

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 887/94

Transfer Application No: --

DATE OF DECISION: 07-03-96

Toufeeq Ahmed S _____ Petitioner

Mr.C.M.Jha _____ Advocate for the Petitioners

Versus

U.O.I. & Ors. _____ Respondent

Mr.A.L.Kasturey _____ 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 ?

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.NO:887/94

Pronounced this, the 7th day of February 1996

CORAM: HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Toufeeq Ahmed.S.

Western Railway Qtrs.,

No.161/11, Bandra (W)

Bombay.

.. Applicant

(By Advocate Shri C.M.Jha)

-versus-

1. Union of India

through

General Manager,

Western Railway,

Churchgate,

Bombay - 400 020.

2. Divisional Railway Manager,

Western Railway, Bombay

Central, Bombay - 400 008.

.. Respondents

(By counsel Shri A.L.Kasturey)

ORDER

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

In this application u/s. 19 of the A.T. Act the applicant who is the son of ex-employee of Western Railway viz. Sabbir Ahmed, Ex-shunter, Loco Shed, Bandra, Western Railway Bombay and who was medically incapacitated while in service on 17-1-1992 and was actually retired from service on 16-12-1992, after consideration of his case by the departmental screening committee impugns the letter dt. 20-7-93 which reads as below:

"Your proposal for employment on compassionate ground was put up to the competent authority.

However, it is regretted that your case cannot be acceded to due to following reason.

Your father Shri Sabbir Ahmed has retired on medical grounds only 1½ month's prior to his normal retirement on superannuation with full qualifying service of 33 years. Therefore your request on compassionate ground has not been considered."

2. The O.A. was allowed to be amended by this Tribunal's order dt. 21-9-95.

3. The main contention raised by the applicant is that while issuing the letter rejecting his representation the Railway Board's instruction on compassionate appointment dt.7-4-83 and which are annexed at Ex. 'E' have not been complied with. One of the circumstances under which compassionate appointment can be given to the persons eligible to be appointed on compassionate grounds is mentioned at Sr.No.I(iv) and reproduced below:

"(iv) When Railway employees become crippled while in service or develop serious ailments like heart diseases, cancer etc. or otherwise medically decaterorised for the job they are holding and no alternative job of the same emoluments can be offered to them."

In Sr.No.VIII the priorities to be observed in making appointments on compassionate grounds are given. It is clear that the priority of a medically incapacitated employee is at sr.No.(iii) and therefore in

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such cases a time limit of three months is to be observed subject to vacancies being available. The applicant has also referred to Railway Board circular dt. 21- 8-1987 which provides for relaxation of the time limit within which compassionate appointment can be offered in the case of medically incapacitated employees from 5 to 10 years. According to the applicant the reason given for rejection viz. that the father of the applicant had left only 1½ months service prior to his normal retirement is not in accordance with Railway Board's instructions.

4. In the amended application the applicant has taken the following grounds. There were two cases viz. (i) Ward of Mr. Ansar Ahmed, Driver, Loco Shed, Bandra, Western Railway and (ii) Ward of Shri Chandrakant G. Desai, Asstt. Loco Shed, Bandra Western Railway who were similarly situated employees whose wards were given compassionate appointments by the respondents. Thus the action of the respondents is not only illegal, not being in accordance with the rules but is also discriminatory and is violative of guarantee of equality under Articles 14 and 16 of the Constitution. The applicant further states that the pecuniary condition of his family is very precarious and although his father had retired on full pension of Rs. 2115/- p.m. there are

five members in his family and this is a relevant circumstance which ought to have been taken into consideration while considering his application for compassionate appointment.

5. The respondents have contended that the case of the applicant was considered by respondent No.1, viz. General Manager, Western Railway who is the competent authority and who has turned down the request. The decision which was taken is fully in accordance with Railway Board's instructions to which the applicant has referred. Moreover the respondents have also taken into account the Railway Board's instruction dt. 28-2-1986 annexed at Ex.R-1 which envisages that employees with less than three years of service before superannuation is at the time the decision taken, personal approval of the General Manager has to be obtained before the offer of appointment on compassionate grounds is made.

6. So far as the additional pleas raised by the applicant are concerned, the respondents did not file their reply although the case came up on five subsequent occasions viz. 17-10-95, 23-11-95, 30-11-95, 4-1-96 and 24-1-96. On the last three occasions, the adjournments were given specifically to enable the respondents to rebut the allegations of discrimination and also to have their say regarding the contention of the applicant that his financial

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condition is very precarious warranting concession of compassionate appointment.

