

14
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No.386 of 2011
Cuttack, this the 22nd day of December, 2015

Smt. M. Laxmi Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *Yes*
2. Whether it be referred to PB for circulation? *Yes*

R. Misra
(R.C. MISRA)
MEMBER(A)

15
CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH, CUTTACK

O.A. No.386 of 2011

Cuttack this the 22nd day of December, 2015

CORAM
HON'BLE MR. R. C.MISRA, MEMBER (A)

.....

Smt. M. Laxmi, aged about 43 years, wife of Late M. Ganapati Rao, Ex. Khalasi under Sr. Section Engineer (Signal), Berhampur, E.Co. Rly., now residing at Ambusola, Post-Kasibugga, Dist. Srikakulam, Pin-532222.

...Applicant

(Advocates: Mr. G. Rath)

VERSUS

Union of India represented through

1. The General Manager, East Coast Railway, ECoR Sadan, P.O. Mancheswar, Dist. Khurda, Pin-751 017.
2. Chief Personnel Officer, East Coast Railway, ECoR Sadan, P.O. Mancheswar, Dist. Khurda, Pin-751 017.
3. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.
4. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po.Jatni, Dist. Khurda.

... Respondents

(Advocate: Mr. S.K. Ojha)

ORDER

R.C. MISRA, MEMBER (A)

The applicant in this O.A. is widow of a deceased railway employee, who has approached the Tribunal making a prayer that the order of the DRM(P), Khurda Road dt.28.02.2001 may be quashed, and direction may be issued to the respondent authorities to provide employment to the applicant on compassionate ground commensurate with her qualification.

2. The short facts of the case are that late M. Ganapati Rao, husband of the applicant died on 29th February, 2000 while working as Khalasi in the Signal Department under Sr. Section Engineer (Signal) at Berhampur. He left behind his widow, i.e., the applicant in this O.A., and his widow mother, in dire distress. The



applicant on 21.06.2000 made an application to the DRM (P), Khurda Road for compassionate appointment to a post under Group 'C'. An officer was deputed to conduct inquiry into the financial status of the applicant, and to verify the documents. Based upon the report of inquiry the office note dated 06.12.2000 was put up making a suggestion that the applicant may be considered for selection to a group 'C' post. The suggestion in specific was that "the widow may be called for test for Group 'C' category as she is a graduate, against compassionate ground employment assistance quota. The Sr. DPO/KUR, as well as his superior officer, ADRM further recommended the case for approval to the DRM/KUR. However, the DRM/KUR took a different view and observed as follows:

"The ex-employee had hardly put in only 03 years of service at the time of his death and as such this is not a fit case to consider E.A. on C.G. pl."

On the basis of this order the DRM(P)/KUR informed the applicant as follows in his letter dated 28.02.2001 which is impugned in this O.A.

" It has been decided that there does not exist any reasonable ground to consider employment assistance on compassionate grounds in the instant case".

The applicant being aggrieved made a representation dated 01.02.2005 to the General Manager, E.Co. Rly. which is alleged not to have been disposed of till date.

3. The applicant in this O.A. urges that the Railway Board in its circular No.E(NG) II/90/RC-1/117 dated 12.12.1990 has dealt with "Appointments on compassionate ground", and laid down that compassionate appointment may be made of the dependents of Railway employees when such employees die in harness while in service, before retirement. Therefore, the dependent family members have a right to get such employment assistance on fulfilling the

R.


minimum conditions. There is no such Rule laying down that the deceased railway employee should have served the Railway for a certain period so that the widow's case for employment assistance is considered on compassionate ground. Therefore, the ground upon which the respondents rejected the prayer for compassionate appointment is unsustainable and illegal. The submission of the applicant is that such an arbitrary decision of the respondent authorities should be set aside by the Tribunal to restore Justice to the applicant.

