

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 61/99

DATE OF DECISION: 25/4/2000

(Twenty fifth April 2000)

Shri Hasan Shaikh Haider _____ Applicant.

Shri S.V. Marne

-----Advocate for
Applicant.

Versus

Union of India & 2 Ors.

-----Respondents.

Shri Suresh Kumar

-----Advocate for
Respondents.

CORAM:

Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to
other Benches of the Tribunal?

3. Library. No

} N^o

B.N.BAHADUR
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:61/99
DATED THE 25th DAY OF APRIL, 2000.

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A).

Shri Hasan Shaikh Haider
residing at
Jalgaon Naka,
Juna Satara,
Bhusawal,
Dist.Jalgaon 425 201. Applicant

By Advocate Shri S.V.Marne

V/s.

1. Union of India, through
General Manager,
Central Railway,
Head Quarters office,
CST Mumbai,
Mumbai-400 001.
2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
CST Mumbai,
Mumbai - 400 001.
3. Carriage & Wagon
Superintendent
Central Railway,
Wadi Bunder,
Mumbai - 400 009. Respondents.

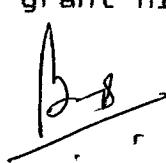
By Advocate Shri Suresh Kumar

(ORDER)

(Per Shri B.N.Bahadur, Member(A))

This is an application made by Shri Hassan Sheikh Haider seeking the relief from this Tribunal for the quashing of the impugned order dated 17/8/1998, through which his request for a job on compassionate grounds has been rejected. The applicant also seeks a direction to Respondents from this Tribunal, to grant him appointment on compassionate ground w.e.f. 1/6/1993.

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2. The facts of the case, as put forth by the applicant are that the applicant's father was working C&W Khalasi, and while so working, died in harness on 8/10/1979. The applicant was then of 4 years, and his mother was unable to take employment. Applicant avers that he attained majority on 1/6/1993, and immediately applied for grant of compassionate appointment. He alleges that the respondents delayed consideration of his case for about 5 years and finally rejected it on the ground that the case cannot be considered at this late juncture. Applicant further adds that his sister was also a minor, when his father died.

3. Applicant has filed copies of his application for employment dated 19/4/1991, and representation dated 19/1/1995 and other applications through which his mother pursued the matter with the Railway Administration. These are available at Annexure A to F of the Application. The Applicant seeks to draw support from the Circular of the Railway Board dated 21/11/1994 to state that General Managers are fully competent to consider such cases beyond limit of 5 years subject to certain conditions. And also on the ground that the date of the first child becoming major is relevant. This circular is annexed at Annexure-H and is described in his application. It is ^{with} this grievance that the applicant is before us.

4. A reply has been filed by the Respondents, where the first plea taken is that the application suffers from delay and laches. The Respondents further state that the applicant's father was working as Monthly Rated Casual Labourer (MRCL) and died while on service on 8/10/1979. The widow did not make an

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application and the applicant made the application on or about 28/4/1997 only. It is averred that the case has been rejected on the ground of there being no immediate distress in the family. Support is drawn on this from the case of Umesh Chandra Nagpal V/s. State of Haryana (1994) 27 ATC 537. Support is also drawn from the guidelines issued by Ministry of Personnel dated 28/11/1994. Other cases of the Hon'ble Apex Court has also been cited in the written statement by Respondents.

Respondents also take the plea that the widow i.e. mother of applicant has not given any reason for not taking up any job till her application dated 25/4/1977.

5. We have heard learned Counsel on both sides. Learned counsel for applicant rested his case on the grounds taken in the application and reiterated the points made. He stated that in terms of the latest Rules, the application could have been made till the year 1999, which point has to be taken into consideration along with the fact that applicant had applied immediately on attaining the age of majority. It was argued that the reasons given *for rejection of his application* are wrong, and that mere statement that the family has not been in distress earlier, nor is now in distress are bald statements. Learned counsel for Applicants took the objection that powers for special consideration of cases have been given specifically and exclusively to the General Managers, and here only DRM has considered the application, and taken a decision. In regard to the defence taken by the Respondents that the first application was made only in 1997, the learned counsels stated that the copy of application dated 20/1/1995 at page-15

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should be read with the copy of postal receipts which are annexed with the rejoinder filed by the Applicant, and available in the Paper Book. Learned Counsel for Applicant contended the applicant became a major only in 1993, and had been continuously agitating the case since 1991. This fact should not be lost sight of.

