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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 765/93.

Transfar Application No:

DATE OF DECISION: 17th Nov, 94.

Shaikh Munir Shaikh Bashir Petitioner

Shri Dinesh Adsule Advocate for the Petitioner

Versus

The General Manager, Central Railway Respondent
& Ors.

Shri S.C.Dhavan Advocate for the Respondent(s)

CORAM :

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

The 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 ?

abp.

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

O.A.No.765/93

Shaikh Munir Shaikh Bashir

... Applicant.

v/s.

1. The General Manager,
Main Building, Central Railway,
Bombay V.T.
2. The Chief Personnel Officer,
(ENG) C.P.O. Office, 1st Floor,
Central Railway, Bombay V.T.
3. The XEM(B/F) MMR CWM Workshop,
Central Railway, Manmad 104.
4. Asstt. Bridge Engineer(STR)
Central Railway AEE Office,
Byculla, Bombay-27. ... Respondents.

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

APPEARANCES:

Shri Dinesh Adsule, Counsel for the
Applicants.
Shri S.C.Dhavan, Counsel for the
Respondents.

ORAL JUDGEMENT :

DATED : 17th Nov, 1994.

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

This Tribunal passed the following order on 20/9/94:-

"In the morning there was mention that Shri Dinesh Adsule, Counsel for the applicant will be appearing after 2.30 P.M. We had therefore fixed the case at 2.30 P.M.; still the Advocate is not present.
Applicant in person, Shri S.C.Dhavan, Counsel for the respondents.

This is a case in which the applicant's father was medically decategorised on 21.4.90 and his application for compassionate appointment was rejected by the General Manager, Central Railway by letter dated 11.3.91. Reasons for rejection of request are not apparent on the face of the reply. However, in the written statement, respondents have now stated that compassionate appointment of wards of Railway Employees who become medically decategorised after the age of 55 years is in discretion of the General Manager and not to be given as a matter of course. The General Manager having once exercised his discretion and considered the applicant's case and rejected his application, the same cannot be interfered with by the Tribunal. It is also stated

that the application is barred by limitation and the applicant's father is getting his full pension as per Railway Rules and has been paid all retirement benefits. The applicant's case has been considered in accordance with Railway Board's circular dated 25.2.86, Exhibit I to the written statement and has been rejected. Further it is stated in para 9 that "as per Railway Board's circular dated 24.6.87 wards of the employees who are declared Medically unfit for all posts are not entitled to appointment on compassionate ground." Further it is stated in para 10 that two elder brothers are already employed with Railways and the allegation of the applicant that they do not support the parents is without any basis and OA for compassionate appointment deserves to be dismissed.

Annexure A to OA which refers to Railway Board letter dated 16.11.94 deals with appointment to wife of Railway Employee who is medically incoaaci-
tated or decategorised and retired from service. Circular dated 25.2.86 deals with "employment on compassionate grounds" and states that it can be offered where a Railway employee becomes medically decategorised for the job he is holding and no alternative job with the same emoluments can be offered to him. Circular dated 24.6.87 deals with wards of the employees who are declared medically unfit for all posts and also are not entitled to appointment on compassionate ground.

In this case it is not in dispute that the father was declared medically unfit in all classes. Evidently, there is a distinction between an employee declared medically unfit for all posts and an employee declared medically decategorised for the job he is holding. Apparently the Railway Board circular dated 24.6.87 covers the employees declared medically unfit for all posts. However, the respondents have not taken a clear cut stand that the applicant is denied compassionate appointment as per the Railway Board circular dated 24.6.87.

We, therefore, direct the respondent to file an affidavit with the approval of the General Manager, Central Railway stating as to whether the appointment has been denied because the applicant is considered not eligible in terms of Railway Board circular dated 24.6.87 or it is denied because the General Manager in his discretion has decided not to give compassionate appointment in terms of circular dated 25.2.86. The case is adjourned solely for the purpose for enabling the Railway to file their affidavit. List the case on 21.10.94 as part heard.

Copy of the order may be given to the parties."

The operative portion of the order stated that the case is adjourned for enabling respondents to file their affidavit on the points raised in that order. The case was listed on 21.10.94 as part heard. When respondents were not ready with their affidavit, hence the matter was adjourned to 11/11/94 and thereafter to 17/11/94. We, therefore, consider that the respondents are not in a position to make a categorical statement that they have rejected the application of the applicant for Compassionate Appointment in terms of Railway Board's Circular dt. 24.6.87. It appears that the matter was decided by the Competent Authority in its discretion as is stated in para-7 of the reply. However, the reasons for this are not given vide Annexure-D. The case of the applicant is that such appointments have been given in other cases and this is a fit case because  two elder brothers of the applicant stay separately, he has an aged mother to support and there are three unmarried sisters and one unemployed brother. The fact remains that pension of Rs.700/-p.m. is not sufficient to support such a large family. It is therefore the case of the applicant that the requirements of compassionate appointment are satisfied in his case.

Under the circumstances, we consider that it may be possible to dispose of this case by issue of appropriate directions to the respondents. We therefore dispose of the case by passing the following order:-

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ORDER.

Applicant is at liberty to file a detailed representation to the Competent Authority about Compassionate Appointment within a fortnight of the receipt of this order. The Competent Authority should consider the application as per applicable rules and taking account of all the circumstances mentioned by the applicant and pass a speaking order within three months of the receipt of the same. No order as to cost.



(M.R. KOLHATKAR)
MEMBER(A)

abp