6. The applicant had made an application on 18th September, 1987, to the Divisional Railway Manager, Rajkot, seeking the appointment of her son Ramesh on compassionate ground. The contention of the respondents is that as the applicant had not made an application stating that ~~xxx~~ she was unable to accept employment and that her minor son should be considered for appointment and case should be kept pending till the minor son became major, as per the clause VII circular dated 18th April, 1985, produced at Annexure R/2, the application cannot be considered. The relevant clause VII of para 3 of the railway board letter dated 18th April, 1985, on which respondents rely reads as under:

"The request for compassionate appointment should have been received by the Railway Administration as soon as the son/ daughter to be considered for compassionate appointment has become a major, say within a maximum period of six months."

We also asked the learned advocate for the respondents on 11th August, 1992, at the time of hearing of this application, to produce instruction if any which required widow to state at earlier stage that ~~xxx~~ she does not want employment and she will seek employment for one of her children at appropriate time when her child become major. The learned advocate for the respondents, on the next date stated that there was no such instruction of the Railway Board, but the respondents produced copy of

an application received on 8th May, 1988, by which the applicant had asked for compassionate appointment of her son Ramesh. She had stated in that application that her son Ramesh should be given appointment on compassionate ground. The Railway Boards' letter dated 18th April, 1985, produced by respondent no. 1 at Annexure R/2 shows that in case of staff who died in harness and widow can not take up employment and sons/ daughters are minor, the case may be kept pending till first son/ daughter becomes major i.e. attains the age of 18 years. However, such cases can be kept pending for period of only five years, after which appointment on compassionate grounds will not be permissible, but as an exception to this provision, the General Manager may personally authorise a relaxation of this limit of five years in deserving cases as provided in Railway Ministry's letter dated 30.4.1979.

As per para three of R/2, power of relaxation even beyond the limit of five years is given to the General Manager on conditions mentioned therein. Learned advocate for the respondents submitted that the applicant in any case ought to have made an application for compassionate appointment within a maximum period of six months from the date Rameshbhai became major. He submitted that as per the applicant's case, the date of birth of Rameshbhai is 28th December, 1968, and therefore, the applicant should have made an application for his compassionate appointment latest by 28th June, 1987. The applicant has

alleged that she had preferred such application on 3rd Feb. 1987, but the application which is on record produced by her is dated 18th September, 1987. Thus, the delay is of about three months' period, than required as per the clause 7 of para three of the Railway Boards letter vide Annexure R/2.

7. In our opinion, the competent authority should have considered the application dated 18th September, 1987, purported to have been made by the applicant relaxing the time limit of six months from the date the applicant's son became major. The reasoning given in the order Annexure A is not legal and in proper and not consonance with the spirit of the scheme for compassionate appointment and the same deserves to be quashed having regards to the facts of this case. Moreover, the representation made, thereafter, by the applicant on 10th April, 1989, referred to in reply given on 23rd June, 1989, by Divisional Railway Manager (Est.) has not been decided by the General Manager or the competent authority.

8. Having regard to the above facts of this case, we direct the General Manager i.e. respondent no. 1 or the competent authority to decide the case of the applicant's son Rameshbhai for compassionate appointment on merits considering the financial position of the family of the applicant, the extent of the family of

the applicant and the educational qualification of and may relax time limit of six months in his case the applicant and if the applicant's son Rameshbhai satisfies the condition regarding his appointment on compassionate ground to any of the post commensurate to his educational qualification, the authority concerned may pass the appropriate order of compassionate appointment. The order of the respondent no. 2 dated 2/7 June, 1988, Annexure A is quashed and set-aside. The application is partly allowed as above. The respondent no. 1 or the competent authority who has power to decide this case is directed to dispose of the application, regarding the appointment of applicant's son Rameshbhai according to the observations made above, within four months from the receipt of the copy of this judgment. No order as to costs.

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(R.C. Bhatt)
Member (J)

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12/1/93

(N.V. Krishnan)
Vice Chairman

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