

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.521 OF 1995.
Cuttack, this the 28th day of December 2001.

Jayadev Rout.

Applicant.

- Vrs. -

Union of India & Others.

Respondents.

FOR INSTRUCTIONS

✓ 1. Whether it be referred to the reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
28.12.2001

Nityananda Prusty
(NITYANANDA PRUSTY)
MEMBER(JUDICIAL).

....

6

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.521 OF 1995.
Cuttack, this the 28th day of December, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. NITYANANDA PRUSTY, MEMBER(J).

....

Jayadev Rout,
Aged about 28 years,
S/o Late Ankura Rout,
A permanent resident of
Village/Post: Rupsa, Dist: Balasore-28. Applicant.

By legal practitioner: M/s S. Palit, B.K. Rout,
C.R. Lenka, P.K. Majhee,
B.S. Das, A. Das, L. Jena,
Advocates.

-versus-

1. Union of India represented through
General Manager, South Eastern Rly.,
Garden Reach, Calcutta.
2. Divisional Railway Manager, South Eastern Rly.,
Kharagpur, At/Po: Kharagpur, Dist: Kharagpur,
West Bengal.
3. Divisional personnel Officer,
South Eastern Railway, Kharagpur,
At/Po/Dist. Kharagpur, West Bengal.
4. Station Superintendent, South Eastern Rly.,
Basta Railway Station, At/Po: Basta,
District-Balasore.

.... Respondents.

By legl practitioner: M/s B. Pal, O. N. Ghosh,
Senior Counsel for the
Railways.

....



O R D E R

MR.NITYANANDA PRUSTY, MEMBER(JUDICIAL):

The applicant is the son of late Ankura Rout, who was a permanent employee of South Eastern Railways, succumbed to injury caused in an accident on 16.6.1967, while undergoing treatment at Railway PG Hospital, has filed the present application for a direction to the Respondents to give him appointment in any suitable post under the provisions of appointment on compassionate ground. The case of the applicant in short is that the applicant is the only son of late Ankura and was only 45 days old while his father died. The family did not have any landed property and as such have no other source of livelihood. The father of the applicant had left behind the mother of the applicant, two sisters (minor) and the applicant. The father was the only earning member of the family and after his death, the family is in a state of abject distress. In such a situation, it was very difficult on the part of the family to manage with the meagre amount of pension ^{and} due to the financial difficulties ~~and as such~~, the applicant had to stop his study after matriculation examination.

Applicant after attaining majority in the year 1985 made several representations to the Railway Authorities, Railway Minister and other Govt. officials for compassionate appointment. Since the applicant was minor, he could not apply for compassionate appointment within ten years blanket coverage as per the Board's provision as he was only 45 days old at the time of death of his father. He had applied for compassionate

H. N. Prusty

=3=

appointment immediately after attaining the majority and passing matriculation examination, but the Railway Authorities did not consider the case of the applicant for compassionate appointment and hence such nonconsideration of the case of the applicant for compassionate appointment is completely against the principles of the very scheme of the compassionate appointment itself. On the above grounds, the applicant has come up in this original Application with the prayers referred to earlier.

2. The Respondents in their reply have stated that the father of the applicant was appointed on 6.1.1961 and died on 16.6.1967 and as such has served only about 6 years and 6 months and while the father of the applicant expired, during the course of his employment, at that point of time, there was no provision or rule for appointment on compassionate ground in respect of sons and daughters of the deceased Govt. servants. After introduction of the scheme for compassionate appointment, a cut off date was fixed as 30th April, 1979 as indicated in Estt. Sl. No. 102 of 1981 under item No. 6 therein. The above said cut off date was fixed by the Railway Administration with the intention of not reopening the past cases but the cases which have been processed as on 30th April, 1979 but not finalised by then, are to be taken into consideration. It is further stated by the Respondents that the applicant submitted his first representation for compassionate appointment in the year 1985 after he became 18 years and the same was forwarded by the then Member of the Parliament and received by the Railway Admn. on 12.9.1985 and the same was disposed of by the competent authority on 30.10.1985. But thereafter, the widow as well as the son made



