

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 388/96 /199

Date of Decision: 17-2-1997

Jagannath Narayan Marathe

Petitioner/s

Mr.K.B.Talreja

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

Mr.A.I.Bhatkar

Advocate for the
Respondent/s

CORAM:

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

Hon'ble Shri

- (1) To be referred to the Reporter or not ? ☒
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ? ☒

M.R. Kolhatkar

(M.R. KOLHATKAR)
M(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 388/96

Monday, this the 17th day of February, 1997

CORAM:

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

Jagannath Narayan Marathe
I.N.S. Shivaji Road,
Bhusi Lonavala, House No.13,
Dist. Pune.

By Advocate Mr. K.B. Talreja

.. Applicant

-versus-

1. The Union of India
through
The General Manager,
Central Railway,
Mumbai - CST.
2. The Divisional Railway
Manager,
Central Railway
Mumbai-CST.



By Advocate Mr. A.I. Bhatkar

.. Respondents

The application having been heard on 17th February, 1997
the Tribunal on the same day delivered the following :

-: O R D E R :-

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

The applicant,  is the son of the deceased railway employee Narayan Bhawana who was working as Khalasi under EF(M)/Lonavala and  expired on 20-12-1976. ^{He} impugns the order dt. 2-12-1993 informing the applicant that his request for appointment on compassionate ground was rejected by the competent authority as he has not applied within one year after completion of 18 years of age. Counsel for the applicant states that he was born on 1-8-1974 and attained majority on 1-8-1992 and he had applied for compassionate appointment on 25-11-1992 and the letter dt. 1-7-93 to which the impugned order is a reply was only a reminder and the reminder was within the time limit

because one year after attaining majority expires only on 31-7-1993 whereas the application was filed on 1-7-93. In this connection he relied on relevant instruction of the Railway Board on compassionate appointment vide Master Circular No.16 in which ~~under the heading~~ "Time Limit for making ^{it} compassionate appointments"/is provided ~~as below~~. "The request for compassionate appointment should have been received by the Railway administration as soon as the son/daughter to be considered for compassionate appointment has become a major, say within a maximum period of one year." These are the instructions under No.E(NG)II/84/RC-1/26 dt. 18-4-1985 and 18-4-1990. He points out that 18 years is the lower age limit and 25 years is the upper age limit and there are Railway Board instructions that upper age limit may be freely relaxed on merits of the cases under No.E(NG)III/79RC-1/47 dt. 29.11.1979. .

2. So far as delay in filing the application is concerned, counsel for the applicant states that ^{the} after ~~the~~ negative reply was received, he had taken up the matter with the National Railway Mazdoor Union which had addressed a letter dt. 5-8-1994 to the GM in which all the particulars were given viz. date of birth as 1.8.74 and the application having been filed on 25-11-1992 and the same was forwarded to AEE(M)/KYN under EF(M), LNL's L.No.ML/EF/2 dt. 27-11-1992 of which the copy was attached by the Mazdoor Union. Since there was no action he had sent ^a ~~advocate's~~ notice on 18-12-1995. The O.A. in this case was filed on 29-3-96.

3. Counsel for the respondents opposed the O.A. Apart from the point of limitation respondents

have contended that the original application dt. 25-11-92 was submitted to the EF(M) Lonavala and EF(M) Lonavala has not been made party respondent. So far as reminder dt. 1-7-1993 is ~~concerned~~ concerned the same has been submitted by the applicant one year after completion of 18 years of age. Respondents letter dtd. state that zerox copy of 27-11-1992 addressed to AEE(M)/Kalyan has been received but the authenticity of the same is doubtful.

4. It is not clear to me as to how when the date of birth of the applicant is stated to be 1-8-74, respondents can contend that the OA having been given to the Electrical Foreman is not within time and that even the reminder is not within the one year of attaining the age of majority. Respondents have not disputed the date of birth which from Annexure-3 is clear i.e. 1-8-1974. Prima-facie therefore the application if filed on 25-11-92 was within time limit and even the reminder was within time limit. The stand of the respondents that the original letter dt. 25-11-92 was submitted to Electrical Foreman ~~who~~ has not been made a party is highly deplorable. Applicant has made Union of India and DRM as respondents and it is not necessary for the applicant to make all the lower functionaries with whom the railway employees have to deal with as party respondents. Respondents ought to have obtained the original application said to have been submitted through a subordinate Foreman for further necessary action. I am of the view that the communication dt. 2-12-93 appears to have been issued ~~not only~~ without application of mind ~~and~~ ^{but} cannot ^{be} ~~but~~ called arbitrary. It has to be considered as void ab-initio following the ratio of Guru Mohan's case and the question of limitation does not arise. I therefore allow the

O.A. and dispose of the same by passing the following direction:

O.A. is allowed. Letter dt. 2-12-1993 rejecting the application of the applicant for compassionate appointment ~~as being~~ time barred is quashed and set aside. Respondents are directed to consider the case of the applicant for compassionate appointment on merits either by ~~reconstructing~~ the old record or if necessary obtaining a fresh application from the applicant in continuation of his earlier letter if not ~~xxxxxxxxxxxxxx~~ traceable, within one month. Respondents are directed to finalise the case of compassionate appointment within three months thereafter; in all within four months from the date of communication of the order. It is again made clear that the case should be dealt with on merits and not on the ground of delay. No order as to costs.

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