

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 1099 of 1995.

~~Transfer Application No~~

DATE OF DECISION: 25/1/96

Shri Kanta B. Yadav, Petitioner

Shri C. Nathan, Advocate for the Petitioner

Versus

The General Manager,  
Ordnance Factory,  
Ambernath and Another. Respondents

Shri R. K. Shetty, Advocate for the Respondent(s)

CORAM :

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

~~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 ?

  
(B. S. HEGDE)  
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR  
PRESCOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1099/95.

Dated, this 25<sup>th</sup> the \_\_\_\_\_ day of JAN. 1996.

CORAM : SHRI B. S. HEGDE, MEMBER (J).

Shri Kanta B. Yadav ... Applicant  
(Shri C. Nathan, Advocate).

Versus

The General Manager,  
Ordnance Factory,  
Ambarnath and Another ... Respondents.  
(Advocate by Shri R. K. Shetty).

: ORDER :


{ PER.: SHRI B.S. HEGDE, MEMBER (J) }

1. Heard Shri Nathan, Counsel for the applicant and Shri R. K. Shetty, Counsel for the respondents. The only prayer made in this O.A. is that the applicant joined the Ordnance Factory, Ambarnath on 29.11.1972 as Labour 'B' Grade. At the time of seeking appointment he did not furnish any date of birth certificate. The respondents in their reply stated that since he was an unskilled labourer at the time of entry in service, the applicant was medically examined by the Medical Officer of Ordnance Factory Hospital, Ambarnath. The Medical Officer while assessing the age had declared him to be of 35 years by appearance and as per the statement of the individual ~~the~~

aged 25 years only. The visual assessment of the age was made in the absence of any documentary evidence of his age at the time of entry in service. Accordingly, the said age was recorded in the service records at the time of his appointment. After a lapse of 13 years, in the year 1985, the applicant submitted a document submitted by the District Magistrate, Azamgarh, dated 15.09.1985 wherein his family history has been given and his date of birth is shown as 29.11.1947. The said request has been turned down by the respondents vide their letter dated 16.01.1986 stating that in accordance with the existing Fundamental Rule, the change in date of birth can be made within 5 years of entry into service. Since you have entered the service as back as 1972, your request for change in date of birth, therefore, cannot be entertained at this stage. Again his request has been turned down by the respondents vide dated 6.10.1993 stating that your request for change of date of birth cannot be acceded to at this belated stage as per the existing Government orders. The applicant is due to retire in the year 1997, therefore, the respondents submitted that in view of the settled principles of law, it is not open to the applicant to seek such certification at the time of his retirement. In this connection, the Learned Counsel for the respondents drew my attention to the catena of decisions of the Supreme Court in Civil Appeal No. 502 of 1993 - Union Of India V/s. Harnam Singh, 1994 SCC (L&S) 681 - State of Orissa V/s. B. Senapathi, (1994) 27 ATC (SC) 606 - National Airport Authority V/s. M.A. Wahab, etc. wherein the Apex Court has held that an

application for correction of date of birth, entered in the service book at the time of entry into service could be rectified within a period of 5 years from the date of coming into force of note 5 to FR 56 (m) in 1979. In the subsequent decision, the Apex Court has clearly held that the application is liable to be dismissed summarily under the Rules if filed after 5 years of entry into government servant. It is also held that Note 5 to F.R. 56 as substituted in 1979 is applicable not only to those employed after 15.12.1979 but also to those appointed earlier.

2. In this case, the applicant though entered into service in 1972, for the first time he submitted some document, which after considering, the same was rejected by the competent authority. Thereby, the applicant failed to substantiate his claim through any reliable and trustworthy documentary evidence. Since he allowed the matter to rest till he neared the age of superannuation, the question of change in the date of birth at this belated stage does not survive. Courts have also held that Tribunal should not give overindulgence to employees by over-riding administrative decisions on technical grounds. As stated above, since the applicant is retiring in the year 1997, the question of rectification of date of birth at this belated stage is not justified. Accordingly, I see no merit in the O.A. and the same is dismissed. No order as to costs.

  
(B. S. HEGDE)  
MEMBER (J).

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 1100/95  
Transfer Application No.

Date of Decision : 14-02-96

D.E.Gawale

Petitioner

Shri L.M.Nerlekar.

Advocate for the  
Petitioners

Versus

Union of India & ~~Ors~~ Anr.

Respondents

Shri V.S.Masurkar.

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

*M.R.Kolhatkar*

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6,  
PRESCOT ROAD, BOMBAY-1.

ORIGINAL APPLICATION NO.1100/95

Pronounced, this the 4<sup>th</sup> day of Feb. 1996.

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

D.E.Gawale. ... Applicant.  
(By Advocate Shri L.M.Nerlekar).

V/s.

Union of India & Another. ... Respondents.  
(By Advocate Shri V.S.Masurkar)

O R D E R

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

In this Original Application under section 19 of the Administrative Tribunals Act, the facts are as below.

