

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/587/1993

Date of Decision : 18/02/2000

Mr. Bhailal Fulaji : Petitioner (s)

Mr. P. H. Pathak : Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr. N.S. Shevde : Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P. C. KANNAN : MEMBER (J)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

m2

DN

Bhailal Fulaji
At & Post : Thuleta
Ta. Viramgam,
Dist. Ahmedabad.

= Applicant =

Advocate : Mr. P. H. Pathak

Versus

1. Union of India
Notice to be served through
General Manager
W.Rly., Church gate,
Mumbai.
2. Dy. Executive Engineer (C)
W.Rly., Railway Station,
2nd Floor, Kalupur,
Ahmedabad.

Advocate : Mr. N. S. Shevde

OR AL ORDER
O.A 587 OF 93

Date : 18.02.2000

Per Hon'ble Shri. P. C. Kannan : Member (J).

The applicant is son of Shri. Fulaji Gulaji who was working as Watchman under the respondents and is aggrieved with non-granting the compassionate



employment by the respondents and not deciding the representation made by the applicant for compassionate appointment by the respondents. The applicant's father was working under PWI (ADI) and he expired on 07.04.91. The applicant's father was working as temporary status Watchman in the grade of Rs.775-1025/-. The applicant submitted his application dated 31.07.93 for compassionate appointment.

2. The respondents in their reply had stated that the applicant has studied only up to 6th Std., and as per the rules for giving appointment on compassionate grounds, minimum educational qualification of at least 8th Std., passed is required in terms of Railway Board's letter dated 16.08.85 and the applicant has not fulfilled the requisite qualification. His case was therefore, not considered.
3. Mr. Shevde, counsel for the respondents after obtaining instructions from the department now states that the representation of the applicant for compassionate appointment has been forwarded to the competent authority and the same is still pending consideration of the respondents. Mr. Pathak submits that the educational qualification can be relaxed in terms of the scheme of the respondents for providing compassionate appointment.
4. Under the scheme of the respondents for providing compassionate appointment, there are provisions for relaxation of the educational qualification by the competent authority under certain circumstances. In the facts and circumstances, the respondents are directed to consider the case of the applicant for



compassionate appointment in accordance with the scheme of the Railway Board's letter including the provisions relating to relaxation of educational qualification and communicate the decision of the respondents within a period of three months from the date of receipt of a copy of this order.

5. With the above direction, the O.A is disposed of. No costs.

P. C. Kannan
(P. C. KANNAN)
MEMBER (J)

MB

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD.

Submitted:

C.A.T./JUDICIAL SECTION.

Original Petition No:

587

of

1993

Miscellaneous Petition No:

of

Shri

Bhailal Fulaj

Petitioner(s)

Versus.

UO 12005

Respondent(s).

This application has been submitted to the Tribunal by

Shri

P.H. Dalkar

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules, 1985.

The Applications has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant Advocate may be advised to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT:

S.O. (J):

D.R. (J):

KNP24492.

01/10/93

01/10/93

7-10-93

Filed by Mr. P. H. Pathak
Learned Advocate for Petitioners
with second set & spares
copies ~~copy served~~/not served to
other side

Court-II

By Registrar C.A.T.(J)
A'bad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO. 587 OF 1993

OA ST 552 A3

Bhailal Fulaji

..applicant

vs

Union of India & or.

..respondents


I N D E X

<u>Sr.No.</u>	<u>Annx</u>	<u>Particulars</u>	<u>Page</u>
1.	-	Memo of the application	1 to 7
2.	'A'	Copies of the representations	8 to 9
3.	A/1	Copy of the advocates's notice dt. 27.7.93	10 & 11

-o-o-o-o-

Date : 1/10/93

Ahmedabad


(P. H. Pathak)
Advocate for the applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.

