

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.36 of 1997

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

SMT.GITA KUMARI, D/o
Late Bachiya Devi, residing
at 14, Uma Charan Bose Lane,
Shibpur, Howrah-1.

... Applicant

Vs.

1. Union of India through the Secretary,
Ministry of Railways, Railway Bhawan,
New Delhi-1.
2. The General Manager, Eastern Railway,
17 N.S.Road, Calcutta-700 001.
3. The Chief Personnel Officer, Eastern
Railway, 17 N.S.Road, Calcutta-1.
4. The Senior Divisional Personnel Officer,
Eastern Railway, Howrah.
5. The Divisional Railway Manager, Eastern
Railway, Howrah Division, Howrah.

... Respondents

For the applicant : Mr.K.Sarkar, counsel.

For the respondents: Mr.P.K.Arora, counsel.

Heard on : 10th June, 1998.

Order on : 10th June, 1998.

ORDER

The Applicant, Smt.Gita Kumari, daughter of Late Bachiya Devi, who was a female Safaiwala and had died in harness in the year 1978, has filed this application praying for a direction upon the respondents to give her compassionate appointment.

2. At the time of death of Bachiya Devi, the applicant ^{as} ~~is her~~ elder daughter, was a minor. According to the applicant, she attained majority in the year 1983. Thereafter she applied for appointment on compassionate ground and the respondents accepted her application and engaged her to work as Hot-Weather

Water Carrier as a casual labour on a daily rate^{2 basis} in March, 1987, as per the letter at annexure 'A/1' to the application. However, that letter was received by the applicant after a lapse of two months due to postal delay and when she reached the office of the respondents to work in that capacity, the vacancy was closed. However, the respondents assured the applicant that she will be called after a few days for the screening test. The applicant filled up her biodata as per annexure 'A/2' to the application and submitted the same to the respondents. Subsequently, she applied again for appointment on compassionate ground to the Sr.Divisional Personnel Officer, Eastern Railway, Howrah, on 5th June, 1990, and by a letter dated 23.8.1994 from the Office of the Divisional Railway Manager, Howrah, the applicant was called for a screening test on 26.8.1994 at 1100 Hrs., for appointment in Group-D (Class IV) post. The applicant appeared in the said screening test. ^{^ She was Selected. ✓} However, by the letter dated 24th May, 1996, the respondents rejected the prayer of the applicant for compassionate appointment (annexure 'A/5' to the application), stating "after considering all aspects, the competent authority has not approved your appointment on compassionate ground. ~~This is for your information please.~~" Feeling aggrieved ^{by} the order dated 24th May, 1996, the applicant has approached this Tribunal by filing this application praying for granting her compassionate appointment. It is alleged that the impugned order passed by the respondents is devoid of reason as they have not stated why her application was ~~not~~ found to be ^{devoid} of merit by the competent authority for granting her appointment on compassionate ground.

3. The case is resisted by the respondents by filing a reply stating inter alia that the mother of the applicant expired on 14.7.1978 and consequent upon her death, Smt.Gita Kumari, her daughter, made an application for her appointment on compassionate ground on 28.7.1993, after a lapse of more than 15 years. Since the case was beyond the competency of the divisional level, it was referred to the Head Quarters Office for necessary approval

of the competent authority being a time barred case. After considering all aspects of the case, the competent authority did not consider it to be a fit case for forwarding the same to the Railway Board for relaxation of time on compassionate ground. The applicant was duly informed vide the letter dated 24.5.1996 (annexure 'A/5' to the application). It is also stated that as a pre-requisite formality for appointment, she was called for the screening test. Accordingly, her case was forwarded to the Head Quarters Office for consideration at the Head Quarters level as a time barred case.

4. Id.counsel, Mr.K.Sarkar, appearing on behalf of the applicant submits that the applicant on attaining majority, applied for appointment on compassionate ground and she was offered the work of casual labour but she could not join the work because of non-availability of vacancy at that time. Accordingly, the applicant made a representation to the authorities on 5th June, 1990. She was also called for a screening test which was held on 26.8.1994 for appointment in Group-D (Class-IV) post on her application for compassionate appointment. It is submitted by the Id.counsel for the applicant that it is not the case of the respondents that the applicant was not found suitable for appointment on compassionate ground after holding of the screening test. Her case was forwarded to the authority for consideration, but the competent authority rejected the prayer for appointment of the applicant without assigning any reason. Thereby Mr.Sarkar submits that the impugned order of refusal is highly arbitrary and illegal and violative of the principles of natural justice.

5. Mr.P.K.Arora, Id.counsel for the respondents, submits that the application is barred by limitation since the mother of the applicant died in the year 1978 and the applicant applied for her compassionate appointment on 28.7.1993 after a lapse of 15 years from the death of her mother. Such a case is not covered by the scheme framed by the Govt. of India for the purpose of compassionate appointment which has been annexed by the respondents as annexure 'R' to the reply. Mr.Arora further submits that there is no whisper in the application that the applicant sought for appointment on

compassionate ground after the death of her mother, being in a distress condition. Hence, Mr.Arera submits, this application for appointment has been filed by the applicant for enforcing her right for getting an appointment not on compassionate ground. Mr.Arera further submits that the case of the applicant for appointment on compassionate ground was considered by the authorities and was found belated by 15 years and hence she was not found eligible for the same.