7. We have heard both the parties. The applicant has relied on Supreme Court judgments in the case of Phoolvati vs. U.O.I. and Sushama Gosai's case and also the O.A. 1313/94 viz. Shivcharan Sukhai Pali vs. U.O.I. decided by this Tribunal on 24-4-1995 which was a similar case of medically incapacitated railway employee in which the Tribunal found that the respondents have not adhered to the guidelines of Railway Board and granted relief.

8. We have considered the matter. The reliance placed by the applicant on Smt. Phoolwati v. U.O.I., AIR 1991 SC 469/^{which} is no more good law in view of the later judgment in Umesh Kumar Nagpal (1994) 85 FJR 299 (SC) and Life Insurance Corporation of India v. Asha Ramachandra Ambekar (1994) 2 SCC 718. ~~is misplaced~~ However, it is settled law that the department has to examine the financial background of the family of the deceased before taking a decision in the matter of compassionate appointments. Moreover the reason given for rejection viz. only 1½ months are left before retirement and that the applicant has superannuated with full qualifying service of 33 years is irrelevant and not in consonance with the law laid down by the Supreme Court. It may be that appointment of wards of employees who are over 55 years is to be considered by the GM but it does not follow that such cases are to be invariably rejected especially on the ground given viz. only 1½ months are left for normal superannuation.

It has been pointed out by the applicant that the Screening Committee took almost a year to decide the case inasmuch as the applicant's father was declared unfit on 17-1-92 but the Screening Committee considered the case after 11 months and order on retirement was passed on 16-12-92. Respondents have also not dealt with the allegations of discrimination made by the applicant although full opportunity was given to the respondents to rebut the same. I am therefore inclined to allow the O.A. and dispose of the same giving the following directions :

O.A. is allowed. Respondents are directed to reconsider the case of the applicant keeping in view the circumstance that there are five members in the family of the incapacitated railway employee and that the financial distress test is prima-facie satisfied and the fact that the employee had only 1½ months to complete before superannuation was due to delay on the part of the department and further keeping in view the two cases cited by the applicant. Action should be taken within three months of the date of receipt of the order.

M.R.Kolhatkar

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(M.R.KOLHATKAR)
Member(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESOT ROAD, MUMBAI 400001

ORDER IN CONTEMPT PETITION NO.19/97
IN
O.A.No. 887/94

DATED : THIS 27 DAY OF AUGUST, 1997

CORAM : Hon'ble Shri B S Hegde, Member(J)
Hon'ble Shri M R Kolhatkar, Member(A)

Taufeeq Ahmed
(By Adv. Mr. C M Jha) ..Applicant

V/s.

1. Union of India
Mr. N.Kirithivasan
General Manager
Western Railway
Churchgate,
Mumbai 400020

2. P K Goel
Divisional Railway Manager
Bombay Central
Western Railway
Bombay 400008
(By Shri V S Masurkar,
Central Government Standing
Counsel)

..Contemnners

ORDER

[Per: B S Hegde, Member(J)]

1. Heard Mr. C.M.Jha, counsel for the applicant and Mr. V.S.Masurkar, counsel for the respondents.
2. The Applicant has filed Contempt Petition no. 19 of 1997 in O.A. No. 887 of 1994. The Tribunal vide its order dated 7.2.96 after considering the rival contentions of the parties allowed the Original Application and directed the Respondents to reconsider.

the case of the applicant keeping in view the circumstances that there are five members in the family of the incapacitated railway employee and that the financial distress test is *prima facie* satisfied and the fact that the employee had only 1-1/2 months to complete before superannuation was due to delay on the part of the department and further keeping in view the two cases cited by the applicant. Action should be taken within three months of the date of receipt of the order.

3. The competent authority has passed a speaking order dated 30.9.1996 in terms of what is stated to be a review of the earlier order as directed by the Tribunal. The speaking order contains eight paragraphs. The main contention of the Contempt Petitioner is that the respondents have not discussed the relevant point as highlighted in Tribunal's order and by maintaining the earlier order have committed clear contempt. We have perused the speaking order. We are constrained to observe that the speaking order though ^{it} is in detail is *largely* irrelevant. In one paragraph reference is made to the purpose of compassionate appointment and in another paragraph a reference is made to the Supreme Court judgment in UMESH NAGPAL Vs. STATE OF HARYANA & ORS., decided on 4.5.94. All this was entirely uncalled for. The only para which appears to have some bearing to the order of the Tribunal is that the competent authority

observed that the two cases cited by the applicant are not comparable. It is stated that in one case the railway employee was completely incapacitated for further service at the age of 48 years i.e., 10 years before the normal date of superannuation. We quite see the point that this case is not comparable. However, we do not understand as to how the second case relied upon by the applicant is not comparable. Mere reference that the DRM under his powers has granted appointment on compassionate grounds did not absolve the competent authority to examine precisely in what respect the second case differed from the case of the applicant.

