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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 28.06.2001

O.A. No. 407/1999

Om Prakash Meena son of late Sukhi Ram Meena aged about 28 years, resident of village and post Kheri, District Karoli (Rajasthan), ward of Ex-Locomotive Driver, Northern Railway, Merta Road, District Jodhpur (Rajasthan).

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Secretary Establishment, Railway Board, New Delhi.
3. Divisional Railway Manager, Northern Railway, Jodhpur.

... Respondents.

Mr. S.K. Malik, Counsel for the applicant.

Mr. Manoj Bhandari, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed for a direction to the respondents to appoint the applicant on compassionate grounds. The applicant contended that his father Sukhi Ramji expired on 29.02.72, while he was working as a Driver at Loco Shed, Merta Road. He stated that he left behind his widow and 4 children, and at the time of his death, the eldest son was only 3 years of age. His widow, i.e., the mother of the applicant did not apply for the employment on compassionate grounds because there were small children at the time of death of the deceased father, Sukhi Ramji. The eldest son Shri Jag Raj was adopted by Shri Sanwal Ramji, brother



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the father of the applicant, on 3.6.71. In these circumstances, the mother of the applicant applied for appointment on compassionate grounds, requesting the respondents to appoint the applicant, Om Prakash Meena, vide Annexure A/1 dated 20.09.89. At the time of the application, the applicant had completed 17 years of age and his date of birth is 20.09.71. In the year 1993, the applicant was asked by the respondents to submit an affidavit that his elder brother, Shri Jag Raj, had gone in adoption to his uncle, Shri Sanwal Ramji, and accordingly, an affidavit of Shri Sanwal Ram Meena dated 2.3.93 was submitted vide Annexure A/2, stating that the applicant's eldest brother, Shri Jag Raj was adopted on 3.6.71, with the permission of his father, Shri Sukhi Ram. The applicant stated that his eldest brother, was adopted when he was 2 years 7 months, and as such, his name was not included in the members of family, while applying for appointment on compassionate grounds. The department being of the opinion that, the alleged adoption of the eldest son of the deceased, by name, Jag Raj Meena, by his uncle, Sanwal Ramji, was not acceptable to the department on the basis of the affidavit filed by Sawal Ram Meena, hence the deceased family had in all 5 members, consisting of widow, 2 daughters and 2 sons, and the eldest 2 daughters have been married of on 3.3.79 and 12.5.81 respectively, and as such there is a delay of more than 15 years, and the department wrote a letter vide Annexure A/4 to the Railway Ministry for releaxation. Thereafter, the applicant had also requested Smt. Usha Meena, Member of Parliament, to write to the Government regarding compassionate appointment to the applicant, and accordingly, the Member of Parliament wrote a letter to the Government vide Annenxure A/7 dated 8.4.99. Inspite of such representations, nothing was heard from the respondents. Therefore, the applicant prays for a direction to the respondents to consider the case of the applicant for appointment on compassionate grounds.

2. By filing counter, the respondents have denied the case of the applicant. They have stated that the application is barred by time since

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the applicant's father died in the year 1972. and the applicant submitted an application in the year 1990 vide Annexure R/1 dated 20.3.90, after more than 18 years have lapsed, and as such, the application is liable to be dismissed on the ground of delay and laches. They have also stated that the cause of action arose to the applicant on the death of his father on 29.02.72, and such cause of action was beyond three years from the constitution of this Tribunal, and hence, the cause of action is beyond jurisdiction of this Tribunal. They have also stated that vide Annexure R/3 dated 14.09.95, the representation made by the applicant's mother for appointment on compassionate grounds has been rejected by the Railway Ministry, and the said order has been communicated to the applicant. But the applicant has suppressed the said letter dated 14.09.95, and has filed the present application. Since an order was already passed on 14.9.95, rejecting the case of the applicant, the present application is barred by time under Section 21 of the Administrative Tribunals Act, 1985, in which only one year period is prescribed, whereas this application was filed only in the year 1999, nearly after 4 years of the said order. The respondents have also contended that the applicant has not produced any proof regarding the adoption of the eldest brother, Shri Jag Ram, to his uncle Sanwal Ramji, and he has also not given any proof that the eldest son was only 3 years of age at the time of the death of his father. It is stated that the widowed mother would have applied for appointment on compassionate grounds after the death of his father, and she has also not done. And it is only after 18 years of the death of his father, the present application has been filed by the applicant, Om Prakash Meena, for appointment on compassionate grounds. This application is, therefore, liable to be dismissed even on merits. They have also stated that on the basis of the letter addressed to Shri Madho Ram, Senior Personnel Officer/R.P, Northern Railway, New Delhi, it is clear that the case of the applicant has already been rejected vide Railway Board's letter 22.08.95, and the same is filed at Annexure R/5. The applicant has not



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challenged that rejection order. They have also relied upon the Railway Board's letter dated 28.07.2000 vide letter No. E(NG)II90/RC-1/64, and contended that the case of long delay of 5 years and 20 years are to be considered by the Railway Board and on delegation by the General Manager. Keeping in view of the guidelines of the Board, the case of the applicant has been considered and it has been rejected, and the same was communicated to the applicant's mother vide Annexure A/3 dated 14.09.95. In these circumstances, the applicant is not entitled to appointment on compassionate grounds.

