

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,

J O D H P U R

DATE OF ORDER : 15.07.98.

C.A. NO. 45/97

Magha Ram S/o Shri Teekama Ram,
Former Gateeman, C/o P.W.I., Northern
Railway, Jodhpur. R/o Vill. & Post
Ratasar, Teh. Chouhatan, Dist. Barmer. ... Applicant.

Versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Jodhpur. ... Respondents.

C O R A M

HON'BLE MR. A.K. MISRA, JUDICIAL MEMBER

Mr. D.C. Sharma, Counsel for Applicant.
Mr. S.S. Vyas, Counsel for Respondents.

O R D E R

BY THE COURT :

The applicant has filed this C.A. with the prayer that respondents be directed to consider the case of the applicant for appointment on compassionate ground.

2. Notice of the application was given to the respondents who have filed the reply. In reply the respondents have stated that after the death of the applicant's father compassionate appointment was offered to the applicant's mother who refused the compassionate

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appointment. Thereafter, the case of the applicant was considered for compassionate appointment on the application of the applicant himself. The case of the applicant was not found meritorious for compassionate appointment, therefore the same was rejected vide order dated 22.12.92. The applicant has not been able to show penurious circumstances for appointment on compassionate ground. Moreover, the case of the applicant was submitted after the lapse of the permissible time limit, hence the same was rejected. The OA has been filed belatedly, therefore the same also deserves to be rejected.

3. I have heard the learned counsel for the parties and gone through the record.

4. The father of the applicant died on 30.9.1979 while he was in harness as Gateman under the P.W.I., Jodhpur. At that time, the applicant was nearly six years old. In the year 1980 applicant's mother applied for compassionate appointment due to the death of her husband. The application was registered by the respondents for consideration. Thereafter when the applicant's mother was offered appointment on compassionate ground she expressed her inability due to domestic circumstances. In the year 1987 applicant's mother again submitted an application to the concerned authorities with a request that his son is still minor and the case of his son be considered for compassionate appointment as and when he attains majority. In this application she mentioned the date of birth of her son as 1.7.1973. The same request was repeated by her in the year 1991 vide Annex.A/4 and vide subsequent application dated 22.1.1992, Annex.A/5. Thereafter, the

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mother of the applicant died on 12.8.1992 as mentioned in application Annex R/7. After the death of his mother applicant moved an application for compassionate appointment on 23.9.1992 vide Annex R/7 but the case of the applicant was rejected on the ground that his case is time barred vide Annex R/1. He was further informed that within five years of the death of the employee or on attaining the age of 18 years the first child of the deceased should apply for compassionate appointment, as the applicant had done neither of the two, therefore, his case can not be considered.

5. From these facts it appears that the case of the applicant was rejected solely on the ground that he did not apply in time after attaining majority but in my opinion this ground taken by the Railway for rejecting the case of the applicant is difficult to sustain in view of the series of applications filed by the mother of the applicant for consideration of the case of the applicant for compassionate appointment on his attaining majority.

6. The concerned Railway authorities have taken the stand for rejecting the claim of the applicant that the date of birth of the applicant has been mentioned as 1.7.1971 by his mother at the time of claiming death-cum-retirement benefits of the deceased Railway employee whereas in subsequent applications the date of birth of the applicant has been mentioned as 1.7.1973. But this stand seems to be baseless in view of the certificate of the Headmaster of Ratasar School (Barmer District), a copy of which has been produced by the

respondents. This certificate clearly mentions that the date of birth of the applicant as per admission register entry No. 420 is certified as 1.7.1973. The Headmaster of the School is a quite responsible officer. when he has issued such certificate which is based on school entry and the Railway authorities have no occasion to disbelieve the same. It appears that the respondents found faults for rejecting the application of the applicant. In my opinion, the application of the applicant should have been treated to be in continuity of the application for compassionate appointment submitted by his mother from time to time starting from 1987 till January 1992. Moreover, the claim of the applicant was also sponsored by the Northern Railway Mens Union vide its letter dated 22.6.1992, Annex.A/6 and 11.11.1992, Annex.A/2. In view of all this it was unfortunate that the respondents had come to the conclusion that the application of the applicant was not submitted within the prescribed time limit. In my opinion this amounted non consideration of the applicant's candidature for compassionate appointment on merits. Therefore, the rejection order Annex.R/1 is difficult to sustain.

7. Learned counsel for the respondents has argued that the entire policy of compassionate appointment is to provide appointment to a member of penurious family of the deceased Railway employee and not to provide employment. Therefore, the applicant ~~should~~ who has been able to sustain himself for such a long time after the death of his father, cannot be provided

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with compassionate appointment because of the death of his father. I have considered this aspect also. The applicant was barely of six years old at the time of death of his father. As per date of birth entered in the school register he attained majority on 1.7.91. Uptill that time applications for applicant's compassionate appointment were already with the respondents which were moved by his mother and in each of them she had requested the authorities that as and when applicant attains majority, he may be provided with employment. Therefore up to July 1991 the Railway had no excuse to reject the candidature of applicant for compassionate appointment on the ground of penurious circumstances etc. Since on completion of 18 years the applicant was not provided compassionate appointment by the Railway as per their own policy, they cannot come round and say that the case of the applicant is barred by time. There is also nothing on record to show that Annex. R-1 was ever received by the applicant. Therefore, the allegation of the respondents that rejection of his application was communicated to the applicant as far back as December, 1992 is difficult to believe. In any case since the respondents themselves did not consider the case of the applicant for compassionate appointment inspite of pendency of applications moved by his mother therefore the application of the applicant dated 23.9.92 cannot be said to be belated application. It could at the most be taken to be a reminder of his previous applications. On this ground also the rejection of the application for compassionate appointment by the respondents is un-sustainable.

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8. In view of the foregoing discussion, I come to the conclusion that the O.A. deserves to be accepted.

9. The O.A. is therefore accepted and the respondents are directed to consider the case of the applicant for compassionate appointment as per Rules, and as per the educational qualification of the applicant within a period of three months from the communication of the order.

10. The parties are left to bear their own costs.

AM (15/7/98)
(A.K.MISRA)
Member
(Judicial)

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