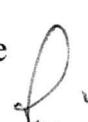
4. The respondents filed a counter – affidavit in the case in which they have submitted that Late Ganapati Rao was appointed as Khalasi on 13.12.1996 and expired on 29.02.2000, while he was in service. The case was inquired into and processed for the decision of the Competent Authority, who took a view that the ex-employee had hardly put in only three years of service at the time of his death, and as such the case of the applicant was not a fit case for consideration of employment assistance on compassionate grounds. The present O.A. is hopelessly barred by limitation. The cause of action arose in the year 2000, and the order of rejection was passed in the year 2001, whereas the applicant filed this O.A. after a lapse of more than 10 years. In the matter of Local Administration Department and Ors. Vs. M. Selvanayagam the Hon'ble Apex Court has decided that the claim of compassionate appointment can not be taken as a matter of right, and can not be agitated at any point of time. The purpose of employment assistance is to help the family tide over the crisis that is caused by the sudden demise of the breadwinner. In the present case, the applicant was able to survive for a period of more than 10 years. Therefore, there is no apparent need for compassionate appointment, and the required conditions are not fulfilled for considering the case. There is no doubt that the subordinate officials have



processed the case, and made their recommendations. But the DRM is the competent Authority to take a final decision. Therefore citing the office notes would not help the cause of the applicant. The General Manager is also not bound to dispose of the representation of the applicant alleged to have been filed on 01.12.2005, since under the Scheme, no appeal lies to the G.M. from the decision of the DRM. Stating thus, the respondents have opposed the prayer of the applicant in their counter – affidavit.

5. The applicant in his rejoinder has answered some of the points raised in the counter – affidavit. With regard to the issue of limitation, it is submitted that since applicant has filed an M.A. for condonation of delay, it is for the Tribunal to take a view in the matter. The Railway Board has also issued instructions dated 30.11.1999 authorizing DRM's/HoD's/ CWM's to consider some specific cases received within but not more than 20 years. Since the matter relates to appointment to Group 'C' under the instructions dated 30.04.1979, DRM is not authorized to take a decision, and the matter should have been put up to CPO, SE Rly., Garden Reach. There is no Rule which prescribes that the deceased employee should have served for a minimum period, as a condition for the ~~dependent's~~ ^{dependent's} case to be considered under the Compassionate Appointments Scheme. The decision of the DRM is therefore arbitrary and illegal.

6. Having heard 1d. Counsels for both sides, I have also perused the records. Written notes of arguments have been filed by both sides. The 1d. Counsel for applicant in his written notes has urged that the authorities without considering the report of the Personnel Inspector, and the fact that the deceased family's two widows had no other source of income and that the family pension calculated on the basis of three years of service of deceased railway employee



was very meager, took an arbitrary decision based upon unsustainable ground. Praying for condonation of delay, applicant has filed M.A. No.453/2011 at the time of admission. Although notice was issued on the M.A., the respondents have not filed any objection, and at the time of hearing they must not raise any objection on the point of limitation. The applicant is also not aware of the law of limitation. In the present case, the GM could have considered the representation, since he has the power to relax the period upto 20 years, after the death of the employee, for considering the matter of compassionate appointment. The G.M. did not dispose of the representation filed by the applicant on 01.12.2005, even though the Hon'ble Apex Court in their decisions in the S.S. Rathore case reported in AIR 1990 SC 10 has laid down that the administrative authorities must communicate their decisions on the grievance representations filed before them. It is further contended by the applicant that M.A. filed under Section 5 of Limitation Act can be considered, since Section 22 of the AT Act does not expressly exclude the applicability of Section 5 of the Limitation Act., as observed by the Hon'ble High Court of Odisha reported in 2015 (I) ILR-CUT-658 in the case of A.K. Parida vs. UOI & Ors.

7. The 1d. Counsel for respondents in his written note of argument reiterates the submission that no reasonable ground exists after so many years of the death of the husband, to consider the widow's prayer for compassionate appointment. It has not been proved by the applicant that a representation was made to the G.M. in the year 2005. However, the G.M. is not the appellate authority in the case from the decision taken by DRM. Further, compassionate appointment can not be claimed as a matter of right. The respondents' counsel has cited Hon'ble Apex Court's decisions in Local Administration Department &



Anr. Vrs. M. Selvanayagam @ Kumaravelu (AIR 2011 SC 1880, para-9), and in State of Chhatisgarh Vrs. Dhirjo Kumar (AIR 2009 SC 2568, para-23) in favour of their submissions.