OF 1993

- I. Applicant : Bhailal Fulaji
At & Post : Thuleta
Ta. Virangam, Dist. Ahmedabad
- II. Respondents : 1) Union of India
Notice to be served through
General Manager
Western Railway
Churchgate, Bombay
2) Dy. Executive Engineer(C)
Western Railway
Railway Station, 2nd floor
Kalupur, Ahmedabad
- III. Order under challenge : Non granting the compassionate
employment to the applicant
and not deciding the
representation made by the
applicant for compassionate
employment by the respondents.
- IV. Jurisdiction
& V. & Limitation : The applicant declare that
the subject matter of this
application is within the
jurisdiction of this Tribunal
and limitation prescribed
under sec.21 of the
Administrative Tribunal Act.

VI. Facts of the case :

1. That the applicant here is a son of Lt. Shri Fulaji Gulaji, who was working as watchman under the respondent No.2. That the grievance of the applicant is that he is not given the benefits of compassionate employment by the respondents. That several representations made by the applicant and a notice issued by his advocate is also not replied by the respondents and therefore the present application is required to be filed.
2. It is submitted that the father of the applicant i.e. Lt. Shri Fulaji Gulaji has initially joined the service of Railway from 1.5.75. That the father of the applicant was working under the Permanent Way Inspector (C), Ahmedabad and he was working continuously under the respondents. That the father of the applicant has expired while on duty on 7.4.91 and has put about 16 years of service in the Railway. That the father of the applicant was working as watchman and was medically fit for the duty. That copy of the death certificate of the father of the applicant was submitted to the respondents.
3. ~~That~~
3. That after the death of the father of the applicant, the applicant has made a detailed representation to the respondents pointing out that there is no earning member in the family and the father of the applicant has put about 16 years of service and his case for compassionate employment may be considered sympathetically. That no fruitful result was available from the end of the respondents and therefore the applicant has made second representation on 25.9.92 and third representation on 1.12.92 but no fruitful result was available and therefore the applicant has to approach his advocate and a notice was also issued by the advocate.

4. That copies of the representations made by the applicant are annexed and marked as Annexure 'A' collectively to this application. It is submitted that the advocate's notice is served by Regd. post to the respondents. That it was clearly mentioned in the notice that so far the case of compassionate employment is concerned, it is required to be considered immediately to help the family of the deceased employee. Copy of the advocate's notice dt. 27.7.93 is annexed and marked as Annexure A/1 to this application.

4. It is submitted that after receipt of advocate's notice the respondents did not even care to consider the case of the applicant or to reply to the notice of the advocate of the applicant. That the respondents are acting in total arbitrary manner even after the judgement of the Hon'ble Supreme Court for giving compassionate employment. That the Hon'ble Supreme Court has held that the intention, aim and object of giving compassionate employment is to see that the family of the deceased person may not suffer further and the service rendered by such an employee, required to be compassionated by giving help to the family of the deceased employee. That there is no justification available to the respondents ^{delay} to ~~deny~~ the appointment of the applicant. But reason best known to the respondents, no reply is given to the representation made by the applicant and the notice of the advocate and therefore the applicant has to approach to this Hon'ble Tribunal by way of this application. It is submitted that so far the compassionate employment is concerned, the applicant is entitled to get compassionate employment being the eldest son in the family and there is no other earning member in the family. That the scheme framed by the Railway administration to provide compassionate employment specifically provide one member of the deceased employee is required to be absorbed in the Railway.

5. It is submitted that it is the duty of the respondents to give pensionary benefits etc. to the widow i.e. mother of the applicant. That the late father of the applicant had completed more than 10 years of service and therefore he was required to be regularised by the respondent department. But unfortunately, the respondents have, with a view to exploit the employee, continued the father of the applicant as casual labourer for more than 10 years without any justification. That the father of the applicant in these circumstances required to be considered as regular employee of the respondent department and therefore, the widow of the late Railway employee, who is mother of the applicant, is required to be granted the benefits of pension etc. That in the similar circumstances, the bench of the Hon'ble Tribunal has held that widow of such an employee is entitled to get pensionary benefits. That in these circumstances, after the death of late Shri Fulaji Gulaji, it is the duty and obligation of the respondents to provide compassionate employment to the applicant and pensionary benefits to the mother of the applicant. That none of the obligation is fulfilled by the respondents and therefore the applicant has to approach to this Hon'ble Tribunal by way of this application.

