

37

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.277 of 2012
Cuttack this the 9th day of September, 2016

G. Mohapatra & AnotherApplicant

-Versus-

Union of India & OthersRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? *NO*
2. Whether it be referred to PB for circulation? *NO*


(R.C. MISRA)
MEMBER(A)

38

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No.277 of 2012
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CORAM
HON'BLE SHRI R.C.MISRA, MEMBER(A)

- ...
1. Geetanjali Mohapatra, aged about 25 years, D/o Late Indramani Mohapatra, Permanent resident of Vill: Kunia Samantarapur, P.O./PS. Nirakarpur, Dist. Khurda.
 2. Pramila Mohapatra, aged about 65 years, W/o Late Indramani Mohapatra resident of Vill: Kunia Samantarapur, P.O./PS. Nirakarpur, Dist. Khurda.

...Applicants

By the Advocate(s)-M/s. R.K. Samantsinghar, S.K. Ray, D. Paikray

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, At/PO/PS-Chandrasekharpur, Bhubaneswar, Dist-Khurda
2. The Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/P.O/S-Jatnai, Dist-Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/P.O/S-Jatnai, Dist-Khurda.
4. The Sr. Section Engineer, E.Co. Rly. Kalupada Ghat, At/PO-Kalupadaghat, PS- Tangi, Dist-Khurda.

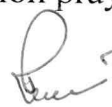
...Respondents


By the Advocate(s)- Mr. M.K. Das



ORDER(Oral)
R.C.MISRA, MEMBER(A):

The applicants claim to be the daughter and wife of late Indramani Mohapatra who was a permanent Group-D Railway employee and have approached this Tribunal praying for compassionate appointment.

2. From the facts of this case it is revealed that the Railway employee expired on 13.07.1992 while he was in service. At the time of death he was survived by his widow and seven minor daughters. The applicant No.2 made a representation dated 18.08.1992 (Annexure-A/2) to the Divisional Railway Manager, South Eastern Railway, Khurda Road Division praying for



compassionate appointment to be granted in her favour. Based upon this representation the Railway-Authorities started enquiring into this matter to process the case of compassionate appointment. According to the document prepared by the Railway-Authorities vide letter dated 17.09.1995 (Annexure-A/3) regarding identification of the legal heirs the widow's name was mentioned as Sarojini Mohapatra and it was further mentioned that she is the sole surviving widow and legal heir of late Indramani Mohapatra. In the representation dated 18.08.1992 (Annexure-A/2), the name of the widow is written as Pramila Mohapatra but in the document of identification of legal heirs dated 17.09.1995 (Annexure-A/3) 

the name is mentioned as Sarojini Mohapatra. No further action was allegedly taken by the Respondents for consideration of the prayer for compassionate appointment. It is submitted that applicant No.2 on being intimated met the Sr. Section Engineer, E.Co. Rly. Kalupada Ghat, Khurda (Respondent No.4) who handed over a letter dated 26.04.1994 (Annexure-A/6) issued by Respondent No.3 in which it was indicated that request of applicant No.2 for compassionate appointment had been regretted by the competent authority. While the matter stood as such, the applicant No.2 sent a letter dated 03.01.2003 to the Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division (Respondent No.3) in which she  mentioned that she was surprised and very much shocked by getting the order of rejection and did not know on what ground her case was rejected. She further mentioned that her two daughters have already attained majority and passed matriculation examination and therefore, compassionate appointment may be extended in favour of any of her daughters. Another 

representation dated 02.11.2009 (Annexure-A/9) was made by both the applicants to the Chief Personnel Officer, East Coast Railway, Bhubaneswar praying for compassionate appointment in favour of applicant No.1. Since no further reply was received by the applicants from the Respondents the applicant No.2 filed application under RTI Act and they were informed by the Respondents vide letter dated 17.01.2012 that in the absence of PPO No. of late Indramani Mohapatra it is not possible to locate the case file and the applicant was advised to submit the PPO No. so that the details could be supplied. Thereafter, the applicants being aggrieved ^{with} in the communication of the authorities filed this O.A before this Tribunal on 21.03.2012 praying for the relief as mentioned earlier.