6. I have considered the submissions of ld.counsel for both the parties.

7. I find that the impugned order dated 24th May, 1996 (annexure 'A/5' to the application) passed by the Sr.Divisional Personnel Officer, Eastern Railway, Howrah, does not bear any reason for which the applicant's case was not found suitable for appointment on compassionate ground. It appears that the respondents after the screening test, forwarded the case of the applicant to the competent authority as per the letter dated 23.8.1994 (annexure 'A/4' to the application), which clearly indicates that the applicant was called for a screening test in Group-D (Class-IV) post for appointment on compassionate ground. The applicant appeared in the screening test. It is not the case of the respondents that she was not found suitable in the screening test. It is found from the reply that the applicant was found fit in the screening test for appointment in Group-D post and hence thereafter referred her case to the competent authority. But the competent authority, after consideration of her case, did not assign any reason and most arbitrarily rejected her prayer for appointment on compassionate ground. It is a well settled law by a catena of decisions that the executive authority must act in accordance with the law and must pass an order disclosing the reason for which the application for appointment on compassionate ground has not been found to be suitable.

8. In the case of UOI & Ors. vs. E.G.Nambudiri (1991 (3) SCC 38), the Hon'ble Supreme Court held - "In governmental functioning before any order is issued the matter is generally

considered at various levels and the reasons and opinions are contained in the notes on the file. The reasons contained in the file enable the competent authority to formulate its opinion. If such an order is challenged in a court of law it is always open to the competent authority to place the reasons before the court which may have led to the rejection of the representation. It is always open to an administrative authority to produce evidence aliunde before the court to justify its action."

9. In Gill's case, the Hon'ble Supreme Court has stated that reasons cannot be supplemented by the respondents by filing affidavit in court.

10. I ~~found~~^{held} the impugned order is devoid of reason and is cryptic in nature. Moreover, the respondents have not produced the file to show the reasons for which the case of the applicant for compassionate appointment was rejected. It is found that the competent authorities have not applied their mind ~~and~~^{properly} therefore, I have no hesitation to hold that the impugned order dated 24.5.1996 is not sustainable for the reasons mentioned above and also because it is cryptic in nature. Hence the said order is liable to be quashed.

11. Regarding entitlement for appointment on compassionate ground, I find that the applicant applied for compassionate appointment and also filled up the preforma for appointment. Accordingly, the Divisional Personnel Officer, Howrah, took steps for appointment of the applicant as casual labour on daily rate basis without allowance to serve as Hot Weather Water Carrier. It is found that the applicant could not be engaged as such as the vacancy then was not available. The applicant again applied for appointment on compassionate ground to the Sr. Divisional Personnel Officer, Eastern Railway, Howrah, on 5.6.1990 stating that she be appointed as Conservancy Safaiwala on compassionate ground or at least as a Hot Weather staff at Howrah at the earliest to be alive with her sisters again. It is seen that the respondents have considered the case for appointment of the applicant on compassionate ground. ^{Called}

for interview & screening & she was selected on screening test. ..6/-

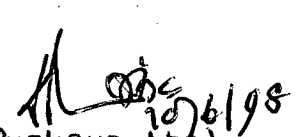
12. Id.counsel for the applicant has also drawn my attention to the circular no.15 to master circular no.16 bearing no.E(NG) II/84/RC-1/26 dated 6.10.1995 which has been embodied in Bahri's R.B.O. 1995 (Railway Board's order on establishment matters including Finance Directorate). Referring to this circular, he states that even a case for compassionate appointment for a death which took place 20 years ago can be considered and the said circular has been overlooked by the Railway Department at the time of consideration of the case of the applicant and at the time of filing of the reply by the respondents.

13. It is an admitted fact that the applicant was found suitable for appointment after the screening test and her case was recommended to the competent authority for consideration. As she was found suitable for appointment, the competent authority could have applied their mind to the facts and circumstances of the case and the circular cited by Mr.K.Sarkar, Id.counsel for the applicant, at the time of hearing of this case. I find that no consideration has been made to that effect. Thereby I find that the applicant is entitled to get benefit of selection for appointment on compassionate ground as per the letter dated 23.8.1994 and that the respondents did not act properly and fairly in dealing with the case of the applicant.

14. I think this is a fit case to direct the respondents to take necessary steps for the purpose of consideration of appointment of the applicant on the basis of the selection made by the authority in the screening test held on 23.8.1994. *as per vacancy available in the deptt.*

15. Accordingly, the application is allowed. The respondents should consider the case of the applicant for appointment on compassionate ground in the light of the observations made above within three months from the date of communication of this order, provided a vacancy is available in the department.

16. No order is made as to costs.


(D. Purkayastha)
Judicial Member