6. Looking to the overall circumstances of the case, the applicant is having strong prima facie case in his favour. The case is directly covered by the judgement of the Hon'ble Supreme Court. That there is no justification available to the respondents to delay the request of the applicant for compassionate employment. The balance of convenience is also in favour of the applicant as the family of the applicant is facing

great hardship and therefore is no earning member in the family and therefore looking to the above circumstances the interim relief prayed for in the application is required to be granted in favour of the applicant.

VII. Relief sought for ;

In the abovementioned facts and circumstances of the case, the applicant pray that :

- (A) The Hon'ble Tribunal be pleased to declare the inaction on the part of the respondents not to provide compassionate employment to the applicant, as arbitrary, illegal, unconstitutional and violative of Art.14 of the Constitution of India and be pleased to direct the respondents to absorb the applicant on compassionate employment from retrospective date i.e. from the date when the father of the applicant has expired and further direct the respondents to pay consequential benefits with 18% interest.
- (B) Be pleased to direct the respondents to give compassionate employment to the applicant forthwith and hold that the respondents have failed to perform their statutory obligation and therefore direct the respondent No.1 to take the proper disciplinary action against the concerned authorities who have not considered the case of the applicant for compassionate employment.
- (C) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost.

VIII. Interim Relief :

- (A) Pending admission and final disposal of the application be pleased to direct the respondents to give compassionate employment to the applicant forthwith, to enable the

applicant to maintain his family, in interest of justice.

(B) Be pleased to direct the respondents to consider the representation of the applicant and submit the reply before this Hon'ble Tribunal within 15 days.

(C) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice

IX. The applicant has not filed any other application in any other court including the Hon'ble Supreme Court of India with regard to subject matter of this application. The applicant has no other alternative remedy available except to approach this Hon'ble Tribunal by way of this application.

X. Details of Postal Order :

Postal Order No. 801 247623.

Dated : 1/x/93

Issued by : NVR Post Office

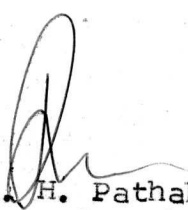
Amount of Rs 50/-

XI. An index in duplicate containing the document is produced herewith.

XII. List of enclosures as per above index.

Date : 1/10/93

Ahmedabad


(P. H. Pathak)
Advocate for the applicant

7

VERIFICATION

I, Shri Bhailal Fulaji, adult, residence of village Tuleta, Ta. Virangam, Dist. Ahmedabad, do hereby verify that the contents of para 1 to 12 are true to my personal knowledge and I believe the same to be true and that I have not suppressed any material fact.

Date : 1/10/93

Ahmedabad



X (Signature) Shri

From : -

Dt. 31-7-93

Bhairam S/O. Late Shri Fulaji Gulaji,
W/Man of PWI(C) ADI,
Village : Tuleta

~~Toxx~~

Tal. Viramgam,
Dist. Ahmedabad.

TO:

The Chief Engineer (Const)
W.Rly. ADI.

Sub : - Employment on compassionate Ground.

.....

Respected Sir,

I, Bairam S/O. Late Shri Fulaji Gulaji Ex: Watchman of PWI(C) ADI most respectfully lay down the following few lines for your honour's sympathetic consideration please.

Sir, my late father named above was working under PWI(C) ADI & he was expired on 07/04/1991. He was expired due to sickness while on service and he was about 48 years age at the time of his death.

Further he was working as T.S. W/man in the grade of 775-1025 (RP)

Regarding his family, I am the elderson named Bairam Fulaji aged 23 years studied upto Vith standard in Gujarati Medium School. Necessary zerox copy of the School Certificate is enclosed. I am having two sisters and we all are un employed. There is no regular earning members in our family. I am working on daily wages on piece meal works and earning very poor wages looking after my family with this meagre income. So I humbly request your kind honour that I may kindly be appointed any where in construction department or ppen line on compassionate grounds, as Class 'D' Category so that I am able to maintain my family without starving.

Hoping your honour will consider my earnest request & awaiting appointment order, I remain highly obliged.

Thanking you Sir.

