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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 380/91

Date of Decision : 6-2-82

T.A.No.

Sri M. Shyamsundar

Petitioner.

Sri J.M. Naidu

Advocate for the
petitioner (s)

Versus

General Manager, South Centrl.Rly Respondent.
and others

Mr B. Bhimanna

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR.R. BALASUBRAMANIAN, MEMBER (ADMN)

THE HON'BLE MR. T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

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(HRBS)
M (A.)

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(HTCR)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.380 of 1991

DATE OF JUDGMENT: 6th FEBRUARY, 1992.

BETWEEN:

Mr. M. Shyam Sundar ..

Applicant

AND

1. The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
S.C.Railway,
Secunderabad.
3. The Statistical Officer,
S.C.Railway,
Secunderabad.
4. Smt. Ratnamala, w/o Sri MVS Narayana Rao,
Hindu, Resident of H.No.19-8-4,
Opp: Post Office,
Kamsalipet,
Vijayawada-1. ..

Respondents

COUNSEL FOR THE APPLICANT: Mr. J.M.Naidu

COUNSEL FOR THE RESPONDENTS: Mr. V.Bhimanna, SC for Rlys.

*Conseal for the Respondent NO.4: Mr. V. Krishna Rao, Advocate -
N.O. 163.*

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CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri T.Chandrasekhara Reddy, Member (Judl.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI T.CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This application is filed under Section 19 of the Administrative Tribunals Act, 1985, to declare that the action of the first respondent in not providing the applicant an appointment on compassionate grounds vide proceedings of the first respondent dated 26.12.90, is illegal, arbitrary and violative under Article 14 and 16 of the Constitution of India and hence requests that the said proceedings of the first respondent dated 26.12.1990 should be quashed and to direct the respondents to appoint the applicant in any one of the Class III posts in South Central Railway and pass any such orders as may deem to be fit in the circumstances of the case.

The facts giving rise to this application in brief may be stated as follows:

1. One Sri M.V.S.Narayana Rao is the father of the applicant. The applicant is the son of the

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first wife of the said Sri M.V.S.Narayana Rao. After the death of the first wife, the said Sri MVS Narayana Rao had married one Smt. M.Ratnamala, (the 4th respondent herein) a second time.

2. The said Sri M.V.S.Narayana Rao was working as Office Superintendent in the Statistical Branch of the South Central Railway, Secunderabad under the control of the 3rd respondent herein. While so, the applicant's father, the said Sri Narayana Rao died in an accident on 04-07-1983 at Vijayawada, leaving behind the applicant, two children who are born to the first wife of the father of the applicant and the 4th respondent Smt.M. Ratnamala. After death of his father, the applicant made an application to the competent authority on 18.7.1983 to offer him an appointment on compassionate grounds. The applicant had passed intermediate examination in 1983 and according to him, he is liable for any one of the Class III posts.

3. The representation of the applicant dated 18.7.83 was followed by repeated representations to the respondents to offer an appointment to the applicant on compassionate grounds. The 4th respondent who has received the bulk of Death cum Retirement Gratuity benefits of the deceased Sri M.V.S.Narayana Rao, had

T. S. N. J

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refused to give consent for appointment of the applicant. She is also not looking after the applicant and other two children who are born to the first wife of the said Sri MVS Narayana Rao. The applicant undertakes to look after the 4th respondent also, if he is provided an appointment by the respondents on compassionate grounds, in the Class III cadre. (Representation of the applicant dated 18.7.1983 and 15.9.1986 were replied by the respondents on 15.10.1986 informing the applicant that his request for appointment on compassionate grounds can be considered only if Smt. Ratnamala, his step mother gives her consent for his appointment, as she had applied for such an appointment through her representation dated 08.03.1985).