2. The applicant's father was working as Wireman under Electric (Mech) in Central Railway at Kalyan and died in harness in 1982. On the death of his father his elder brother M.E.Gawle i.e. the son of the deceased employee was appointed on compassionate ground in the Railways in the year 1983. Shri M.E. Gawle expired on 3.10.1993 survived by wife, two daughters aged 5 and 3, one son aged 1½ years, mother and the applicant (aged 25 years) who is the brother of late Railway employee. The applicant applied for compassionate appointment on 25.10.1993 (Ex. 'A'). In this application it is stated that the widow of the employee by name Mrs.Maya Madhukar Gawle was not keeping good health since long and therefore she is

...2.

not in a position to do any job in Railways. As required by Rules by way of consent of the widow, <sup>the</sup> ~~the~~ viz. Mrs. Maya Madhukar Gawle has declared that she has no objection in giving the job on compassionate ground to her brother (sic) [brother-in-law] as she is unable to do any job on health ground. The applicant has enclosed a letter stated to be dt. 24.3.1994 addressed to Smt. Maya Madhukar asking her along with her brother-in-law to attend the office of D.R.M. On 26.6.1994 Smt. Maya Madhukar Gawle was asked to intimate the date from which she was working as Ayya in B.M.C. Hospital in Bombay as was reported. At (Ex. 'D') is the certificate in which it is stated that Smt. Maya Madhukar Gawle has been working in R.A. Poddar Ayurvedic College since 14.11.1983. According to the applicant till the filing of the O.A. on 17.7.1995 he had not received any reply to his application and hence the O.A.

3. The Respondents in their written statement have stated that the application of the applicant has been rejected by letter dt. 21.3.1995 (Ex. R-2). According to the respondents, the application of the brother of the late Railway employee for compassionate appointment is not covered by Rules and therefore, it was rejected. In this connection, reference is made to the Railway Board letter dt. 25.8.1990 at (Ex. R-1) This circular extends the benefit of compassionate appointment to the near relative

is subject to several conditions one of which is as below:

"v) The appointment of the "near relative" should not be considered, if a son or a daughter or the widow is already working and is earning."

According to the respondents, since the widow of the late Railway employee is already gainfully employed, the question of grant of compassionate appointment to her brother-in-law who is only a near relative does not arise. The respondents have also contended that the O.A. is vitiated by fraud, inasmuch as, a false statement was made in the application both by the brother-in-law, as well as, by the widow as to the employment status of the widow.

4. The counsel for the applicant has contended that the statement made in the application regarding employment status is not false<sup>and</sup> what was sought to be conveyed was that her health does not permit her to do any job in Railways. He further relies on the following provision of the master circular on appointment on compassionate grounds which reads as follows:

"XII(a) When offering appointment on compassionate grounds to a widow, son, daughter, etc. it need not be checked whether another son, daughter is already working; but in no case should there be more than one appointment against one death/medical incapacitation. For example, it should not be permitted where the family wants another son or daughter to be employed in lieu or in addition to an appointment already made on compassionate grounds."

According to the counsel so long as there is no more than one appointment against one death/medical incapacitation, the appointment is permissible.

finding as to  
It is also contended that there is no distress which is the crucial test to be applied in the matter of compassionate appointments. Finally, the counsel for the applicant relied on the Judgment of this Tribunal in O.A. No.913/94 in V.P.Singathkar V/s. Union of India & Ors. (Central Railway) where, in a case of compassionate appointment, this Tribunal had disposed of the matter by giving liberty to the applicant (of) making a detailed representation to the General (l) Manager against the order passed by the Divisional Railway Manager. He would thus pray for liberty to make a representation against the letter of rejection dt. 21.3.1995.

5. (I) have considered the matter. (I) take note of the contention of the respondents that the O.A. is vitiated by falsehood. (I) have gone through the record and (I) consider that the clarification given by the applicant as to the statement made about the employment status of the widow of the late (l) Railway employee is not satisfactory and that the application for compassionate appointment to the Railway did contain a false statement. The certificate (l) filed by widow may or may not have filed by the applicant, (l) but it is clear that such a certificate if (l) filed (l) was filed only after the Railways started their inquiries. Following the maxim "fraud vitiates all" I am of the view that the O.A. is liable to be dismissed on this short ground.

6. Even otherwise, the various contentions of the applicant do not appeal to me. It is no doubt true that there can be one appointment against one death

or medical incapacitation, but this appointment can be only in accordance with the rules. Apparently, the Railway Rules as quoted at (Ex. R-1) do permit appointment on compassionate grounds of a near relative but even this liberal policy is qualified by the condition quoted in para 3 above which is not fulfilled in this case. On the other hand, the counsel for the respondents would urge that keeping in view the ratio of Auditor General of India v. G. Ananta Rajeswara Rao (1994 SC (L&S 500)), the question of appointment on compassionate grounds of a near relative does not arise at all. In para 5 of the Judgment the Hon'ble Supreme Court has observed as below:

"But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion." I refrain, however, from pronouncing on the vires of Railway Circular dt. 25.8.1990.

7. Lastly, I have gone through the Judgment in O.A. 913/94. In that O.A. liberty to appeal was granted in the facts and circumstances of that case viz. it came on record that the applicant had filed an appeal against the original rejection letter and the matter was processed for obtaining orders of the General Manager, but the same were not obtained. Therefore, the ratio of that case does not apply to the instant case. As I have observed, the fact that

the applicant has not come with clean hands also militates against any equitable order in his favour.

7. In the light of the above, the O.A. is dismissed with no orders as to costs.

*M.R. Kolhatkar*

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

B.