

14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 212/95 with M.P.98/96

Date of Decision: 25-03-98

Mohd. Javeed Mohd. Kadir,

.. Applicant

Shri G.S. Walia

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri R.R. Shetty.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? X

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 212 / 95
WITH
MISCELLANEOUS PETITION NO. 98 / 96.

Prongunly this the 25th day of March 1998.

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

Mohd.Javeed Mohd.Kadir,
C/o. G.S.Walia,
Advocate, High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Fort, Bombay - 400 001.

... Applicant.

(By Advocate Shri G.S.Walia)

V/s.

1. Union of India, through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Divisional Railway Manager,
Central Railway,
Bhusawal,
Maharashtra.

... Respondents.

(By Advocate Shri R.R.Shetty)

ORDER

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

In this O.A., the applicant has challenged the action of the respondents denying compassionate appointment to him. The facts are as below. The applicant is the son of one Mohd. Kader Shafaquat Hussain who was working as a Rivetter Plater under Chief Carriage Superintendent, Bhusawal who expired on 31.3.1985. His deceased father left behind his widow and three children including the applicant. It is not disputed that the widow was aged 34 years, the applicant was aged 12 years, the younger brother was aged 7 years and his sister was aged 14 years at the time of the death of his father. The applicant attained majority on 8.3.1990 and thereafter applied for compassionate appointment under his letter

...2.

dt. 19.4.1990 (vide Ex. 'B'). It appears, however, that the respondents rejected the request of the applicant by their letter dt. 28.6.1990, the same has not been brought on record either by the applicant or by the respondents though the respondents in their reply to the M.P. No.98/96 have purported to enclose the same.

However, receipt of such a letter is not denied by the applicant which ^{letter} was addressed to his Grand Father. The reason for rejection of the request is also not disputed viz. that the widow of the Government employee re-married.

~~According to~~ In Circular No.E(NG)II-84/RC-1/26

dt. 18.4.1985, ~~it is laid down that for the~~ General Manager to consider cases beyond 5 years of the death of the deceased government employee ~~up to 10 years,~~ ~~certain conditions have to be fulfilled and one~~ condition ^{is} that the widow of the deceased employee should not have re-married. The counsel for the applicant states that the said condition does not apply to his case because the widow has not sought the employment, but the son living separately from the widow has sought it and admittedly the son stays with his grand father who is very old ^{and} who is maintaining the applicant, his brother and sister.

2. Regarding the delay in filing the O.A. (which was filed on 5.2.1995) the contention of the applicant ~~is~~ that the applicant had been meeting the D.R.M. personally time and again, who in turn informed the applicant that his case was under consideration and had been referred to the Head Office. It is contended that the applicant ^{that he} had hoped that his case would be considered by relaxation of time limit

...3.

of 5 years within General Manager's powers up to 10 years which in the present case expired on 31.3.1995. He waited up to that time and has filed this application just short of the time limit of 10 years.

3. The respondents have opposed the O.A. The respondents have denied that the applicant was contacting the D.R.M. or other staff in connection with his case. According to respondents, the cause of action accrued to the applicant on 28.6.1990 and he ought to have filed the O.A. within one year thereafter, but he did not do so and therefore, the O.A. is time barred.

4. The applicant has filed M.P. No.98/96 praying for condonation of delay. In this application it is stated that the letter dt. 28.6.1990 was not addressed to him, but to the grand father and that his claim for compassionate appointment gives him a continuous cause of action. The respondents have opposed the M.P. and have relied in this connection on the Supreme Court Judgment in Union of India & Ors. V/s. Bhagwan Singh (1996 SCC (L&S) 330). In that case the application was filed by the applicant beyond 5 years from the date of death and beyond one year from the date of attaining majority and it was there held that the O.A. was time barred. It was further held that the reason for compassionate appointment which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness when there is no earning member in the family and if there is material to show that the family has carried on for a long time, then a direction to grant compassionate appointment would not be justified.

5. I have considered the matter. The reason given by the Railway Administration for rejecting the

application of the applicant for considering grant of compassionate appointment does not appear to be correct. ~~Unlike~~ⁱⁿ the case of Bhagwan Singh in the present O.A. the application for compassionate appointment was made shortly after the applicant attaining majority and the application to the Railway Administration itself was not time barred. To that extent, the facts in this O.A. ~~are~~ different from the facts in Bhagwan Singh's case. However, the question is whether the O.A. before the Tribunal is time barred and whether the contention that the applicant having pulled on under the roof of his grand father for 10 years beyond the date of event and 5 years beyond the date of majority would indicate that the test of immediate financial distress was not satisfied. In my view, the applicant's explanation that he delayed in filing the O.A. because he was approaching the D.R.M's Office personally is not borne out by any evidence on record. The lapse of time would also indicate that the test of immediate financial distress is not satisfied. I am therefore, of the view that the O.A. is liable to be dismissed on the ground of limitation as well as on merits. The O.A. is dismissed accordingly with no orders as to costs.

M.R. Kolhatkar

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

B.

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