3. Heard the learned counsel for the parties.



4. The learned counsel appearing for both the sides highlighted and elaborated the pleadings on both sides. The learned counsel for the applicant contended that it is a fit case for appointment on compassionate grounds. He relied upon the judgement of Hon'ble the Supreme Court in (1989) 4 SCC 468 = 1989 SCC (L&S) 662 (Smt. Sushma Gosain and Ors. vs. Union of India & Ors.), and AIR 2000 SC 1596 = 2000 (4) Supreme 602 (Balbir Kaur & Anr. etc. vs. Steel Authority of India Ltd. & Ors.). On the other hand, the learned counsel for the respondents relied upon the judgements reported in 1995 (6) SCC 476 (Union of India & Ors. vs. Bhagwan Singh), 1998 (2) SCC 412 (State of U.P. and Ors. vs. Paras Nath), (2000) 7 SCC 192 (Sanjay Kumar vs. State of Bihar & Ors.), 1980 (3) SLR 18 (Shri Gian Singh Mann vs. The High Court of Punjab and Haryana and Anr.), (1989) 4 SCC 582 (S.S. Rathore vs. State of Madhya Pradesh), AIR 1986 SC 2086 (K.R. Mudgal and Ors. vs. R.P. Singh & Ors.) and JT 1994 (3) SC 525 (Umesh Kumar Nagpal vs. State of Haryana & Ors.), contending that the application is liable to be dismissed on merits as well as on the ground of limitation. He also submitted that the compassionate appointment is to be provided immediately on the death of the deceased employee to mitigate the financial hardship caused to the family on account of his unexpected death, while he was in service, as

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already held by Hon'ble the Supreme Court in more than one judgements. Therefore, it is not a fit case for appointment on compassionate grounds. Accordingly, the application is liable to be dismissed.

5. Keeping in view all the pleadings of both the parties and the arguments addressed at the Bar, we have to see whether there are merits in the application for appointment on compassionate grounds. Taking up the point raised by the respondents regarding limitation, we find that the respondents decided the case of the applicant refusing to appoint on compassionate grounds vide Annexure R/3 dated 14.09.95, and the same has been communicated to the applicant's mother, Smt. Panchi. The department has specifically averred in the reply that this decision/letter has already been communicated to the mother of the applicant, and this fact has not been denied by the applicant neither in the pleadings nor by filing a rejoinder. We do not find any reference of the said order in the entire application. From this, it follows that the applicant has purposefully suppressed the said order dated 14.09.95, finding it to be inconvenient on the point of limitation. The fact remains that from the date of the order dated 14.09.95, the application is barred by time under Section 21 of the Administrative Tribunals Act, 1985. Under that Section, the period of limitation prescribed ^{is} only one year from the date of the order and that limitation expires in the month of September, 1996, whereas the present application is filed on 28.12.99, nearly after 4 years from the date of the order. If that is so, the application is liable to be rejected on the ground of limitation alone. However, the case of the applicant is that he has been making representation to the department, including the one made thorough the Member of Parliament. But Hon'ble the Supreme Court has pointed out in 1999 SCC (L&S) 251 (Union of India vs. S.S. Kothiyal and Others) that the repeated representations do not extend cause of action. In para 3 of the said judgement, Hon'ble the Supreme Court has observed as under:-

"3. In our opinion, the admitted facts of this case alone are



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sufficient to reverse the judgement of the learned Single Judge as well as that of the Division Bench of the High Court. According to the version of the respondent 1 himself, his representation against non-promotion as Deputy Commandant was rejected on 10.6.1971, the second such representation made on 19.8.1971 was rejected on 4.11.1974 and the third representation made on 12.4.1977 was rejected on 11.7.1977. It is obvious that on rejection of his representation in June 1971, there was no occasion for Respondent 1 to wait any longer to challenge his non-promotion and, therefore, the filing of the writ petition 8 years thereafter in December, 1978; was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principles relating to interference in service matters of this kind in exercise of the power of judicial review. The learned Single Judge as well as the Division Bench of the High Court completely overlooked this aspect. The fact that respondent 1 waited for several years till he was actually promoted as Deputy Commandant in 1972 and even as Commandant in 1975 and more than three years elapsed even thereafter before he had filed the writ petition, is itself sufficient for rejection of the writ petition."

