

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 187/2001

Date of Decision : 09<sup>th</sup> August-2002

A.Muthupandi

Applicant

Shri K.B.Talreja

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar

Advocate for the  
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? YES
- (ii) Whether it needs to be circulated to other 10 Benches of the Tribunal ?
- (iii) Library YES

(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.187/2001

Dated this the 9<sup>th</sup> day of August 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Anand Muthupandi  
son of deceased employee  
Shri M.Muthu Pandian,  
C/o K.B.Talreja, Phulwadi,  
Plot No.16, Dev Samaj Road,  
Ulhasnagar.

...Applicant

By Advocate Shri K.B.Talreja

vs.

1. Union of India  
through the General manager,  
Central Railway,  
Mumbai CST, Mumbai.
2. The Chief Workshop Manager,  
Central Railway,  
Matunga Workshop,  
Matunga, Mumbai.
3. Smt.Ranjana  
Wd/o Shri M.Muthu Pandian,  
C/o Shri Govind Vasudeo Pillai,  
Sampakal Chawl, Dattari Nagar,  
Behind Shankar Temple,  
Golibar Road, Ghatkopar (W),  
Mumbai.

...Respondents

By Advocate Shri V.S.Masurkar

*J. Jain*

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside order dated 25.3.1999 (Annexure-1) with a direction to the respondents to appoint the applicant in any of the Group 'D' post.

2. The applicant's father M.Muthu Pandian, who was working as a Khalasi at Matunga Workshop, died in harness on 12.8.1996. Smt. Ganpati Ammal claiming to be the widow of said M.Muthu Pandian filed OA.No.492/97 for retirement benefits due to her husband, arraying Smt.Ranjeeta as Respondent No.2, before this Tribunal which was decided on 18.6.1998 and the operative part is extracted below :-

" In the result, the OA. is dismissed, but without prejudice to the rights of the applicant or the second respondent to approach competent Civil Court for proper declaration about the status of their marriage and other consequential reliefs. All contentions regarding marriage status etc. are left open. M.P.709/97 is disposed of as not pressed on the submissions made by the learned counsel for the applicant. In the circumstances of the case, there will be no order as to costs."

3. The applicant claiming to be the son of said S.Muthu Pandian filed OA.NO.991/97 for compassionate appointment which was decided vide order dated 24.7.1998 and it is held that OA. is pre-mature. The applicant's representation dated 13.3.1997 was directed to be decided in OA.No.991/97 was decided by the respondents vide order dated 25.3.1999 (Annexure-1 to the OA.) being the impugned order. The applicant filed C.P.No.49/98 which was decided on 11.10.1999.

*P. Jain* -

4. The applicant's grievance is that S.Muthu Pandian married with Ulgamal who expired on 20.6.1982. Thereafter, the said Muthu Pandian married Ganpati Ammal and she was blessed with two daughters, namely, M.Ulgamal and M.Laxmi. Smt.Ranjana was arrayed as Respondent No.2 in OA.NO.492/97 which was for retirement benefits and not compassionate appointment. Smt.Ranjana filed an application for compassionate appointment dated 9.12.1997 which is withdrawn by her on 1.6.2000. After the decision in C.P.No.49/98, the applicant filed the OA. on 7.3.2001 before this Tribunal.

5. The claim of the applicant is resisted by the Respondents No.1 & 2 on the ground that the applicant has impugned the order dated 25.3.1999 by an OA. which is filed on 7.3.2001. As such, OA. is barred by limitation as prescribed by Section 21 of the Administrative Tribunals Act, 1985. It is further stated that in view of an order passed by this Tribunal in OA.No.492/97 which was between Smt.Ganpati Ammal and Union of India along with Ranjeeta (Ranjana), it was directed that the parties to approach competent Civil Court for proper declaration about the status of their marriage and other consequential benefits. Thereafter, none of the parties have brought forth the declaration about their status. As such, the OA. is misconcieved. It is further alleged that Smt.Ranjana has also filed application for compassionate appointment and neither Ganpati Ammal nor Ranjana has given consent to the applicant's appointment on compassionate ground nor the applicant has stated that if the compassionate appointment is granted whom he would look after. Hence, respondents prayed for dismissal of the OA.