Yours faithfully,

(BAIRAM S/O FULAJI GULAJI)

True copy
[Signature]

Dt. 26/5/93

From :- Bhailal Fulaji
At :- Thuleta
Post. Thuleta
Ta. Viramgam
Dist. Ahmedabad.

To,
DY (CE) Construction)
W.R. Ahmedabad.

Sub :- Employment on Comproassion Ground.

R/Sir,

With due to respect the following few line under your kind and sympathetic Consideration please.

My lati father Shri Fulaji Gulaji was working under your kind control. He was appointed on 1-5-75 and was working continuous service up to 6-4-91 and T.S. granted on 1-1-81 and He expired on 7-4-91. His service was about 15 years in construction department I am help him, there are no any source to me to solve the food problem. I am suffering so much Difficuly. I have applied there times to you But not reply is given from your side there application is give by me to you. First application 31-7-91 second Applications 25-9-92 and Third Application ~~12-12-92~~ 12-12-92.

Now I am giving forth reminder to your I hope that you will have me reply with 10 (Ten) day, if you will not give me reply I will go in court for natural Justice.

I shall be thank full your honour if you kindly give chance under your kind control after me Lati father.

Yours faithfully,

C/- XEN (C) ADI
WREU-ADI
AWI (C) North ADI.

Truecopy
[Signature]

BY REGD. A.D.

Date : - 27/7/1993.

Dy. Engineer (Construction)
Western Railway
Railway Station
Ahmedabad.

Sub : - Employment on Compassionate
ground.

Under the instruction of my client Shri Bhālal Fulaji, at & Post; Tuleta, Ta. Virangam, Dist. Ahmedabad, I the undersigned advocate inform you by this notice as under :

That my client is a son of Lt. Shri Fulaji Gulaji, who was working as Watchman. That Lt. Shri Fulaji has joined the service of Railway administration with effect from ~~the~~ ~~xxx~~ 1.5.75 and was working satisfactorily under PWI(C)ADI. That the father of my client i.e. Fulaji was granted temporary Status with effect from 1.1.91 and unfortunately has expired while on duty on 7.4.91. That Lt. Shri Fulaji has completed more than 16 years of service.

That my client is the only son as the mother of my client has expired before about 10 years. At that time, my client was minor and now the father has also expired and there is none to ~~as minor~~ help my client to maintain body and soul together. That after the death of the father of my client, my client has made several representations to you requesting to give employment on compassionate ground. The representations are dated 31.7.91, 25.9.92, 12.12.92 etc. But without assigning any reason, the case of my client is not considered at your end and therefore my client is constrained to approach me and the present notice is required to be issued.

It is submitted that now it is settled legal position that so far compassionate employment is concerned, it is for the welfare of the family of the deceased employee and as stated above my client is the only family member in the family of Lt. Shri Fulaji. That the compassionate employment should not be delayed by the administration otherwise the intention behind the same will be frustrated. That the Hon'ble Supreme Court has clearly held that if the posts are not available where such compassionate employment is granted, supernumerary post should be created and the employee on compassionate ground should be accommodated. That in abovementioned clear legal position, there is no justification available to you for not extending the benefits of compassionate to you for not extending the benefits of compassionate employment to my client. That such an action on your part is ex facie arbitrary, illegal, unconstitutional and violative of Art. 14 & 16 of the Constitution of India.

In these circumstances, by this final notice I inform you that it within 15 days of receipt of this notice, you will not give employment on compassionate ground to my client, my client shall be constrained to move further legal proceeding against you, at your cost and risk.

: 2 :

I would like to point out that my client is also not paid all the dues which is required to be paid to Lt. Shri Fulaji and the amount is also due from the administration to my client, the same is also required to be paid forthwith.

Looking to the circumstances of the case of a poor boy, I am sure you will do the needful in the matter and inform me accordingly.

Date : - 27/7/1993
Ahmedabad.

(P.H. Pathak)
Advocate

CC to : - General Manager
Western Railway
Churchgate
Bombay.

Traciop
R

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O.A.No. 587/1993

Shri Bhailal,
son of Late Shri Fulaji Gulaji. Applicant.

V/s.

Union of India & Ors. Respondents.