6. Arguing the case on behalf of Respondents, their Learned Counsel reiterated the plea taken in written statement, and contended that some reason should be cited for a widow not being able to take up the employment. Till 1997, no application was made. In regard to the objection relating to competence of the DRM legally, to take a decision, the argument taken was that only when the delay was sought to be considered was it necessary to take up the case to the General Manager. Hence the DRM was competent to deal with the application, the point regarding there being no immediate distress was reiterated and the case of Umesh Nagpal was cited in defence. The point regarding limitation was further stressed to say that even if it was accepted that the first application was made in 1991, the test of financial crisis was relevant.

7. The first point that needs to be noted is that the Government instructions allow and prescribe certain time limits for making applications after the death of the Government Servant, specifically in cases where the first son/daughter becomes a major. These instructions are on record from pages-17 onwards as Annexures to the Application. Instructions have been duly modified from time to time. As instructions stand today, the decision is that case should not be more than 20 years old from the

date of death, this modification having come through a circular dated 21/11/94. Also General Manager have been given powers of relaxation in specific circumstances. Now, in the instant case, the death of the Railway Servant i.e. Applicant's father has admittedly taken place on 8/10/79. The son(applicant) who was four years old then, claims that he first applied in 1991 and cites some postal receipts in support since the defence of the respondents is that no application was made till 1997. It is not for us to go into a fishing enquiry on this aspect but suffice it to say that since admittedly the son and his sister were minors and rules allow consideration of cases upto 20years, this case need not be rejected only on this ground.

8. The main ground taken by the Railway Administration has indeed been that there is now (at time of application) no immediate distress. This is a principle that has been well settled by the Apex Court, and can be taken as a legitimate stand/ground by the Administration. However, papers in the present case do not show any basis for arriving at this conclusion. Nowhere in the paperbook could any basis or cogent reasons or facts/details leading to such conclusion become evident, as would lead to the conclusion that no immediate distress exists. All that would be required therefore in the interest of justice in this case, is that the facts reconsidered relating to the distress of the family be re-considered either from existing data, if available with the respondents, or from additional information they may deem necessary to collect, and a conclusion reached and recorded with reasons after

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re-considering the Application as per rules.

9. The position regarding economic status/distress being an important aspect in such cases is known. In fact as pointed out by the respondents the law settled by Hon'ble Apex Court in this context is also known. Therefore no finding is being given here by me on the economic status or the condition of distress of the family of the Applicant. However, since the rejection of the application is on such grounds in the main, it is important that respondents should arrive at any conclusion on the basis of well considered facts. Since this has not been done as explained above, in a satisfactory manner, it would be proper in the interest of justice to give directions that the respondents apply their mind on the question of economic distress or otherwise in the applicant's case and give a well reasoned decision based on facts.

10. One contention of the respondents was that no reason was assigned as to why the widow of the late Government Servant could not ask for the compassionate appointment at the stage of the death of the Government servant. A plain reading of the rules instructions shows that this is a discretion given and it cannot be said that it would be necessary for the widow in such cases as the present one to take permission, as it were, after the death of the husband or to clearly specify in advance that her minor children would be asking for the relief. The case of S.Mohan V/s. Government of Tamilnadu (1998 SCC L&S 1231) cited, shows that two brothers of the applicant therein had already been given compassionate appointment and were working. Hence this

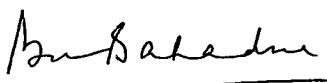
...7.



case of S.Mohan cannot be compared to the present case. The case of Parasnath cited (1998 SCC L&S 570) relates to the rules framed by Uttar Pradesh Government and it is with reference to these rules that the case therein has been decided. There is no doubt that the ground/stand regarding immediate distress taken out by the respondents can legally be taken as on the basis of rejection of the request for compassionate appointment, but it has to be examined with proper application of mind as discussed above. It is only to this limited extent that relief can be provided to the applicant.

12. In view of the discussions made above, this OA is disposed of with the following directions to the Respondents:-

The Respondents shall reconsider the application for compassionate appointment made by the applicant, especially with regard to the point relating to immediate distress as discussed above, and take a decision as per law and rules. Such decision shall be communicated, with reasons, to the applicant within a period of four months from the date of receipt of copy of this Order. If the applicant is further aggrieved thereafter, recourse as allowed by law will be available to him. There will be no orders as to costs.



(B.N.BAHADUR) 25/4/2000
MEMBER(A)