

3

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 25/94.

~~Transfer Application No~~

DATE OF DECISION: SEPTEMBER 12, 1994.

Shri M.M. Shaikh & Another, Petitioners

None. Advocats for the Petitioners

Versus

Union Of India & Others, Respondent

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

RCL

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 ?

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

6

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 25/94.

Shri Mohiddin Moula Shaikh  
& Another. ... Applicants.

Versus

Union Of India & Others ... Respondents.

CORAM :

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

APPEARANCE :

1. Shri S. C. Dhavan,  
Counsel for the respondents.

ORAL JUDGEMENT

DATED : SEPTEMBER 12, 1994.

{ Per. Shri M. R. Kolhatkar, Member (A) }.

1. This is an original application on the subject of compassionate appointment under Section 19 of the Administrative Tribunals Act. Applicant absent though noticed. Applicant No. 1 is the father of Applicant No. 2, whose request for compassionate appointment was rejected by the Railway Administration vide letter dated 13.07.1993 at Exhibit 'F', which reads as below :-

"Your case has been re-examined by DRM and taking into account your service record, it has been decided to drop the recommendation for giving compassionate appointment to your Son.

Moreover, you have been retired with full pensionary benefits."



2. The case of the applicant is that the Applicant no. 1 retired as Driver 'A' Grade on 20.03.1991 because he was declared as medically unfit for all classes of work. It is the practise in the Railways to ~~consider~~ the wards of such persons for compassionate appointment and there are several people to whom the compassionate appointments were granted and the applicant has been discriminated in the matter of granting of compassionate appointment. The applicant also relies on the circular of the Chief Personnel Officer, no. CON/883/R/IV dated 25.10.1991, which states that the same post must be filled only on compassionate ground. The applicant has however, not enclosed a copy of this circular. The applicant has also questioned the letter dated 20.03.1991, which is the medical certificate issued by Hospital/<sup>at</sup>Kurudwadi, stating that the applicant no. 1 is unfit for all classes of work.

3. It is contended by the Respondents that the applicant no. 1, having retired on medical grounds, has been paid all pensionary benefits, as such, neither the applicant no. 2 has got any vested right for compassionate appointment nor any assurance was given to him in this regard. They have contended vide para 6 of their reply that when railway employees are medically decategorised and no alternative job is offered, compassionate appointment to the wards of such employees can be considered in the discretion of the competent

(2)

authority but when such employee has passed the age of 55 years, the personal approval of the General Manager has to be obtained. The competent authority is also competent to call for the past record of the services of the employee and the appointment of the wards of employees, who are over 55 years age, should be done only in the circumstances considered as a special case and not as a matter of course and with the personal approval of the General Manager. The case of the applicant was not recommended to the General Manager, taking into account all circumstances, including the record of the applicant, who suffered a penalty of censure on three different occasions, imposed fine on four different occasions, his increment was withheld on three different occasions and who was also absent unauthorisedly for 25 days. The fact that the applicant No. 1 retired with full pensionary benefits and the Railway Board's circular dated 24.06.1987 were also kept in view. This Railway Board Circular, which was produced at the time of hearing by the Learned Counsel for the Respondents, reads as below :-

"NO.: E(NG)II/86/RC-1/20      New Delhi dt. 24.6.1987.

The General Managers,  
Central Railway & Others.

Sub.: Appointment on compassionate grounds to the wards of Railway employees retired on medical grounds.

---

Attention is invited to the provision in para 512(ii) of the Indian Railway Medical Manual which lay down that where malingering is established, the Railway Servant should be

9

declared unfit for all classes.

2. A question has been raised whether in a case where a Railway servant is declared unfit for all posts in terms of the said para 512(ii) of the Medical Manual and is retired from railway service, compassionate appointment to the ward of such a Railway servant would be admissible. The Board have considered the matter and have decided that in such cases, compassionate appointment would not be admissible.