Reply by the respondents.

1. At outset the respondents state and submit that the averments made in the application is not correct and denied hereby. The respondents further state that the application made by the applicant is not maintainable and tenable and same deserves to be dismissed.

2. With reference to para 6 the averments made in the said para are not correct and denied hereby. The respondents state that the applicant has not submitted any documentary proof regarding his date of birth, educational qualification etc. along with his application for appointment on compassionate ground. The above details has been called from applicant by this office vide this office letter No.E.615/1/dated 20-12-93 and the same has been submitted by verifying the documents it is seen that Shri Bhailal has studied upto VI standard only. As per rules for giving appointment on compassionate ground minimum educational qualification is required VIII standard pass in terms of Railway Board's letter dated 16.8.85 circulate under GM(E)CCG's letter No.E(R&T) 890/6 dated 6.9.85. The applicant has not fulfilled the required educational qualification for considering his case for appointment on compassionate ground hence he is not entitled for compassionate appointment.

3. With reference to para 6.2 the averments made in the said para are not correct and denied hereby. The respondents state that the father of applicant Late Shri

Dec. 11/12
(11)

Copy served to
Shri B. R. Kyada
on 23/2/95

(2 Hrs)
Mr. B. R. Kyada
20/2/95

Fulaji Gulji was appointed as a project casual labour on 1.5.75 under P.Way Inspector(C) Ahmedabad, he ~~was~~ expired on 7.4.91 while he was in service and all the benefits applicable to the project casual labour has been given to him from time to time.

4. With reference to paras 6.3 & 6.4 the averments made in the said paras are not correct and denied hereby. The respondents state that After the death of Late Shri Fulaji Gulaji necessary gratuity payment amounting to Rs. 10352-00 has been paid to the applicant as per gratuity Act 1972. The application for compassionate appointment of the applicant dated 31.7.93 received by this office only on 14.12.93. No further any representation dated 25.9.92 and 1.12.9 received by this office. The office has received the copy of the application on 31.7.93 addressed to CE(C)ADI from CE(C)ADI on 8.12.93. On receipt of copy of application immediately necessary action has been taken and required documents, certificates etc. has been called for from applicant vide XEN(C)IC-ADI's letter No.E.615/1 dated 20.12.93.

5. With reference to para 6.5 & 6.6 the averments made in the said paras are not correct and denied hereby. The respondents state that Late Shri Fulaji Gulaji was a temporary status project casual labour and he was not regularised on any payment post hence his family is not entitled for any pensionary benefit as per Railway Board's letter dated 19.5.87 circulated vide GM(E)CCG's letter dated 25.6.87 but the applicant is entitled for payment of gratuity act 1972 and the same has already been paid to the applicant amounting to Rs.10352-00. As per GM(E)CCG's letter the minimum qualification for compassionate appointment is required VIII standard pass, in this case the applicant is studied upto VI

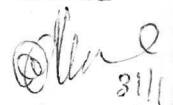
standard hence his case for compassionate appointment can not be considered as per rules.

6. In view of the facts mentioned above, the applicant is not entitled for the relief prayed for in the application and therefore, the application filed by the applicant for compassionate ground is deserves to be dismissed. The respondents reserves their right to file further reply as and when necessary.

Ahmedabad.

For and on behalf of
Union of India

Dt:


(Executive Engineer(C) IC.)
Western Railway, Ahmedabad.

कार्यपालक इंजीनियर (ए. ई.)
पश्चिम रेलवे, अहमदाबाद



(B.R.Kyada)
Advocate for the Respondents.

VERIFICATION

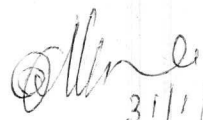
I, O.P Sharma,

Executive Engineer(C),

Western Railway, Ahmedabad, do hereby verify that what is stated hereinabove is true to the best of my knowledge information and belief and I believe the same to be true and I have not suppressed any material facts.

Ahmedabad.

Dt:


(Executive Engineer(C) IC.)
Western Railway, Ahmedabad.

कार्यपालक इंजीनियर (ए. ई.)
पश्चिम रेलवे, अहमदाबाद