

In the Central Administrative Tribunal
Calcutta Bench

OA No.954/1996

Present : Hon'ble Mr.S. Biswas, Member(A)

Swapn Bhadra, alias Swapn Kumar Bhadra, S/o Late B.K. Bhadra,
Mandirpara, P.O. Jagacha, Dist.Howrah

..Applicant

-Vs-

1) Union of India represented by GM, S.E. Rly, Garden Reach,
Calcutta-43

2) DRM, S.E. Rly, Kharagpur Dn., Kharagpur-1

3) The Medical Superintendent (Incharge) S.E. Rly General
Hospital, Garden Reach, Calcutta-43

4) The Asstt. Mechanical Engineer (Carriage and Wagon), S.E. Rly,
Santragachi, P.O. Jagacha, Dist.Howrah

...Respondents

For the applicant : Mr M.M. Roy Choudhury, Counsel

For the respondents : Mr.K.C. Saha, Counsel

Date of Order : 24/11/03

ORDER

Mr.S.Biswas, Member(A)

The applicant, being the eldest son of the deceased employee, his father, has sought appropriate direction upon the respondents so that an employment opportunity by way of compassionate appointment in Gr.D posts is granted to him.

2. The applicant's case is that he is the eldest son of the deceased employee Late A.K. Bhadra who died in harness on 16-4-88. The family received retiral dues as per rule. He had initially promised to forego his legitimate claim for compassionate appointment in favour of his younger brother, i.e. the third son of his father, but as statedly his youngest brother Shankar could not get the job due to medical reasons, the applicant thereafter made contact with Divisional Manager personally for a job and Inspectors visited him for the purpose but as no job was offered he made his first formal representation

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on 16-10-95.

3. Heard rival counsel. Went through the records in OA and related legal and factual submissions by both counsel.

4. The learned counsel for the applicant submitted an affidavit alleging that R2 and R3 as filed in reply are documents prepared by his second brother, Tapan in collusion with others to cause deprivation to him. He was never appointed ~~on~~ regular basis as alleged in Hindusthan Dev. Corporation. He was admittedly engaged there only as Badli Labour. His second brother is absconding. He was not fully paid his full share of settlement dues as he was told differently that his other brothers were made nominees. His mother has also since expired.

5. The applicant's case is vested on the ground that the Railway Authority by virtue of S.No.163/91 dated 26-8-91 is competent to grant compassionate appointment to other brothers within 5 years of death. Thereafter, only the eldest son is eligible to be entertained and considered for compassionate job opportunity. This is also supported by legal judgements.

6. Having considered the submissions of both sides, I find that the father of the applicant, the employee expired on 16-4-88. The official circular No.163/91 clarifies the phases of time limit by which near relatives could be considered for compassionate appointment. The relevant extract is reproduced below :

"General Managers could consider cases of compassionate appointments to other than first child only within 5 years of death, as mentionead in para 3 of Board's letter No.E(NG)-II/84/RC-1/172 dt.01-3-85, whereafter the claim will lapse. Beyond 5 years, cases could be considered only in respect of the first ward (son/daughter) but only upto 10 years from the date of death of the deceased employee."

7. This application has been made within this clarificatory 10 years though, but the first representation by the applicant dated 16-10-95 was itself submitted after 7 years. He has come to Tribunal after 8 years of his representation.

8. However, the respondents have stoutly disputed the facts and legality of the OA stating that the applicant has made

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out a false and fabricated story to claim compassionate job to him by a belated application, by further suppression of facts that following his father's death, ^{the} youngest brother Shankar along with Tapan had filed a representation on 28-9-89 in favour of Shankar, which, the applicant has also admitted. The cited clarification in S.No.163/91 dated 26-8-91 in my view only provides that beyond 5 years of death if no representation is there from other eligible relatives the 1st son would be eligible. In this case other brothers had made an application already in 1989 which was considered and more so the applicant himself statedly in Annexure R2 gave his forfeiture of claim in favour of Shankar as early as on 10-2-90. Therefore, the present OA is not covered within the clarificatory provision of the order dated 26-8-91 - more so because the applicant stated in his letter that he was working as a Khalasi himself. The OA is therefore time barred and not factually supported by clear cut evidence in favour of the applicant to deserve compassionate facilitation.


9. The respondent authorities in submitting their reply have averred filing a draft copy of the proposed appointment letter to Shankar, which was evidently an outcome to the joint representation made by two younger brothers in 1989. Hence, I find no justification to give any direction upon the respondents for consideration of the representation of 1995 to the former.

10. Why the said order to Shankar was not issued is not in question in this OA.

11. Apart from delay, and non-bona fide claim of the applicant by misrepresenting facts and ^{held-out} contradictions, it was decided in the case of Managing Director MMTC Ltd, New Delhi and another V.Promoda Dei reported in 1997(11)SCC 390 that the object of compassionate appointment is to enable the family to tide over the sudden financial crisis not to just provide employment. After 15 years, and also after the death of the widow, I find that the period of indigent and financial crisis does not hold out for

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consideration. The applicant is in same sort of a job, apart from being matured adult of nearly 40 years of age. In this case the employee died in 1988. The present application was filed in 1996 and today it is 2003 end. The applicant is managing himself. This is evidently not an exceptional case and indigent phase of the case when the widow is also not alive. The OA is dismissed as devoid of merits. No costs.


Member(A)