

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 1216/92

Transfer Application No: ---

DATE OF DECISION 1-4-1993

Pramod H.Pardeshi Petitioner

Mr.Saseendrah Pillai Advocate for the Petitioners

Versus

U.O.I. & and one anr. Respondent

Mr.P.R.Pai Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri V.D.Deshmukh, Member(J)

The Hon'ble Shrixxx

1. whether Reporters of local papers may be allowed to see the Judgement ?

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement ?

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



(V.D.DESHMUKH)
M(AJ)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(b)

Q.A.1216/92

Pramod H. Pardeshi,
Dagdu Gawli Chawl,
Near Bhajani Matb,
Upper Peth Post,
Igatpuri, Nasik (Dist.) .. Applicant

-versus-

1. Union of India
2. The General Manager,
Central Railway,
Bombay V.T. .. Respondents

Coram: Hon'ble Shri V.D. Deshmukh,
Member (J)

Appearances:

1. Mr. Saseendran Pillai,
Advocate for the
Applicant.
2. Mr. P.R. Pai
Advocate for the
respondents.

ORAL JUDGMENT: Date: 1-4-1993
(Per V.D. Deshmukh, Member (A))

The application is admitted and
taken for hearing.

2. The applicant is a son of one Shri Hira Dulla Pardeshi, who was working as Fitter in Central Railway and who died on 8-5-80. The applicant's father left behind him his wife and four children after his death. The present application has been filed by the third son of the deceased railway employee. He seeks in this application a direction to the respondents that he be appointed as Commercial Clerk in Central Railway on compassionate ground.

3. It is contended in the application that the first son of Shri Hira, the deceased employee of the Central Railway, did not apply for employment on compassionate grounds but

admittedly he is employed. According to the applicant the second son is mentally retarded and he also never applied for employment.

4. The present applicant applied for employment on compassionate ground on 18-2-87 prima-facie as his father expired on 8-5-80 the application was delayed. However, there are circumstances which had to be taken into consideration while considering the question of delay. The applicant was studying in the 5th standard at the time of his death of his father and he attained majority on 10-11-85. He did not apply for employment on compassionate grounds immediately on attaining majority as he was studying in the 10th standard. After he passed the SSC examination he applied for Trade Apprenticeship in C&W Depot in C.R. and it is contended that he passed the written test on 14th September, 1986 and was also called for an interview. The applicant however was not selected. The applicant thereafter applied for employment on compassionate grounds on 18th February, 1987.

5. My attention has been drawn to the ~~order~~ ^{order} Railway Board's ~~Ex. A-5~~ ^{Ex. A-5} dt. 18-4-1985 to the application. It deals with the question of ~~for delegation~~ ^{time} application of powers to the GMs for relaxation of age limit ^{by} five years for making application for employment on compassionate grounds. As per this order it was decided that in all cases of death of an employee while in service compassionate appointment ~~was~~ ^{shall be} ~~is~~ ^{and} permissible under the extant instructions, could be approved by the GMs even

beyond the limit of five years, subject to the condition laid down in the order. Two conditions in this order are relevant for the present application, ~~one~~, that the reasons for relaxing the time limit should be placed on record and, ~~two~~, 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 six months. These instructions were however modified by the Railway Board's order dt. 21-8-87 (Ex.A-6) in cases where the death occurred more than 10 years back and also in cases where death took place between 5-10 years back. As per this letter in such cases if compassionate appointment ~~is~~ ^{Was} otherwise permissible and if there were special features or circumstances justifying relaxation of time limit the cases could be considered by the Railway administration for approaching the Railway Board for relaxation of time limit as a special case. Such a reference to the Railway Board has to be made by the Railway Administrations only if the GM personally approves of recommending the case to the Board. In the present case the father of the applicant expired in May, 1980 and the application was made for employment on compassionate ground on 18-2-87. In these circumstances it was necessary that the case be considered as per the instructions in letter dt. 21-8-87 and the reference be made to the Railway Board. Ex.A-3 is the reference dt. 22-6-1989 made by the General Manager to the Railway Board. Para 5 of this communication states that the case of the applicant had been

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considered by the General Manager personally and was approved for recommending to the Ministry. Similarly in para 6 it is stated that the applicant was subjected to a written test and was also interviewed by a committee of ~~3~~ ^{three} Sr. scale officers, who had recommended him for appointment as Commercial clerk and it was proposed to appoint the applicant as Commercial Clerk in the grade of Rs.975-1540(RPS). The Railway Board, however, by their communication dt. 28-5-92, which ^{is for} the impugned communication in the present application informed their inability to agree with the proposal to relax the time limit for considering the case for appointment on compassionate ground.

6. It cannot be disputed that the applicant ought to have applied for compassionate ground within six months from the date of his attaining majority. However, the circumstances that he had appeared for SSC examination and that he had also attempted for being appointed by selection, that he was selected by the selection committee but could not be appointed certainly go in support of the applicant so far as the delay is concerned. It is also very pertinent that the General Manager had recommended his case for condonation of delay. The learned advocate for the applicant relied upon the judgment of this Tribunal in O.A.917/89, Raju Shankar Shirke vs. U.O.I. & Ors. decided on 18-8-92. The Division Bench held that the period of limitation was not an inflexible one and in suitable cases relaxation could be given. In the present case also, the circumstances would definitely justify a lenient

view on the part of the authorities concerned and the application could not be rejected merely on the ground of delay.

7. The respondents have taken a stand that the applicant is the third son of the deceased employee. However, in the same decision referred to above the division bench has taken a view that this also could not be a ground to reject the application. After going through the impugned letter dt. 25-5-92 which is addressed to the General Secretary, All India Railwaymen's Federation, it is obvious that the request of the Union for re-opening of the case of the applicant was rejected on the ground that the time limit could not be relaxed. This letter referred to the earlier letter of the Board dt. 13-6-90. Learned advocate for the respondents has produced the letter before the Tribunal today. The Railway Board had expressed its inability to agree to relaxation for appointment on compassionate ground to the applicant addressed to the General Manager. It appears that after this letter of 13-6-90 was sent the matter was taken up by the Union and their representation was replied by the impugned letter dt. 25-5-92.

8. The written statement of the respondents show that the application was rejected on the ground of delay and also on the ground that the applicant was the third son of the deceased employee. The decision of the division bench of this Tribunal (supra) shows that the application could not be rejected on ^{these or} ~~this~~ ground alone and it ought to have been considered on merits and all other circumstances.

9. In these circumstances the application is allowed and the authority concerned is directed to entertain the application of the applicant and dispose of the same on merits and in accordance with law. The authority concerned shall pass ~~his~~ ^{The} speaking order within a period of three months from the date of receipt of a copy of this order.

10. The application is disposed of with no order as to costs.



(V.D.DESHMUKH)
Member(J)

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