3. Respondents have filed their counter affidavit mentioning that the claim made by the applicants in the present O.A. is grossly barred by limitation. The order dated 26.04.1994 (Annexure-A/6) which has been sought to be quashed was passed more than 17 years before the filing of the O.A. The delay in approaching this Tribunal has not been explained by the applicants. Further, according to the death certificate of the late employee, he expired on 13.07.1992 which means that the O.A. was filed after 20 years of death of the deceased Government employee. Therefore, the O.A. is grossly barred by limitation.

In the counter affidavit the authenticity of the documents filed by the applicants has also been challenged. In this regard, the Respondents have pointed out that the applicant No.2 i.e., the widow of the deceased Govt. employee ^{had} sworn an affidavit on 05.09.1992 in which the members of the family along with date of birth and relation with the deceased Govt.

[Signature]

employee have been mentioned. In this affidavit the name of the applicant No.1 i.e. Geetanjali Moapatra said to be the daughter of the deceased Govt. employee has not been mentioned. On the other hand, the name of Sarojini Mohapatra has been mentioned as the eldest daughter. The case of the Respondents is that even in the legal heir certificate issued by the Tahasildar, Banpur on 12.10.1992 name of applicant No.1 as daughter has not found place. Going by these documents the applicants in this O.A. have not come with clean hands and they have suppressed two important documents at Annexure Nos.-R/1 & R/2. The Respondents in the counter affidavit have therefore forcefully submitted that it is a fit case where the Tribunal should impose heavy costs on the applicant for suppressing documents under Annexure Nos.-R/1 & R/2 and asking for compassionate appointment for applicant No.1 who is an outsider and not the family member of the deceased Govt. employee. Moreover, in the present case the applicant No.2 had represented for compassionate appointment for herself and not for any of her children till the filing of the present O.A. On the question of merit, the Respondents have also submitted that at the time of death the deceased Govt. employee had not been regularized and was continuing as casual Gang Man. Therefore, his family members are not entitled to any appointment on compassionate grounds. More importantly, consideration of the prayer for compassionate appointment after a lapse of more than 20 years from the date of death when the cause of action arose, will be unsustainable under law and would also be a travesty of justice. It is also submitted that there is no record or information available with the administration since the connected file in this regard is not traceable after a lapse of more than 20 years. Based



upon the grounds as stated above, Respondents have submitted that this case is liable to be dismissed by this Tribunal.

4. Having heard the Ld. Counsel for both sides I have perused the records and the notes of arguments filed by the Ld. Counsel of both the sides.

5. The Respondents have brought serious allegations against the applicant No.2 regarding suppression of vital documents and also misrepresentation of this matter before this Tribunal. The authenticity of applicant No.1, the daughter of late employee has also been questioned since her name does not appear as the daughter of the late deceased Govt. employee in the affidavits sworn by the applicant No.2 and the legal heir certificate. The Ld. Counsel for the applicant has filed a detailed written note of submission which I have perused, but I do not find the specific charges alleged by the Ld. Counsel for the Respondents to have been controverted. Ld. Counsel for the applicant submitted that the concerned authorities have wrongly mentioned the names of legal heirs. But the question arises, in case there was mistake steps should have been taken by applicants for rectification of the same on an urgent basis. Therefore, I do not find any satisfactory explanation ^{from} ~~from~~ the applicants in this regard. This leads me to conclude that the applicants have not approached this Tribunal with clean hands.

