

In the Central Administrative Tribunal
Calcutta Bench

OA No.825 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Nivas Rao

Vs.

S.E. Railway

For the Applicant : Mr. D.K. Chatterjee, I.d. Advocate

For the Respondents: Ms. B. Ray, I.d. Advocate

Heard on : 22-6-1998

Date of Judgement : 22-6-98

O R D E R

The applicant, being a son of the medically de-categorised railway employee, namely, Shri R. Rama Rao, has approached this Tribunal for direction upon the respondents to consider the case of the applicant for appointment on compassionate ground on the ground that the father of the applicant was declared medically de-categorised on 28-7-85 and he was compelled to take voluntary retirement from the service w.e.f. 28.7.85. After having been retired on the ground stated therein, the father of the applicant applied for appointment on compassionate ground of his son on 25.5.91 before them and it is found that the Secretary, DRSB at Adra requested the Divisional Railway Manager, South Eastern Railway for consideration of the said employee on compassionate ground. After attaining majority the applicant Shri N. Rao again applied for appointment on compassionate ground and that has been duly turned down by a letter dated 12.3.96 written by the Divisional Personnel Officer, South-Eastern Railway, Adra (Annexure 'A-7' to the application). Feeling aggrieved and dissatisfied with the said order of refusal for appointment on compassionate ground, the

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applicant approached this Tribunal for direction upon the respondents to consider the case of the applicant afresh for appointment on compassionate ground. Case of the applicant is that at the time of retirement of applicant's father, applicant was minor and he attained majority on 21.10.91 ~~since his~~ date of birth as per certificate is 21.10.73.

2. The case of the applicant is resisted by the respondents by filing a written statement in this case and it is stated by the respondents that father of the applicant applied for appointment on compassionate ground of his (i.e. applicant) and that has been rejected by the authority after due consideration vide letter dated 10.3.92 (Annexure 'R-1' to the reply) and father of the applicant did not come to the Tribunal against that order of refusal dated 10.3.92. Now son of the employee has come before this Court against the impugned order of refusal dated 12.3.96 (Annexure 'A-7') and it is stated that the application is hopelessly barred by limitation. It is also stated by the respondents in their reply that applicant's father was medically declassified and on that ground he took voluntary retirement on 26.7.85 and applicant applied for appointment in the month of September, 1991 after a period of 7 years and in terms of the Estt. Srl.No.106/85 request for appointment on compassionate ground should be sent within a period of 5 years to the competent authority. In this case the said request was received after 5 years. Copy of the said Estt.Srl.No.106/85 is annexed herewith (Annexure 'A-8' to the application). Ultimately, Chief Personnel Officer has communicated the Board's decision dated 12.3.96 (Annexure 'A-7' to the application) and thereby application is liable to be dismissed.

3. Lt. Advocate Mr. Chatterjee on behalf of the applicant submits that the applicant attained majority in the year of 1991 and prayer made by the father of the applicant was rejected on 10.3.92 (Annexure 'R-1' to the reply) with a reason stated therein. According to the Lt. Advocate Mr. Chatterjee, as per railway circular dated 6-5-85

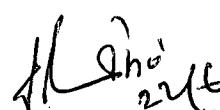
(Annexure '8' to the application) the request for compassionate appointment should have been received by the railway administration as soon as the son or daughter to be considered for compassionate appointment has become a major, say within a period of 6 months which has been extended by subsequent amendment upto 1 year. So, as per clause 7 of the railway circular dated 6.5.85 (Annexure '8' to the application) the case ought to have been considered by the respondents for appointment on compassionate ground without disposing the application on the ground of limitation as mentioned in the letter dated 10.3.92 (Annexure 'R-1' to the application). However, Mr. Chatterjee submits that the respondents be directed to consider the case of the applicant afresh for the end of justice.

4. Ms. Ray, on behalf of the respondents, contended that the application is barred by limitation in view of the circumstances that the applicant suppressed the rejection order dated 10.3.92 (Annexure 'R-1') and the father of the applicant did not challenge the said order dated 10.3.92 (Annexure 'R-1') before the competent Court of Law or Tribunal. The applicant has come before this Tribunal with this fresh application suppressing the said facts of the rejection of the earlier prayer for appointment on compassionate ground. So, applicant is debarred from getting appointment on compassionate ground under the scheme framed by the railway for the said purpose. Lt. Advocate Mr. Chatterjee also relied on a decision reported in OA No.286 of 1993 Sakina Khatoon & Anr. Vs. Union of India & Ors. dated 18.8.93 passed by this Tribunal that the applicant is entitled to get benefit of appointment on compassionate ground.

5. I have considered the submissions of Lt. Advocates of both the parties. It is admitted that the applicant was declared unfit on being medically de-categorised on 26.7.85 and he also took voluntary retirement w.e.f. 26.7.85. It remains undisputed in this case that the applicant was minor on the date of retirement of his father on 26.7.85 and according to the present application, he attains majority on 21.10.91 on attaining the age of 18 years. So, applicant has no scope for

getting appointment before 1991. So, as per earlier circulars of the Railway Board, it appears that the earlier limitation for receipt of the application for compassionate appointment was 6 months after attaining the majority by the dependent of the deceased employee and that was subsequently extended to one year. It is found from the Estt.Srl.No.106/85 of clause 7 of the said circular that request for appointment should have been received by the railway administration as soon as the son or daughter to be considered for appointment on compassionate ground has become a major - within maximum period of 1 year. So, the respondents were not justified in rejecting the prayer on ground of limitation stating that the case is beyond 5 years time limitation ^{from} ~~on~~ the date of medically de-categorised (i.e. 26-7-85). But in the instant case, the father of the applicant did not challenge the said order dated 10.3.92 (Annexure 'R-1' to the application). It is found that applicant attained majority on 21.10.91 and applicant did not challenge the impugned order of refusal before the competent Court of Law. He applied for appointment in the year of 1996. It is seen that Hon'ble Appex Court in a case of U.P. Vs. Paresh Nath 88 SCC(I&S) 570, held "the purpose of providing employment to a dependent of a Government servant dying in harness in preference to ~~any~~ anybody else is to mitigate the hardship caused to the family on account of unexpected death while ^{in the way} ~~still~~ in service and such appointments are permissible on compassionate ground provided there are rules providing for such appointment. The purpose of the scheme is to provide immediate financial assistance to the family of the deceased govt. servant; none of the consideration can operate when the application is made after a long period of time". By catina decisions, the Hon'ble Appex Court disapproved the order of the Tribunal entertaining the belated claim of the appointment on compassionate grounds, because such consideration cannot be kept binding for years together. Keeping these decisions of the Hon'ble Appex Court in my mind, I find that the applicant filed this application on 25.7.96 after being aggrieved

by the order dated 12.3.96 (Annexure 'A-7' to the application) suppressing the fact of earlier rejection order (Annexure 'R-1' to the reply). No explanation has been given by the applicant as to why his father did not approach this Tribunal or Court of Law, if he was aggrieved by the said order dated 12.3.92. I find that the applicant has suppressed the material facts in his application. In order to get a discretionary relief from the Court, applicant must come with clean hand for getting appropriate relief. In the instant case I find that application also suffers from suppressing material facts and thereby, application is devoid of merit and hence it is rejected awarding no costs.


(D. Purkayastha)
Member(J)