

6

O.A.No. 150 of 2009

K.Laxman Rao ..... Applicant  
Versus  
Union of India & Others ..... Respondents  
.....

Order dated: 11<sup>th</sup> 05<sup>th</sup> April, 2010.

C O R A M

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....  
It is not in dispute that the father of the Applicant was working as a Shed Khalasi in the Railway and died prematurely on 30.10.1994 leaving behind his widow, and four sons including the Applicant who is the third son. According to the Applicant soon after the death through application dated 17.05.1996 his mother sought appointment in his favour but on the ground of non-availability of such application, Respondents by letter under Anenxure-1 asked the mother of the applicant to submit fresh application. In compliance of the said letter, though through fresh application all documents were submitted the Respondents without due application of mind rejected the request to provide employment and communicated the reason of rejection to the Applicant under Annexure-A/7 dated 31.1.2007 and appeal preferred by him was also rejected and communicated under Annexure-A/9. Being aggrieved by the order of rejection, the applicant has approached this Tribunal in the present Original Application seeking to quash the orders under Annexure-A/7 & A/9 and to direct the Respondents to provide him appointment on compassionate ground. As the last impugned order under Annexure-A/9 is dated 07.02.2007 and he has filed this OA on 30.03.2009 i.e. beyond the period of limitation prescribed in section 21 of the A.T. Act, 1985 by filing Miscellaneous Application No. 191 of 2009 applicant has also prayed for condonation of delay. The reasons given in the orders under Annexure-A/7 & A/9 read as under:

L

7

"Annexure-A/7

dated 31-01-2007

In connection with the above, it is to inform you that your request for appointment of your son on compassionate ground has been examined and put up to the competent authority for decision. The competent authority has observed that Class eight passed certificate of the candidate has not been submitted and two different Transfer Certificates from two different Institutions at two different times has been submitted. In view of this, the competent authority has not agreed to extend employment assistance in favour of your son on compassionate ground."

"Annexure-A/9

dated 07-02-2007

Your representation dated 22.01.2007 has been examined. In this connection, it is to inform you that after the death of your husband on 31.10.1994, you had submitted an application dated 17.05.1996 seeking appointment of your son Shri K.Laxman Rao on compassionate grounds. Enquiry was conducted and as per the record available, it is seen that the case was regretted, but the case file is not available in our record.

On 24.03.2003 you had submitted an application for employment assistance in favour of your above named son. As the old case file was not available, the matter was entrusted to the Sr. Personnel Inspector to enquire into the matter to examine the case. Accordingly, enquiry was conducted and the case was examined.

On perusal of the documents, it is seen that you have not submitted Class Eighth passed certificate of your son and two different Transfer Certificates from two different Institutions at two different times have been submitted which is not acceptable.

In view of the above, your request for compassionate appointment in favour of your above named son is not agreed to. In this regard a reply has already been sent to you vide Letter No.P/R/EA/OT/Comp.Appt./1433, dated 31.01.07.

This disposes your appeal dated 22.01.2007."

2. Respondents filed their counter in which it has been stated that compassionate appointment in favour of the third son was sought by submitting two Transfer Certificates in support of his educational qualification obtained from two different institutions one is from Biswanath Sanskrit Vidyapitha, Puri and the other one is from Neelachal Narayan Ayurvedic Chatuspathi, Puri instead of submitting Class VIII pass certificate which is the minimum educational qualification for appointment in Group D service in Railway. As per rules one must submit the certificate along with the

2

8

application in regard to his educational qualification of Class VIII pass which has not been submitted. This aspect of the matter having been brought to the notice of the Applicant, the widow vide her letter dated 18.03.2004 clarified that out of her four sons, the first and second sons are married and staying separately. But on enquiry it was revealed that all the married and unmarried sons are living jointly with her. Copy of report of the enquiry has been placed at Annexure-R/1 to the counter. The widow had submitted application for employment assistance on compassionate ground in favour of her third son in the year 1996 which was considered and rejected by the competent authority. But the file was missing and not traceable. On further submission of the representation by the widow in the year 2003 requesting appointment on compassionate ground, the case was re-examined but the same was rejected by the competent authority on the ground of submission of two different transfer certificate from two different institutions at two different times without showing class VIII pass qualification of the applicant. Further stand of the Respondents is that the applicant initially got his admission in 07.08.1986 in Biswanath Sanskrit Vidyapitha, Puri and left the institution on 09.09.1990 while he was continuing his 3<sup>rd</sup> year Madhyama i.e. Class X. Again after 12 years, he got admitted in another institution viz. Neelachal Narayan Ayurvedic Chatuspathi, Puri on 16.08.2002 and left the institution on 18.07.2005 after appearing Annual examination in the year 2005 but failed. It is, therefore, not understood as to how a student continuing in Class X would again be admitted in Class VIII after 12 years. According to the Respondents, as the Applicant did not come in clean hand, his case was considered and rejected by the Respondents which needs no interference by this Tribunal.

3. In order dated 5.5. 2009 this Tribunal issued notice both on this OA as well as on the MA seeking condonation of delay to the Respondents

2

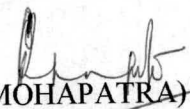
9  
requiring them to file counter. Since no rejoinder was filed by the Applicant even after serving copy of the same on the learned counsel for the applicant on 05.11.2009 the matter was listed to the Bench for consideration on 22.3.2010 when Mr. P.Lenka, learned Counsel for the Applicant requested time and accordingly, it was directed to list the matter on 31.3.2010. On 31.3.2010 none of the Counsel appearing for the applicant was present. However, Mr. P.K.Padhi, Learned proxy counsel of the Learned Counsel for the Applicant placed the matter for and on behalf of the Applicant's counsel. Heard him and Ms. S.L.Patnaik, Learned Counsel appearing for the Respondents and perused the materials placed on record.

4. Although appointment on compassionate ground is a benevolent legislation yet it is trite law that Administrative Tribunal cannot confer benediction impelled by sympathetic considerations in disregard to the requirements as per Rules. The appointment on compassionate ground is not another source of recruitment but merely an exception taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. Employment to the dependant of a government servant dying in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To over come the distress of the family, such appointments are permissible on compassionate grounds provided one must come in clean hand and situation does really exist for providing employment on compassionate ground. It cannot be provided as a matter of routine or cannot be claimed as a matter of right. In the instant case the deceased left behind his widow and four sons. But no satisfactory explanation is given (except bald statement that they are staying separately) as to why the widow did not opt herself to take the appointment or for his first or second son

10

soon after the death of her husband. Nothing has been stated as to why the applicant kept idle from 1994 till 2003. Even the explanation furnished seeking to condone the delay in approaching this Tribunal belatedly is not at all satisfactory. Law is well settled that equity helps those who come in clean hand. As the applicant did not approach the authority with clean hand so far as transfer certificates are concerned, this case does not appeal to judicial conscience to be a fit case necessitating interference in the order of rejection. In my opinion direction to provide employment to the applicant would tantamount to debarring another candidate who might be having genuine claim for appointment under compassionate ground in the Railway. For the reasons stated above, I find no justifiable reason to interfere in the order under Annexure-A/7 & A/9; especially because the death of the father occurred in 1994 whereas he has approached this Tribunal in 2009 i.e. approximately FIFTEEN YEARS after the death of his father without any satisfactory explanation.

5. Therefore, viewed the matter from any angle; I find no merit in this OA. Hence, this OA stands dismissed. No costs.

  
(C.R. MOHAPATRA)  
MEMBER (ADMN.)