3. Receipt of this letter may please be acknowledged."

4. Finally, the respondents have also referred to the recent <sup>Supreme Court</sup> judgement in the case of L.I.C. V/s.

Asha Ramchandra Ambekar, in which the Supreme Court has laid down that the Tribunals cannot direct compassionate appointment which are against the rules.

5. We have considered the matter carefully. The circular dated 25.10.1991, to which reference has been made in para 5.2 <sup>of the O.A.</sup> has not been produced before us and its contents are also not very clear from what is stated in para 5.2. We have, however, before us the Railway Board's Circular dated 24.06.1987, which has laid down that compassionate appointment would not be admissible in such cases. The ratio of L.I.C. V/s. Asha Ramchandra Ambekar, therefore applies to this case, so far as this aspect of the matter is concerned.

However, the applicant has also alleged discrimination. The applicant however, has not cited any cases wherein equivalent circumstances, ~~the Railways have~~ offered compassionate appointment and the applicant alone has been singled out for not having been offered

(10)

the compassionate appointment. In this connection, we would like to refer to the recent Supreme Court Judgement in State of Haryana V/s. Naresh Kumar Bali JT 1994(4)SC 184 where the Hon'ble Supreme Court has set aside the judgement of Punjab & Haryana High Court, directing compassionate appointment to the ward of a retired Constable. The Hon'ble Supreme Court stated that "The High Court without even analysing the circumstances under which the seven persons mentioned in its judgement came to be appointed as Police Officers (ASI or Inspector), straightaway has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning. The positive finding ought to have been given whether the case of the respondent was comparable with those of the seven and then a finding of discrimination ought to have been rendered. In the subsequent para of the same judgement, the Hon'ble Supreme Court has also referred to the ratio of L.I.C. V/s. Asha Ramchandra Ambekar & Anr. (1994) 2SCC 718 and observed that the principles set out in that judgement would also apply in this particular case.

6. In view of the above discussion, we are of the view that there is no merit in the application. We accordingly, dismiss the same. No order as to cost.

*M.R. Kolhatkar*  
\_\_\_\_\_  
(M. R. KOLHATKAR)  
MEMBER (A).

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Review Petition No.140/94  
in  
Original Appln. No. 25/94

- 1. Mohiddin Maula Shaikh
- 2. Riyaz Mahiddin Shaikh .. Review Petitioners  
(Original Applicants)

-versus-

Union of India & 2 Ors. .. Respondents

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

Tribunal's Order in Review  
Petition by circulation  
(Per M.R.Kolhatkar, Member(A))

Date: 23-11-94

This is a review petition requesting for review of our oral judgment dated 12-9-94. The main ground urged by the applicant for review is that the case was fixed for final hearing on 25-7-94 but the advocate of the petitioner was not able to appear before the Tribunal due to unavoidable circumstances and the petitioner was under the impression that the matter was adjourned to 26-9-94, but however the matter was disposed of by single bench on 12-9-94 without hearing the petitioner. Thus the order has been passed without giving an opportunity to the applicant of being heard and the petitioner has a good case on merits as per the rules regarding compassionate appointment.

2. The order sheet shows that the matter was admitted on 18-7-94 and adjourned to 26-8-94. Thereafter it was adjourned to 12-9-94. In our order we have stated that the

applicant is absent though noticed.  
However, the matter has been considered  
on merits and after considering the  
pleadings of the applicant and respon-  
dents and considering the relevant  
case laws.

3. No ground has been made  
out for review or rehearing of the  
matter. The R.P. has no merit and  
therefore it is rejected.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)

M

Copy to:-

Mr. M.M. Shaikh & Anr.,  
C/O. Mr. S.C. Halli, Adv.,  
~~At High Court~~  
5/3, Bhabani Peth,  
Sangameswar Sadan,  
SOLAPUR-2.

2. The Union of India & Ors.,  
through Mr. S.C. Dhawan, Adv.

SECTION OFFICER.