

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 4/95
~~TRANSMISSION NO.~~

Date of Decision : 13/10/95

Shri Ahmedalli Petitioner

Shri C.M. Jha Advocate for the Petitioners

Versus

Union of India

Respondents

N.K. Srinivasan,

Advocate for the respondents

C O R A M :

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).)

BEFOR THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO.4/95.

Shri AhmedalliApplicant.

V/s.

Union of India & Others.Respondents.

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

APPEARANCE :

1. Shri C.M. Jha,
Counsel for the applicant.
2. Shri N.K. Srinivasan,
Counsel for Respondents.

JUDGEMENT :

Date : 13-10-95

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

The applicant in this O.A. has challenged impugned order dated 28.1.1994 issued by the Divisional Railway Manager, Western Railway, rejecting the request of applicant for the appointment of his son on compassionate ground. The letter recites that the case for employment on compassionate ground was put up to the competent authority viz. General Manager who has not considered the request for compassionate appointment.

2. The case of the applicant is that on 31.10.1992 he was medically decategorised for A&B categories and was made fit to work for C-1 and below categories. However, the applicant says that the committee did not find the applicant fit for the post in C-1 category

and made him to retire compulsorily. It appears that the applicant had submitted an application before the screening committee that he cannot accept any lower grade job as it is disadvantageous to him and he preferred to retire on medical grounds. The applicant says that his son's application for appointment on compassionate ground was registered against waiting list no.25 but inspite of completing all requisite formalities and inspite of the clear instructions in the Master Circular of the Railway Board on this point, his case has been arbitrarily rejected.

3. The applicant relies on the case of *Shivacharan Sukhai Pali Vs. Union of India* in O.A.1313 of 1994 decided by a Single Bench of this Tribunal on 24.4.1995. In this case the Tribunal held that the respondents have not adhered to the directions of their own circular and directed the respondents to consider the applicant no.2 for compassionate appointment keeping in view their own guidelines and pass appropriate reasoned order.

4. According to the respondents the case of the applicant could not be considered as the financial condition of the applicant did not justify the appointment of applicant's son. Learned Counsel for the respondents stated that the applicant receives a pension of Rs.1000/- per month. The applicant has also received the lumpsum compensation of about Rs.2 lakhs and these circumstances were taken into consideration while taking a decision of rejecting his request. The respondents have also relied on the case of *Umesh Kumar Nagpal Vs. State of Haryana & Ors.* JT 1994(3) S.C. 525.

5. Since the main contention of the applicant is that the instructions of the Railway Board on this point have not been followed. We considered these instructions dated 7.4.1983 which appear at

Exhibit 'E' of the O.A. These instructions show that medical incapacitation of an employee is one of the many grounds for compassionate appointment. In para VIII under the heading

Priorities to be observed in making appointments on

compassionate grounds : its stated

"The following should be the order of priority to be followed while making appointments on compassionate grounds.

- (i) Dependents of employees who die or are permanently crippled in the course of duty:
- (ii) Dependents of employees who die in harness as a result of railway accidents when off duty:
- (iii) Dependents of employees who die in service or are medically incapacitated."

From this is is seen that medically incapacitated employees do not enjoy a very high priority in the matter of appointments of their wards on compassionate ground. being at priority No. (iii)

It is also seen from the instructions quoted in the judgment in Shivcharan Pail's case that if an employee has less than 3 years service at the time of decategorisation personal approval of the General Manager is to be obtained before the compassionate appointment is to be made. It is therefore seen that the case of the employees who are incapacitated within 3 years before superannuation are quite frequent and therefore there is no delegation of the powers and the orders of General Manager personally are to be obtained. Our reading of the instructions therefore show that the category to which the applicant belongs does not enjoy high priority as such cases are quite common. The permission of the highest officer in the zonal Railway viz. General Manager is required to be obtained. In this particular case is is not the contention of the applicant that the matter was not considered at the level of the General Manager. It is very clear from

the order that the matter did receive the personal attention of the General Manager who after taking into account various circumstances negatived the request. The Judgment quoted by the respondents in Umesh Kumar Nagpal is also quite relevant and shows that compassionate appointment is not a rule but an exception and the test of financial condition of the family being critical is required to be satisfied.

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. However, to this general rule... there are some exceptions carved out in the interests of Justice, and... One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased."

In view of the discussion above we are of the view that no case for Tribunal's interference with the order of the Railway administration dtd. 28.1.1994 is made out. The O.A. is without merit and is dismissed with no order as to costs.

M.R. Kolhatkar

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