6. The question of limitations stares at them as the applicants have challenged the order dated 26.04.1994. There is no doubt that this is a very cryptic order in which no reason has been assigned while rejecting the prayer of the applicants. In normal circumstances, the Respondents could

have been directed to reconsider the matter in detail. But in the present case this is not possible since the prayer is grossly barred by limitation. The Hon'ble Apex Court in the case of Bhakra Beas Management Board Vrs. Krishna Kumar Vij & another, 2010 (2) SCC (L&S) Page-649 has decided as follows:-

“Yet, another question that draws our attention is with regard to delay and latches. In fact Respondents 1's petition deserved to be dismissed only on that ground but surprisingly the High Court overlooked that aspect of the matter and dealt with it in a rather casual and cursory manner.


The applicant had categorically raised the ground of delay of 18 years in approaching the High Court for grant of the said relief. But the High Court has simply brushed it aside and condoned such an inordinate long and unexpected delay in a casual manner. Since we have decided the matter on merit, thus it is not proper to make avoidable observation, except to say that the approach of the High Court was neither proper nor legal.”

In case of Chairman UP Jal Nigam Vrs Jaswant Singh 2007 (1) SCC (L&S) Page-500 it has been held by the Hon'ble Apex Court that those who sit on the fence and wake up to take up the matter are not entitled to any relief. There are several decisions of the Hon'ble Apex Court observing that no relief should be provided by the Courts and Tribunals in cases where there has been unusual delay in claiming relief, since such relief will not only defeat the ends of justice but would affect adversely the rights of the third party. When it is proved by the records that the applicants have sat over the matter without any justifiable reasons it would not be possible to consider their prayers. The Ld. Counsel for the applicant has no doubt submitted that General Manager of the Railways has the discretion to consider the case after even a delay of 20 years and has quoted the Railway Board's letters Nos.E(NG)II/84/RC-1/26 & E(NG)II/99/RC-1/Gen/23 dated 06.10.1995 and



31.11.99. Perusal of these letters indicates that these powers of General Manager are about the justification of compassionate appointment based on a balanced and objective assessment of the financial condition of the family. Ld. Counsel for the applicant cannot selectively quote the guidelines of the Railway authorities in this regard, while ignoring to mention on what grounds the General Manager will be satisfied to exercise an extraordinary power. Even to claim such a special consideration the applicants should also have to come up with clean hands. When the authenticity of the applicant No.1 itself is called in question and important documents were not brought to the notice of the Tribunal, there is no question of issuing any direction to the General Manager for special consideration in this case. The submission of Ld. Counsel in this behalf is found to be totally unconvincing and unjustifiable.

7. Apart from the ground of delay and laches as well as limitation in filing of this O.A. there are certain important principles of compassionate appointment which need to be mentioned here. The scheme of compassionate appointment has been framed with a purpose to immediately help the family of the deceased after the death of the breadwinner. The scheme itself is an exception to the normal Rules of recruitment. Considering the purpose of the scheme, it is no doubt imperative that the consideration of compassionate appointment has to be done within a reasonable period of time. In the case of Umesh Kumar Nagpal Vrs. State of Haryana 1994 (2)SCC (L&S) Page-138, the Hon'ble Supreme Court has very lucidly laid down the objective of this scheme and also mandated that appointment on compassionate ground is not a vested right which can be



exercised at any time in future. It is not acceptable that the applicants can wake up at any point of time and approach the Tribunal praying for compassionate appointment. In fact such a prayer after lapse of a long period would lead the Tribunal to draw an inference that the applicants' family may not be needing compassionate appointment since the period of acute distress is over. As already observed, compassionate appointment is not a method of recruitment to public posts and it is only an exception. It has to be considered strictly in accordance with the scheme.

8. The applicants in the present O.A. have completely failed in establishing the case that their prayer for compassionate appointment needs to be reconsidered. The O.A. is therefore dismissed both on merit as well as on the ground of limitation. Although the Learned Counsel for the Respondents have prayed for costs to be imposed on the applicants, on consideration of the overall circumstances of the case, I do not feel inclined to pass any order as to costs.


(R.C. MISRA)
MEMBER(A)