6. As per the above law declared by Hon'ble the Supreme Court, it is clear that this application is liable to be rejected on the ground of limitation only, as we have stated above. The period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, is only for one year, and there is even no application for condonation of delay also, and as such, this application is liable to be dismissed as barred by time, as held by Hon'ble the Supreme Court in 1997 (3) Supreme 555 (Hukam Raj Khinvsara vs. Union of India & Ors.).



7. Even on merits, we are of the opinion that the discretionary order passed by the respondents, rejecting the case of the applicant for appointment on compassionate grounds does not call for our interference for more than one reasons. It is an admitted fact that the applicant's father, Shri Sukhi Ram, expired on 29.02.72, leaving behind the widow, 2 daughters and 2 sons. 2 daughters being the eldest, were married of on 3.3.79 and 12.5.81 respectively. It is stated by the applicant that the third child, Shri Jag Raj Meena, was adopted by the younger brother of the deceased, Sanwal Ramji, during his childhood. But the department held that no proof has been submitted regarding his adoption, except one affidavit filed by Shri Sanwal Ramji, and as such, his adoption could not be accepted. But in our opinion, this finding

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does not call for any interference, since no other material^a is produced before us to come to a contrary conclusion. Moreover, it is also not in dispute that the applicant's date of birth is 20.09.71, and accordingly, he attained the age of 18 years on 20.9.89. It is also not in dispute that the applicant's 2 elder sisters were married on 3.3.79 and 12.5.81 respectively. In these circumstances, it cannot be said that the family was in indigent condition, deserving for an appointment on compassionate grounds. The applicant admittedly^{is} the youngest child, and the compassionate appointment has not been sought for other elder children, namely, two daughters and one son, immediately after the death of his father in the year 1972. In other words, if the family were to be in indigent circumstances in the year 1972, the widowed mother could have sought the appointment or any one of the daughters could have sought appointment. Even the elder brother of the applicant did not seek appointment on compassionate grounds. Therefore, it is difficult for us to hold that after 28 years of the death of the deceased employee, the family is in indigent circumstances, so as to warrant ~~an appointment~~ an appointment on compassionate grounds. In JT 1994 (3) S.C. 525 (Umesh Kumar Nagpal vs. State of Haryana & Ors.), Hon'ble the Supreme Court laid down the law that the appointment on compassionate grounds is not a matter of course, and such an appointment may be made in case where the family is tied over by the financial crisis, and for relieving such family from the indigent circumstances. We think it appropriate to extract the relevant part of the judgement as under :-

"2. The question relates to consideration which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family will not be able to make both ends



meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authorities concerned has to examine the financial conditions of the family of the deceased, and it is only if it is satisfied that but for provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Class III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family of the financial destitution and to help it get over the emergency. The provision of employment in such lowest post by making an exception to the rule is justiciable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.



3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial conditions of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we had not been in a position to appreciate the judgements of some of the High Courts which have justified and even directed compassionate appointment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain & Ors. vs. Union of India & Ors.* [(1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgement that the State Government had made at least one exception and provided compassionate appointment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S, B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant....."

8. In 1998 (2) SCC 412 (*State of U.P. and Ors. vs. Paras Nath*), Hon'ble the Supreme Court has further pointed out that making an application for appointment on compassionate grounds to one of the sons of the deceased after 17 years of the death of the deceased employee, was totally

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erroneous. We think it appropriate to extract the relevant portions of the said judgement as under:-

"5. The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgement of this Court in the case of Union of India vs. Bhagwan Singh. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This court observed :-

"The reason for making compassionate appointment, which is exceptional is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family."

7. No such considerations would normally operate seventeen years after the death of the Government servant. The High Court, was therefore, not right in granting any relief to the respondents."

9. In view of the consistent law declared by Hon'ble the Supreme Court, we are of the opinion that the applicant is not entitled for appointment on compassionate grounds, as held by the respondents vide Annexures R/3 and R/5. These annexures have not been challenged by the applicant for the best reasons known to him. However, the learned counsel for the applicant relied upon the judgements of Hon'ble the Supreme Court reported in 1989 SCC (L&S) 662 and 2000 (4) Supreme 602, in support of his contentions. These 2 judgements do not apply to the facts of the present case. In 1989 SCC (L&S) 662, Hon'ble the Supreme Court held that when an employee dies in harness, to relieve the family from hardship, the employee could be provided appointment on compassionate grounds, and the ban imposed by the Government should not come in the way of such employee. In 2000 (4) Supreme 602, Hon'ble the Supreme Court has pointed out that introduction of a family benefit Scheme or family pension, cannot be a ground to deny compassionate appointment. But in


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the instant case, facts are entirely different, and the present case is neither one concerned with the family pension nor a case of there being any financial benefit Scheme. Therefore, these judgements do not apply to the facts of the present case.

10. For the above reasons, we do not find any merit in the application, and accordingly, we pass the order as under:-

"The O.A. is dismissed. But in the circumstances, without costs."


(A.P. NAGRATH)
Adm. Member


(Justice B.S. Raikote)
Vice Chairman

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