A representation dated 4.6.1990 had been made to the General Manager, South Central Railway, who is the first respondent herein on behalf of South Central Railway Mazdoor Union to offer an appointment to the applicant on compassionate grounds. The said Union had been informed by the first respondent vide his proceedings No.P(SC)268/HQ/III/MVS/79, dated 26.12.1990, that it was not possible to consider the request of the applicant for appointment on compassionate grounds.. So the present application is filed by the applicant herein to quash the said proceedings dated 26.12.1990 and for the relief as already indicated above.

T. C. N. J.

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Counter is also filed on behalf of the respondents opposing the application.

4. In the counter filed by the respondents, it is maintained that after the death of the applicant's father, an application was received from the applicant for the first time on 15.09.1986 and the applicant was replied on 15.10.1986, ~~and it is~~ that the applicant's request for appointment on compassionate grounds can be considered only if Smt. Ratnamala, his step mother gave her consent for his appointment, as she had applied for such an appointment through her representation dated 8.3.1985. It is also further maintained by the Railways on behalf of the respondents that unless the 4th respondent gives her consent for appointment of the applicant on compassionate grounds, he cannot be considered for the said appointment. It is the case of the respondents that the application is barred under Section 21 of the Limitation Act, and is liable to be dismissed.

5. In view of the point of limitation that is raised on behalf of the respondents, we will first deal with the point of limitation. As could be seen, it has been pleaded on behalf of the applicant that he had put an application on compassionate grounds as early as 1983. It is also his case, since then onwards till

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this application was filed before this Tribunal that he was putting repeated representations to the respondents to provide him an appointment on compassionate grounds and that the authorities never decided his representations. As could be seen from the counter of the respondents, the first representation is said to have been received by the respondents on 15.09.1986 and the same had been replied on 15.10.1986, informing the applicant that he cannot be considered for appointment on compassionate grounds, unless the 4th respondent, the step mother of the applicant gave her consent. So, as seen from the counter of the respondents, as early as 15.10.1986, the applicant had been informed that he cannot be appointed ~~on~~ on compassionate grounds for the reasons that were made known to the applicant. This application as could be seen is filed on 15.4.1991. The respondents have also specifically raised the plea in their counter as already pointed out that the applicant's application is barred under the provisions of Section 21 of the Administrative Tribunals Act. As could be seen from the Section 21 of the Administrative Tribunals Act, the applicant should have approached this Tribunal within one year six months from 18.7.1983, as his representation is said to have not been decided by the respondents. That is, he should have approached this Tribunal before 17.12.1985. Ofcourse this applicant has not approached this Tribunal before that period.

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6. As per the plea of the respondents, they have replied to the applicant to his representation dated 15.9.1986 on 15.10.1986, informing the applicant that he cannot be provided any appointment on compassionate grounds. Within one year from 15.10.1986 which is the date of reply of the respondents, the applicant should have approached this Tribunal for redressal of his grievance. The applicant admittedly had approached this Tribunal more than 4 years after the applicant had been replied by the respondents that his request for appointment on compassionate grounds was rejected. The applicant had filed a rejoinder to the counter filed by the respondents. Even though the respondents have taken the plea that his OA is barred by limitation, the applicant has not tried to explain the delay of 3-4 years to approach this Tribunal. The applicant has also not moved this Tribunal by filing a separate petition to condone the delay of more than 3-4 years in approaching this Tribunal. So, in view of the provisions under Section 21 of the Administrative Tribunals Act, we have no hesitation to hold that this Original Application is barred by limitation and hence, this application is liable to be dismissed as barred by limitation. The learned counsel for the applicant very strenuously contended that the applicant had been making repeated representations to the respondents to consider him for appointment on compassionate grounds, and in

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view of his repeated representations on the part of the applicant, the delay on the part of the applicant in approaching this Tribunal is liable to be condoned. In this context, it is worthy to note the decision of the Supreme Court reported in AIR 1976 SC 2617 - State of Orissa Appellant Vs. Sri Pyarimohan Samantaray and others, at Page 2619, Para 6 which reads as follows:-

"It would thus appear that there is justification for the argument of the Solicitor General that even though a cause of action arose to the petitioner as far back as 1962, on the rejection of his representation on November 9, 1962, he allowed some eleven years to go by before filing the writ petition. There is no satisfactory explanation of the inordinate delay for, as has been held by this Court in Rabindra Nath Bose V. Union of India (1970) 2 SCR 697 = (AIR 1970 SC 470), the making of repeated representations, after the rejection of one representation, could not be held to be a satisfactory explanation of the delay....."