4. The most important aspect of the order is that the competent authority has failed to appreciate that this Tribunal has clearly given ^a finding that the test of financial distress in the case of the applicant is *prima facie* satisfied. The competent authority has not at all dealt with the aspect of the financial distress of the applicant and instead mechanically repeated the fact that the applicant having retired on medical ground just two months and 12 days before his actual date of superannuation and that medical decategorisation has not in any way affected the quantum of his pension. We are, therefore, of the view that the competent authority has not really applied his mind to the findings of the Tribunal and the directions flowing from those findings.

The speaking order dated 30.9.96 is therefore clearly arbitrary and is liable to be quashed and set aside.

5. We therefore hold that the respondents have not acted as per the directions of the Tribunal, though we are not at present in a position to hold that there was a wilful disobedience on the part of the respondents. Under the circumstances, we direct the Respondents to reconsider the case of the applicant keeping in view the letter and spirit of our order and consider the case of the applicant for appointment on compassionate ground. Action in this regard should be taken within a period of two months from the date of communication of this order. We are keeping the C.P. pending till first week of November, 1997 when the matter would be considered again.

6. List the C.P. for orders on 10th November, 1997.

M.R.Kolhatkar

(M.R. Kolhatkar)

Member(A)



(B.S. Hegde)

Member(J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GJLESTAN' BUILDING NO:6
PREScot ROAD, MUMBAI:1

Review Petition No.87/97 in
Original Application No.887/94

CORAM : Hon'ble Shri B.S.Hegde, Member (J)

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

Taufeeq Ahmed

... Applicant.

V/s.

Union of India and others.

Tribunals order on Review Petition No.87/97 by Circulation.

{ Per Shri B.S. Hegde, Member (J) }

Dated: 10.10.97

The respondents have filed this Review Petition seeking review of the judgement dated 27.8.97 and the order passed on the Contempt Petition No.19/97. The Tribunal while passing the order on Contempt Petition held that the respondents have not acted as per the directions of the Tribunal dated 7.2.96. In that order the Tribunal clearly mentioned that the Department has to examine the financial background of the family of the deceased before taking a decision in the matter of compassionate appointments. No such observations has been made while passing the order dated 30.9.96, by the respondents. Though we were of the opinion, that no wilful disobedience on the part of the respondents, but there was non-application of mind and we directed the respondents to re-consider the case

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of the applicant for compassionate appointment keeping ~~in~~ in view the letter & spirit of our order. Action in this regard should be taken within a period of two months from the date of communication of this order.

The Registry to place the C.P. on 10.11.97.

In the Review Petition, the learned counsel for the respondents have cited various decisions of the Supreme Court stating that the order passed by the Tribunal dated 27.8.97/keeping in view of the observations of the Supreme Court. It is true, that the ultimate decision has to be taken by the Competent authority while rejecting the request of the applicant on the basis of the financial background of the family. No such observations has been made by the competent authority. Therefore, it is incumbent upon the respondents to consider the same and pass appropriate order. ~~On perusal of the Review Petition~~ On perusal of the Review application, we do not find any new points have been brought out or any new evidence which could not be brought at the time of filing the Contempt Petition. The only contention raised in the Review Petition is that in view of the decisions of the Apex Court, it is the discretion of the competent authority to consider the case on the basis of facts. Needless to mention, that the respondents are required to consider the directions of the Tribunal while passing the order dated 30.9.96. Therefore, we find neither any error nor any new facts have been brought to our notice calling for a review of the order passed in Contempt

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Petition. In the circumstances, we adhere to our decision earlier passed, and the respondents are required to pass appropriate order within the specified time.

In the circumstances, the Review Petition is dismissed by circulation.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

B.S. Hegde

(B.S. Hegde)
Member (J)

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dd - 10/10/97
~~order~~ ~~10/10/97~~ is despatched
to Appellate Complainant (s)
on 10/10/97

5/11/97