

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 403/99

DATE OF DECISION: 13/04/2000

Shri Suresh Bahiroo Waluji Applicant.

Shri K.B.Talreja

----- Advocate for  
Applicant.

Versus

Union of India & Anr.

----- Respondents.

Shri A.I.Bhatkar

----- Advocate for  
Respondents.

CORAM:

Hon'ble Shri D.S.Baweja, 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. ✓

  
(D.S. BAWEJA)  
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:403/99  
DATED THE 13/4 DAY OF APRIL, 2000

CORAM: HON'BLE SHRI D.S. BAWEJA, MEMBER (A)

Shri Suresh Bahiroo Waluji,  
Ex-Highly Skilled Fitter,  
C&W Depot, Igatpuri,  
Under Executive Control of  
D.r.M. C.Rly, Mumbai, CSTM.

... Applicant.

By Advocate Shri K.B. Talreja

V/s.

1. The Union of India,  
The General Manager,  
Central Railway,  
Mumbai CSTM.

2. The Divisional Railway Manager,  
Central Railway,  
Mumbai CSTM.

... Respondents.

By Advocate Shri A.I. Bhatkar

(ORDER)

Per Shri D.S. Baweja, Member (A).

This OA has been filed by applicant seeking compassionate appointment.

2. The father of the applicant Shri Bahiroo Waluji while working as fitter in Central Railway, Igatpuri was prematurely retired from service from 1/6/1985 on account of medical incapacitation. Subsequently, he died on 21/4/90. The applicant was minor at that time and attained majority on 14/7/98. Thereafter, the mother made an application for compassionate appointment for the applicant but did not receive any response. It is further submitted that at the time of retirement of his father, the mother tried to get appointment for herself and also made an oral request to appoint the applicant when he attains

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majority. However, all the original papers concerning representations made for compassionate appointment, etc have been lost during journey from Igatpuri to Mumbai. The applicant also gave a notice through his advocate on 15/2/1999 and on not receiving any response, the present OA has been filed on 19/4/99.

3. The main ground of the applicant is that he is entitled for compassionate appointment as per rules and non grant of compassionate appointment to applicant amounts to discrimination and thereby violation of articles 14 and 16 of the Constitution of India.

4. The respondents in the written statment have opposed the OA. The respondents while admitting the retirement of the applicant on 1/6/1985 have submitted that no request for compassionate appointment has been received from either the mother at any time or the present applicant on attaining majority in 1998. It is further stated that the compassionate appointment is not admissible as per extant rules laid down under Railway Board's letter dated 12/12/90. As per this circular, compassionate appointment is admissible when an employee is retired on medical grounds but if the wards are minor, then the appointment can be taken by the wife of the Railway Employee. Further, the request for compassionate appointment has to be made within five years from the date of retirement on medical ground. Apart from non admissibility as per the rules, the request cannot be made after 14years of the date of retirement and in terms of the law laid down by Hon'ble Supreme Court, Such a belated request for the compassionate appointment cannot be allowed.

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The respondents have relied on the judgement in the case of Umesh Kumar Nagpal V/s. State of Haryana and Others reported at 1994 SCC (L&S) 930.

5. The applicant has not filed any rejoinder reply.

6. We have heard the arguments of Shri K.B.Talreja and Shri A.I.Bhatkar, learned counsels for Applicants and Respondents respectively.

7. The father of the applicant retired from Railway Service on medical ground from 1/6/1985. The present OA has been filed on 16/4/94 seeking relief of grant of compassionate appointment. It is noted that the applicant was minor at the time of retirement of his father in 1985 and attained majority on 14/7/98. It is brought out that on becoming major, the mother of the applicant made a request for compassionate appointment for the applicant but did not receive any response. The applicant has not brought out on the record any request having been made and has stated that all that all the original papers have been lost during journey. The respondents have however denied receipt of application for compassionate appointment from the applicant after attaining majority on 14/7/98. It is noted that the applicant had rushed to the Tribunal after giving legal notice on 15/2/99. Even if the papers had been lost, he could have made another representation before approaching the Tribunal for seeking compassionate appointment. Leaving aside these observations, after careful consideration of the facts of the case and the submissions made by the respondents, I do not find any merit in the claim of the applicant for compassionate

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appointment. It is well settled law by Hon'ble Supreme Court through several judgements that granting of compassionate appointment is with an objective to provide immediate help to the family to overcome the financial crises which it faces on account of death of breadwinner. The compassionate appointment cannot be sought after several years of death/retirement. In this connection, para-6 of the judgement in the case of Umesh Kumar Nagpal V/s State of Haryana and Others relied on by respondents is reproduced below:-

"6. For these very reasons, the compassionate appointment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. In the present case, it is noted that the request for compassionate appointment has been made after a period of 14 years of the retirement of the father on medical ground. If the family was in dire need on account of financial crisis for compassionate appointment, then the wife that is mother of the applicant could have taken appointment in 1985. Though the statement is made that the mother of the applicant had tried for compassionate appointment for herself, but no documentary evidence to this fact has been brought on the record. This has been explained by stating that all the original papers have been lost during journey. This contention is difficult to be accepted. In case the mother of the applicant wanted a job for herself, then it is

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not clear as to why she waited till 1999 when the applicant has agitated the matter if the representation made had not secured any response. Waiting for such a long period till the applicant has attained the age of majority indicates that the family was not in need of a job and could manage and the only interest was to seek appointment for the applicant on becoming major. ~~right~~. Seeking a compassionate appointment after a period of 14 years is more as a recruitment as if it is <sup>q</sup>vested right. Here I also refer to the judgement of the Hon'ble Supreme Court <sup>m</sup> the case of Jagdish Prasad v/s. State of Bihar reported at 1996 SCC (L&S) 303. In para - 3 of the judgement <sup>u</sup>, is held as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of a appointment of the dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

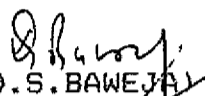
In the present case the situation is the same as in the case of Jagdish Prasad, The applicant has sought compassionate appointment after a period of 14 years. Keeping in view the observations of the <sup>i</sup> Lordship's above, such a belated claim cannot survive.

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9. In view of the facts of the case and the law laid down by Hon'ble Supreme Court, I am unable to find any merit in the OA and the same is dismissed accordingly. No orders as to costs.

  
(D.S. BAWEJA)  
MEMBER (A)