

**Central Administrative Tribunal
Lucknow Bench Lucknow**

Original Application No. 197/2011

This, the ^{5th} day of October, 2012

HON'BLE MR. D. C. LAKHA, MEMBER (A)

Uma Shankeraged about 31 years, son of Late Shiv Prasad, resident of Village Anandpura, Post aliabad (Badshah Nagar), District Barabanki.

Applicant

By Advocate Sri R. K. S. Suryvanshi

Versus

1. Union of India through its Secretary Ministry of Railways, Central civil Secretariat, New Delhi.
2. Railway Board, Rail Bhawan New Delhi Through its Chairman.
3. General Manager North-Eastern Railway (N. E. R.) Gorakhpur.
4. Divisional Railway Manager, North-Eastern Railway, Lucknow.
5. Divisional Personnel Officer, North-Eastern Railway, Lucknow.

Respondents

By Advocate Sri B. B. Tripathi

(Reserved On 03.10.2012)

ORDER

By Hon'ble Mr. D. C. Lakha, Member (A)

In this O.A. the following reliefs are sought for:

- (i) To issue order or direction thereby directing the opposite party No. 2 i.e. Railway Board, Rail Bhawan New Delhi to consider and decide the applicant's case for his compassionate appointment under Dying-in-Harness Rules in compliance of the judgment and order dated 12.9.2008 passed by this Hon'ble Tribunal in O.A. No. 323 of 2008 forthwith.
 - (ii) to pass any other suitable order or direction which is deemed just and proper in the circumstances of the case.
 - (iii) to allow the original application with costs against the opposite parties.
2. Undisputed facts are that the father of the applicant was working as Khallsi when he died in harness on 25.01.1980. The applicant was minor at that time. The mother of the applicant applied for the appointment on compassionate ground and was given assurance by the respondents that the case for compassionate appointment will be considered when her son attained majority. Accordingly, the applicant preferred the

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application for such appointment after attaining majority. But when his application was not considered, a Writ Petition No. 2080(S/S) of 2005 was filed before the Hon'ble High, Lucknow Bench, Lucknow. The Hon'ble High Court vide order dated 7.3.2005, directed the opposite parties to consider and decide the representation. The respondents required certain documents vide letter dated 18.5.2005 (Annexure-3) from the applicant which were supplied. These documents were furnished by the applicant on 13.6.2005 (Annexure-4). But thereafter, no action was taken, and hence, contempt petition was filed before the Hon'ble High Court, Lucknow Bench by the applicant. When the notice in this contempt petition was issued against the respondents, respondent No. 4 rejected the claim of the applicant for compassionate appointment by order dated 7.8.2007 on the ground that the institution from where the mark sheet and T.C. of Class VII were issued was not recognized and hence, the certificates, on verification, were found forged. The applicant again passed Class VII as private student from recognized institution namely Purv Madhyamik Vidhyalaya, Ajai Mau, Block Pure Dalai Barabanki and again submitted the application for appointment on compassionate ground on 11.7.2008 along with the necessary certificates of Educational Qualification (Annexure A-7). When no action was taken, the applicant again approached the Hon'ble High Court by means of Writ Petition No. 4764(S/S) of 2008 for redressal of his grievance. The Hon'ble High court passed the order dated 13.8.2008, the ratio^{of} which is as under:-

"On account of availability of alternative remedy, no case of interference under Article 226 of the constitution of India is made out. However, liberty is given to the petition to file original application before the Central Administrative Tribunal within a period of

one month from today, which shall be decided by the Tribunal expeditiously and preferably within a period of six months from the date of filing of the original application."

3. As per direction of the Hon'ble High Court in the above order, the applicant moved O.A. No. 323/2008 (Uma Shanker Vs. Union of India and Others) challenging the rejection order dated 7.8.2007. This O.A. was disposed of by an order dated 12.9.2008 directing the respondents to consider the representation of the applicant dated 11.7.2008 and to pass order on merits as per rules within a period of 45 days from the date of receipt of certified copy. Further, the copies of the Hon'ble Tribunal as well as application (Annexure -9). The respondents have submitted time extension application to comply with the order dated 12.9.2008 and the time was extended by the Tribunal vide order dated 5.12.2008 (Annexure-10). The opposite parties sent a letter to the applicant dated 16.12.2008 along with format of the application requiring the applicant to fill up the same attaching all the necessary certificates. The same was complied with by the applicant, but no action was taken thereafter even on personal follow up. It was only on 12.1.2009, that the respondent No. 4 sent a letter to the applicant stating that in compliance of the order dated 12.9.2009 of the Tribunal, the matter was re-examined by the competent authority, but since, the approval of the Railway Board is necessary, the reasoned order shall be issued only after obtaining that approval (Annexure A-12). Some further extension or clarification was taken from the Mother of the applicant upon the date of death of the applicant's father whether it is 25.1.1980 or 24.1.1980. The same was clarified by an affidavit from the side of the applicant (Annexure-14). But no



action has been taken thereafter and the decision taken by the respondents has not been communicated to the applicant even under the RTI Act and hence, this O.A.

4. The respondents have contested, on notice, and have raised preliminary objection of delay stating that after attaining majority, the applicant moved the Hon'ble High Court after the delay of 7 years. The matter was considered by the respondents and since, the TC of Class VIII was found to be fake, the case was rejected. Since, the matter is of 11 years old from attaining the age of majority and 28 years from the date of the death of applicant's father, the approval of the Railway Board is mandatory. The requirement of the approval of the Railway Board in this old case has been repeatedly emphasized in more than one paragraph of the CA.


5. I have heard both the learned counsels. The learned counsel for the applicant has laid emphasis on the facts as averred in the O.A. that the case of the applicant has been under consideration before the respondents by virtue of the orders of the Hon'ble High Court and Hon'ble Tribunal. Hence, it is still worth consideration as a result of continuous cause of action. The point of limitation, has not been emphasized in oral arguments by the learned counsel for the respondents, in view of the fact that the reference had already been made to the Railway Board for seeking concurrence because the matter is very old i.e. of more than 20 years. At the time of arguments, the learned counsel for the respondents informed that the reply to the reference has been received from the Railway Board by the GM(P), NER, Gorakhpur, the copy of which is submitted, at the time of arguments and the same is taken on record. He has also submitted that since, the final order is to be issued by the DRM,NER, Lucknow, the same



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may be passed in due course of time if direction to that effect is given.

6. In view of the above facts and circumstances and arguments of both the sides, I hold that in view of the order of the Hon'ble High Court and the Hon'ble Tribunal and also in view of the fact that the matter was under consideration at the level of the respondents for more than one time, the O.A. is not barred by limitation. Now, since the reply from the Railway Board is received by the GM (P) the matter may be finally disposed of. Accordingly, I deem it just and proper to direct the respondent No. 4, who is said to be the competent authority in this matter, to consider the case of the applicant and pass reasoned and speaking order within a period of 2 months from the receipt of the certified copy of this order. No order as to costs.


(D. C. Lakha)
Member (A)

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