

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **781/96**

Date of Decision: **29-04-97**

Madhukar Manga Bagul

.. Applicant

Shri K.B.Talreja

.. Advocate for
Applicant

-versus-

U.O.I. & Ors.

.. Respondent(s)

Shri R.R.Shetty

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble **M.R.Kolhatkar, Member(A)**

The Hon'ble

(1) To be referred to the Reporter or not ? **X**

(2) Whether it needs to be circulated to **X**
other Benches of the Tribunal ?

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M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.781/96

pronounced this the 24th day of April 1997

CORAM:

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Madhukar Manga Bagul
R/o. At post Tarwade,
Tal.Chalisgaon,
Dist. Jalgaon

By Advocate Shri K.B.Talreja .. Applicant

-versus-

1. The Divisional Railway Manager,
Central Railway,
Bhusawal.

2. The General Manager,
Central Railway,
Mumbai CST
Mumbai.

By counsel Shri R.R.Shetty .. Respondents

--: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

Applicant is the son of the deceased railway employee Shri Manga Suka Bagul who died while in service on 17-1-1971. The applicant was only 5 years old at the time of death of his father. It is not disputed that applicant attained majority on 28-3-1985. According to the applicant he and ~~other~~ members of his family have been contacting the Divisional Office from the year 1985-86 for getting employment in any of the group 'D' posts but all along he was directed to the PWIs of various depots orally for seeking employment. and the PWIs informed that only those employees who were holding the casual labour cards were being appointed. No application of 1985-86 however is on record. At Annexure-3 is an application dt. 19-5-1991 and thereafter there are applications

dt. 18-9-94, 12-6-95 and lawyer's notice dt.

17-6-1996. A reply was received on 17-9-91 (page 17) intimating that as per prevalent rules compassionate appointment cannot be granted. The applicant has therefore sought a direction to the respondents to appoint the applicant against any Group 'D' post on compassionate ground.

2. The respondents have opposed the O.A. According to them the applicant is the 7th child of the deceased railway employee and there is no record of the applicant having applied for compassionate appointment after he attained majority. According to respondents Railway Board instruction dt. 7-8-1991 at Ex.R-I lays down as below :

(i)

(ii) General Managers could consider cases of compassionate appointments to other than first child only within 5 years of death, as mentioned in para 3 of Board's letter No.E(NG)II/84/RC-1/172 dated 1-3-85, 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."

(iii) ...

According to respondents the applicant not being the first child his claim could have considered only within five years of the death of the railway employee. Grant of compassionate appointment therefore is not permissible under the rules. Respondents further contend that the contention of the applicant that the people in his family are illiterate and unaware of the rules

of recruitment on compassionate ground is not correct as the two elder brothers of the applicant are presently working in railways right from 1972 onwards. Respondents contend that the application of the applicant received for the first time by letter dt. 19-5-1991 was rightly rejected on 17-9-1991 and that O.A. is devoid of any merit besides being barred by limitation. Counsel for the respondents submits that the father expired in 1971 and the O.A. has been filed in July'96 i.e. almost after 25 years. The very fact that the family has been able to pull on ^{for} about 25 years after the death of the deceased Govt. employee shows that this is not a deserving case.

3. Counsel for the applicant has invited my attention to various provisions of Master Circular relating to compassionate appointment. According to him the normal period of 5 years can be relaxed upto 10 years by G.M. vide instruction dt. 18-4-85 and 18-4-90 and that even this time limit can be further extended beyond 10 years according to instruction dt. 21-8-87. His main contention is that whether a case is deserving or not is required to be decided not by Divisional Railway Manager but the ~~same is~~ required to be invariably put up to the GM who may exercise his personal discretion and decide to forward the case to the Railway Board. He further contends that when offering appointment on compassionate ground to widows and daughters etc. it is not necessary to check whether any other son or daughter is working .

4. I have gone through all the circulars relied upon by the counsel for the applicant. I do not find that the circular relied upon by the respondents viz. 7-8-1991 has been superseded. As I read the circulars the case is to be examined according to rules at every level and thereafter ^{if deserving} it should be submitted to the GM ^{or} the Railway Board, as the case may be. Where at ^a _a lower level a view has been taken that the case does not fall within the purview of the rules ^{and is not deserving} it is not mandatory on the part of that authority to still submit the case to the higher authority. It is only when a positive recommendation is being made because of the deserving circumstances of the case that the case may be submitted by the DRM to the GM and by the GM to the Railway Board. E.g. the case of the applicant can be said to fall within the purview of the instruction which states that when the son has not attained majority, cases even beyond 10 years can be processed but only such cases can be processed in this extended time limit where the applicant is the first child. In the present case applicant not being ^{the} first child the case gets eliminated at the threshold after 5 years i.e. in 1976. It would therefore appear to me that the applicant's family were well aware of the rules and that is why after attaining majority on 28-3-85 application was not made; it is only in 1991 i.e. after 20 years of the death of railway employee that the applicant entered into correspondence. It appears to me that the rejection of the application by the concerned railway authorities is entirely according to the rules and the fact that O.A. has been filed after 25 years also shows that the most essential test in the matter of compassionate appointment viz. distress test is not satisfied in the

present case.

5. On the consideration of all the facts and circumstance of the case I am of the view that the O.A. has no merit and the same is therefore dismissed with no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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