So, in view of the above observations of the said Supreme Court, the contention of the learned counsel for the applicant that repeated representations on behalf of the applicant would save the delay for redressal of his grievances cannot be accepted.

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7. As already pointed out, a representation has been made to the first respondent on 4.6.1990 ~~to~~ by the Railway Mazdoor Union to offer the applicant an appointment on compassionate grounds which was replied by the first respondent vide his proceedings dated 26.12.1990 and it is the said reply by the first respondent that is questioned in this OA. By 4.6.1990 the remedy of the applicant has become time barred, so, the said representation of the South Central Railway Mazdoor Union dated 4.6.1990 and the reply of the first respondent for the same dated 26.12.1990 rejecting the representation of the Union does not revive the time barred claim of the applicant. So, in view of the said facts, this OA as having become time barred cannot be doubted at all.

8. As already pointed out, it is the case of the applicant that he put his first representation as early as on 18.7.1983. The representation of the South Central Railway Mazdoor Union is dated 4.6.1990. As the representation of the applicant was not decided from 18.7.1983 to 4.6.1990, we are unable to understand why the applicant had not approached the proper forum for redressal of his grievance upto 4.6.1990? As already pointed out, this OA has been filed on 15.4.1991. In view of the 3-4 years delay in approaching this Tribunal, it is quite evident that there is many amount of inaction on the part of the applicant. He had been very negligent. In view of latches on the part of the applicant, the applicant is not entitled to the relief as prayed for by him.

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9. The stand taken by the respondents throughout is that the respondents are not able to consider the applicant's request for appointment on compassionate grounds, as the widow of the applicant, 4th respondent herein has not given her consent. But, in our opinion, the respondents have got vast discretion in the matter of compassionate appointments, due to the death of an employee while in service. Specific guidelines given by the Railway Board for appointments to be made on compassionate grounds. It is needless to repeat the guidelines given by the Railway Board in the matter of appointment on compassionate grounds. Nothing stands in the way of the respondents to consider the case of the applicant on compassionate grounds if the respondents are satisfied the case of the applicant is a deserving one.

9. The learned counsel for the applicant relied on the decisions reported in ATR 1988(1) CAT 1 Sri B. Kumar Vs Union of India and 1990(2) SLJ CAT 138 Sri Adhitavaraneswaran Vs Union of India. We have gone through the said judgements and the said judgements are not applicable to the facts of this case in viewing the said Supreme Court decisions referred to above. As a matter of fact the latest position is, that repeated representations do not extend the period of limitation.

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10. As already pointed out, this application is liable to be dismissed and is accordingly dismissed. The parties are directed to bear their own costs.

R.Balasubramanian

(R. BALASUBRAMANIAN)
Member (Admn)

T. Chandrasekhara Reddy

(T. CHANDRASEKHARA REDDY)
Member (Judicial)

Dated: 6 - - 2 Jan, 1992

5/2/92
Dy. Registrar

To

1. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
2. The Chief Personnel Officer, S.C.Rly, Secunderabad.
3. The Statistical Officer, S.C.Rly, Secunderabad.
4. One copy to Mr.J.M.Naidu, Advocate, CAT.Hyd.Bench.
5. One copy to Mr.v.Bhimanna, SC for Rlys, CAT.Hyd.
6. One ~~copy to~~ copy to M.S.R. Subrahmanyam, Advocate for Rlys, 6-2-45

7. One Span Copy.

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A.C.Guards, Holi Mary school Road,

Hyderabad.

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