(9)

series of representations to the other political people and none to the Railway authorities. As per the Railway Board's letter circulated under Estt.Sl.No.120 of 1983 followed by another Railway Board's letter dated 18.4.1985 it has been categorically envisaged that normally all appointments on compassionate ground should be made within a period of five years from the date of occurrence/event. The period of five years, however, could be relaxed in case of sons or daughters of the Railway servants who were minors with the approval of the General Manager in deserving cases. In the Estt.Sl.No.106 of 1985, it has been indicated that where a Railway staff died in harness and where the widow can not take up employment and sons/daughters are minors, question of appointment on compassionate ground may be kept pending till the son or daughter becomes major. However, in no case, consideration can be made after ten years of the event i.e. the date of the death. Thus, there is a bar in the Rules and the procedure to the effect that no consideration can be made after ten years period which is the maximum limit in keeping the matter pending. Since in the present case, the death of the Railway employee was in 1967 when there was no rules/provision, for providing compassionate appointment and since the cut off date 30.4.1979 as has been fixed, ~~after~~ and the introduction of the scheme by the Railway administration is much after the date of death, the applicant is not entitled to avail the benefit under the scheme and also the present application is completely barred by time in view of the fact that the first representation of applicant for compassionate appointment dated 12.9.85 was disposed of by the competent authority on 30.10.1985.

H.M.

3. We have heard Shri S.Palit, Learned counsel for the Applicant and Shri B.Pal, Learned Senior Counsel for the Respondents and perused the pleadings and supporting documents of the respective parties.

4. As it appears, the scheme for compassionate appointment introduced by the Railway Administration in the year 1979 and clarification regarding the same was issued in the year 1981. But in the instant case, the death occurred in 1967. First representation ~~which~~ was made by the applicant after attaining the majority in the year 1985 and the said representation was rejected/disposed of on 30.10.1985. Some of the annexures filed as annexure-2 series by the applicant alongwith to the O.A. indicate that the applicant made representations to the Chairman of the Railway Board, New Delhi on 11.8.89 and the mother of the applicant made another representation to the ADRM, SE Rly., Kharagpur on 5.12.1990 but much prior to that in 1985, one representation of applicant was forwarded to the Railway Admn. by Shri Chintamani Jena, the ~~then~~ Member of the parliament, which was replied to by the DRM, SE Railway, Kharagpur vide his letter dated 30.10.1985 and another representation which was forwarded to the General Manager of SE Railway, by Shri Chintamani Jena, the then Member of the parliament regarding compassionate appointment of applicant was also rejected by the Railway Administration and the same was intimated to Shri Chintamani Jena, and also to the applicant by the General Manager, South Eastern Railway vide his letter dated 18/21-4-87. From the above it goes without saying that the applicant was well aware of the earlier rejections of his application for

W.M.J.

11

compassionate appointment since 30.10.1985 as well as 18/21.4.1987. Law is well settled that repeated representation to the authority shall not revive the period of limitation. Learned counsel for the applicant in support of his case cited the decision of the Hon'ble Supreme Court in the case of BALBIR KAUR AND ANOTHER VRS. STEEL AUTHORITY OF INDIA LTD. AND OTHERS reported in 2000 Supreme Court Cases (L&S) 767(para-8). We have carefully gone through the above said decision of the Hon'ble Apex Court relied upon by the learned counsel for the applicant, but the ratio decided in the said case can not be applied to the present case at hand as the facts and circumstances of both the cases are completely different and each case has to be decided on its own merit on the basis of the circumstances of that case only. In the case of Balbir Kaur and another(supra) the death occurred on 22.11.92 and the applicant applied for compassionate appointment on 22.1.1993. Hence it has been observed by the Apex Court to the effect that:

"Admittedly, an authority within the meaning of Article 12, has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer - it is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers had before us any effect in our daily life - the answer can not however but be in negative - what happens to the constitutional philosophy as is available in the constitution itself which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on a certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied as "it is

likely to open a Pandora's box" - this is the resultant effect of our entry into the new millennium. Can the law courts be mute spectators in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the breadearner?".

But in the instant case at hand the death of the father of applicant occurred in 1967 when there was no provision for compassionate appointment in the Railways. The so called application made by the applicant's mother directly to the Railway administration and through the Member of the then Parliament having been rejected in the year 1985 and 1987 by the competent authority, the applicant having been remained silent for years together, the present application is completely barred by limitation.

5. Further it is to be noted that the whole aim and objects of the scheme for providing compassionate appointment immediate is to mitigate the hardship of the family on the event of the death of the sole breadearner. But here in this instant case, the death as stated above occurred during 1967. The widow did not apply for compassionate appointment for herself. Even though the representations have been rejected by the competent authority in the year 1985 and 1987, the applicant remained silent and did not approach before any court of law. All these facts go to show that the deceased family ~~was not in~~ in indigent circumstances.

6. In view of the discussions made above, this original Application is dismissed both on merits as also on the point of limitation. No Costs.

Somnath Som.
(SOMNATH SOM)
VICE CHAIRMAN
~~CHIEF MEMBER~~

KNM/CM.


(NITYANANDA PRUSTY)
MEMBER(JUDICIAL)