8. I have given my anxious consideration to the facts of the case and the submissions made by the ld. counsels. One glaring lacuna that is noticed in the counter affidavit is that this does not answer the issue as to whether there is any rule barring the consideration of a case for compassionate appointment, in case the deceased employee has not done a minimum period of service before his death. That is the sole ground on which the DRM/KUR has rejected the prayer of the applicant. In all fairness the respondents should have given their specific reply on this point of merit. On the other hand, they have only hammered on the point that at this belated stage, compassionate appointment can not be considered, since that will hit at the very purpose of the scheme, i.e., helping the family to tide over immediate distress. The fact, however, is that the respondents rejected the case in 2001, one year after death and therefore the argument of the respondents would not be valid in the year of consideration. Obviously, applicant approached the Tribunal very late, and that helped the respondents to develop this argument. But the ground on which the prayer of the applicant was rejected was specific, that is, the applicant's husband had served only for 03 years, and that is why the family does not deserve consideration under the Scheme. How far that is sustainable and whether there is any such provision in the Scheme is a question which has not been answered by the respondents.

9. Before I could enter the area of merits of the O.A., I however encounter the difficulty of the limitation. In the M.A. No.453/2011 filed under Section 5 of the Limitation Act for condonation of delay, the applicant submits that



she gave application for compassionate appointment without any loss of time after the death of the husband. She was conveyed the rejection order in 2001. Then she submitted a representation to G.M. on 01.12.2005. But she did not receive any reply. Then ~~she~~ obtained the copies of relevant note sheets under RTI Act only on 17.04.2007. Her poor financial condition prevented her from having suitable legal help, and therefore, she filed the O.A. after this unusual delay. She further contends that the delay is not intentional or deliberate, and the Tribunal should not look at this with the pedantic approach of 'every day's delay must be explained'. Substantial justice is much superior to technical consideration of delay. In the present case, the applicant has a legitimate expectation of being given compassionate appointment which has been denied by respondents on unreasonable ground. So applicant urges that delay should be condoned, and O.A. may be considered on merits.

10. Even after taking into account the pleading of the applicant on the M.A, I find inexplicable delay on the part of the applicant in filing the O.A. The deceased railway employee expired on 29.02.2000. Applicant submitted application for compassionate appointment on 21.06.2000 to DRM (P), Khurda Road. The DRM in his order dated 28.02.2001 rejected the application, giving rise to the present grievance. The applicant claims to have filed representation to General Manager, E.Co. Railway on 01.12.2005 which is after a period of more than 04 years of the order of rejection. Since there was no reply from the GM, applicant after waiting for 06 years filed the O.A. in 2011. Thus there is delay at every step. I do not appreciate why the applicant committed this long delay in seeking remedy for her grievance, when she was praying for compassionate appointment which is in the nature of immediate relief, ⁱⁿ ~~is~~ a sudden crisis caused

by the death of the breadwinner. The urgency of the cause thereby has been blunted. If applicant had a reasonable expectation in the matter of relief, did she not have a duty to show expedition in the matter? In the absence of such expedition, it becomes very difficult to believe that applicant's expectation was in fact urgent in nature.

11. Delay in filing a lis can sometimes prove fatal to the cause, particularly in the absence of satisfactory explanation as to why such delay was caused. The Tribunal has a bounden duty to go into the question of limitation even when the respondent's counsel has not raised any such question or objection. Limitation to that extent is not a mere matter of legal technicality. In a number of pronouncements the Hon'ble Apex Court has observed that unusual or inordinate delay substantially affects the cause of justice. The Hon'ble Apex Court has also ~~denied~~ ^{decided} the practice of ignoring the point of limitation while deciding the cases. The following decisions of the Hon'ble Apex Court ~~reflect~~ ^{reflect} substantially ~~rejects~~ the decisions of the Hon'ble Apex Court in the matter of law of limitation:-

“ 1. Basawaraj & Another Vs. The Special Land Acquisition Officer AIR 2014 SC 746:-

It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no jurisdiction to extend the period of limitation on equitable grounds. A result flowing from a statutory provision may cause hardship or inconvenience to a particular party, but the Court has no choice to enforce it giving full effects to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law” stands attracted in such a situation”.

2. Chennai Metropolitan Water Supply and Sewage Board & Ors Vs. T.T Murali Babu (AIR 2014 SC 1141) :-

Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and

equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix.”

12. Considering the facts and the law in the matter, I do not find any justification to condone the delay in filing this Original Application. M.A. No.453/2011 is therefore rejected, and the O.A. thus being barred by limitation, is dismissed. No costs.


(R.C. MISRA)
MEMBER(A)