*P. L. N.*

..4/-

6. The applicant has filed the succession certificate granted by competent court. Perusal of the same makes it clear that the applicant is the legal heir of M.R.Muthu Pandian (who expired on 12.8.1996) and Mrs.Ulagammai (who expired on 28.6.1982). On the basis of said heirship certificate, the applicant claims to be the son of Late M.R.Muthu Pandian.

7. OA.NO.492/97 was between Smt.Ganpati Ammal, Union of India and Smt.Ranjana. The applicant was not a party to the said OA. As such, any order passed in the said OA. cannot be constitute a direction regarding declaration of status to the applicant.

8. The learned counsel for the applicant relied on Circular dated 2.1.1992 which mentions that when the employee dies during harness leaving more than one widow along with children born to the second wife, appointment on compassionate ground to the second widow and her children are not to be considered unless the administration has permitted the second marriage in special circumstances, taking into account the personal law etc. On the basis of the said Circular, the learned counsel for the applicant argued that Smt.Ganpati Ammal and Smt.Ranjana who claim to be the married wife of M.R.Muthu Pandian. The second marriage was not permitted by the respondents, as such, neither the widow nor their children are entitled for compassionate appointment.

P. Wm ' /

..5/-

9. It is true that the compassionate appointment is granted when the deceased family is indigent and the compassionate appointment is for not only to an individual but it's benefit accrues to whole of the family. The person appointed on compassionate ground is bound to look after the family members left behind the deceased. It is pertinent to note that Smt.Ganpati Ammal never claimed the compassionate appointment.

10. It is true that Smt.Ranjana filed an application for compassionate appointment on 9.12.1997 which the applicant claims that she has withdrawn it on 1.6.2000. The learned counsel for the respondents argued that merely production of a letter claiming to be signed by Smt.Ranjana is not sufficient to arrive to a conclusion that she is not interested in compassionate appointment or she has withdrawn her application for compassionate appointment vide her letter dated 1.6.2000. I must have accepted this argument had there been Smt.Ranjana not a party to a present petition. In the present petition, she has been arrayed as Respondent No.3. She was having every opportunity to come before the Tribunal and rebut the facts stated in the application. In absence of her appearance before this Tribunal only it can be inferred that she does not want to challenge the facts stated in the OA. As such, I am not impressed with the arguments of learned counsel for the respondents.

11. Order in C.P.No.49/98 which was passed on 11.10.1999 is extracted below :-

"The matter cannot be treated as Contempt. In view of this rejection, in the present case the applicant gets fresh cause of action. He can challenge the order dated 25.3.1999 according to law."

*P. V. M.*

..6/-

In view of the fact that C.P. was decided on 11.10.1999, the applicant gets a fresh cause of action w.e.f. 11.10.1999, argued by the learned counsel for the applicant. As the OA. is filed on 7.3.2001 beyond a period of one year than 11.10.1999 claiming it to be within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, OA. appears to be barred by limitation.

12. The applicant is not entitled to challenge the order dated 25.3.1999 as the OA. is barred by limitation in this respect. His right for consideration in respect of compassionate appointment being a continuous cause of action and the respondents are bound to consider his case for compassionate appointment as he is the son of deceased employee S.Muthu Pandian from Mrs.Ulgamal which is established by heirship certificate (Annexure-3) is contended by the applicant's counsel. Keeping in mind that the criteria adopted by the respondents in considering the application of the applicant for compassionate appointment is not as per law - extraneous matters are taken into consideration, relevant matters are over-looked, even if there is some delay in filing the OA., justice cannot be denied to the applicant when matter requires to be decided afresh, keeping in view the facts established vide this order. Delay condoned.

13. In the result, OA. is allowed. Respondents are directed to consider the case of the applicant within a period of three months from the date of receipt of copy of the order for compassionate appointment treating him to be the son of S.Muthu Pandian and Mrs. Ulgamal. No order as to costs.

  
(S.L.JAIN)

MEMBER (J)