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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
J A I P U R.

O.A.No.16/1996

Date of order: 3.3.1997

Smt. Phoolia wife of late Shri Sheekaran
Meena, resident of Village Kharli Kalan,
Post-Dhamun Khurd, District Sawai Madhopur.

: Applicant

Versus

1. Union of India through General
Manager, Western Railway, Headquarters
Office, Churchgate, Bombay.
2. The Divisional Railway Manager,
Western Railway, Divisional Office,
Jaipur.

: Respondents

Mr. Ganesh Meena, counsel for the applicant
Mr. Zakir Hussain, proxy for
Mr. M. Rafiq, counsel for respondents

CORAM:

HON'BLE SHRI RATAN PRANASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRANASH, MEMBER (JUDICIAL))

Smt. Phoolia has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to claim compassionate appointment for one of her sons Shri Lakhpat and to set-aside and quash the impugned order dated 27.4.1995 (Annex. A-1) by which her request has been dis-allowed.

2. Facts leading to this application in brief are that the applicant's husband Shri Sheekaran Meena was working on the post of Gangman under Permanent Way Inspector, Niwai of the Western Railway. He died in harness on 9.1.1978 leaving behind the applicant and five children. It is the case of the applicant

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that after the death of her husband the officials of the respondents came and obtained her thumb impression on various papers assuring that on the particulars given, the Railways will give employment to her one children being the dependant of the deceased railway employee. Applicant's son Lakhpat who was born on 14.1.1970 was at that time a minor and aged about 8 years. Her son Lakhpat attained 18 years on 14.1.1988. She waited for the order of employment from the respondents but without any result and submitted an application on 8.8.1990 (Annex. A-2) to respondent No.3. She continued to approach respondent No.2 and again gave an application on 23.6.1992 (Annex.A-3) and thereafter sent many letters to respondents, the last being dated 14.2.1995 (Annex.A/4). The respondents rejected the applicant's case vide their impugned letter dated 27.4.1995 (Annexure A-1). Aggrieved, she has approached this Tribunal to claim the aforesaid reliefs on the basis of the policy laid down by the respondents.

3. The respondents have opposed this application by filing a written reply, to which no rejoinder has been filed. The stand of the respondents has been that the application is time barred as it has been filed on 8.8.1990 after 12 years, 7 months of the death of the husband of the applicant. The matter of appointment on compassionate ground, according to the respondents, is governed by the guidelines of the Railway Board in their letter dated 7.6.1985 (Annex.A-1) as also the policy letter of the

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Headquarter dated 10.1.1992 (copy not supplied). It has also been denied by the respondents that they obtained any thumb impression on any paper from the applicant. The applicant having failed to comply with the instructions/ guidelines issued by the Railways, this application deserves rejection.

4. I have gone through the pleadings of the parties and have examined the record in great detail.

5. The stand of the applicant has been that when her husband Shri Sheokaran died, he left behind him five minor children. No details of the five children has been given in the application. The applicant has not been able to make out that any application was made for appointment of one of his Son Lakhpat Meena on his attaining the age of majority on 14.1.1988. It has also not been disclosed that Lakhpat Meena happens to be the eldest son of the deceased Railway employee and that his date of birth is actually 14.1.1988. Even if, it is believed that he is the eldest son or one of the sons who could be considered for appointment on compassionate ground in terms of the Railway Board's letter dated 28.6.1979 reproduced in para 4(iii) of the OA, the applicant has not been able to make out a case for compassionate appointment. The above referred two circulars have been followed by another circular letter of the Railway Board dated 1.3.1985 circulated on 19.7.1985 by the Divisional Railway Manager, Jaipur. Para 3 of this letter lays down that:

"3. The Ministry of Railways have now decided that where the widow cannot take up employment Railways can keep the case for appointment on compassionate grounds

open to enable consideration of appointment of a minor son when he attains a majority, even though at the time of occurrence of the event making compassionate appointment permissible, there is a daughter who has attained majority and/or a major son who is already employed. This will be subject to the following conditions:-

- i) The minor son to be appointed will be attaining majority of age within a period of five years of the event of death which is the basis for appointment on compassionate grounds.
- ii) Where is more than one minor sons, it is only the eldest minor son who should be considered for appointment when he attains majority and not any of the minor, sons.
- iii) Further, in such cases, the competent authority should be satisfied about the bonafides of the requests of the widow or if there is no surviving widow, of the family, that appointment should be given to a minor son (when he attains majority) instead of a daughter or an employed son who is already a major."

This Board's letter dated 1.3.1985 has further been followed up by another policy letter dated 7.8.1991 which is printed at serial No.48 on page 68 of the Railway Board's Compendium of Master Circular Diglot Edition, 1995, Vol.II, published by Bahri Brothers, Delhi.

According to sub-clause (2) of Para 2 of this Circular dated 7.8.1991, the General Manager could consider cases of compassionate appointment to other than first child only within five years of death as mentioned in para 3 of Board's letter dated 1.3.1985 referred to above. This sub-clause further makes it clear that beyond five years case could be considered only in respect of the first ward (son/daughter) but only upto 10 years from the date of death of the deceased employee. Reading these two circular letters issued by the Railway Board, it is made out that where an appointment on compassionate

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ground is sought for a ward other than the first ward, it could be considered by the General Manager for giving compassionate appointment only within five years of the death of the deceased employee and not beyond that. The employee in question i.e. the deceased husband of the applicant died on 9.1.1972, hence, according to this particular clause of Circular dated 7.8.1991 if the applicant's son Lakhpat happens to be the other than the first son of the deceased employee; the matter could have been considered by the General Manager within five years of the death of the deceased employee i.e. till the year 1983. If Lakhpat Meena happens to be the eldest son of the deceased employee, then it could have been considered by the General Manager only upto 10 years from the date of death of the deceased employee i.e. in the applicant's case upto January, 1988. Although the applicant has stated in her application that the respondents obtained her thumb impressions on various papers assuring that on the particulars given, the Railways would give employment to one of her children, yet it has not been made out that any application was made by the applicant or eligible son of the deceased Railway employee before January, 1988. According to her own version, the first recorded application was submitted by the applicant on 8.8.1990 (Annex.A-2) which was duly considered by the respondents and the reply to it is said to have been given on 29.8.1990 although a copy of it has not been produced by the respondents. In any view of the matter, it was incumbent upon the applicant to approach the respondents within the

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limitation which has been detailed in Circular letters dated 1.3.1985 and 7.8.1991. Respondents vide their communication dated 27.4.1995 (Annex.A-1) have reiterated that they have already informed her in reference to her request to seek compassionate appointment for her son, that since her son who has attained the age of 18 years did not make any application in his office, it has not been considered proper for them to give compassionate appointment to her son. A communication dated 16.5.1985 (Annex.A-5) which has been placed by the applicant in support of her claim does not appear to have been issued by the office of the General Manager it being hand-written. Ordinarily communications from the office of General Manager are not addressed to the sub-ordinates in hand-written manner. However, even if, it believed to be a communication issued by the General Manager, it is merely a general communication which does not specifically referred to the applicant's case and simply makes out that in the case of a death of railway employee one appointment on compassionate grounds is permissible. This letter, therefore, is not against their basic policy to give compassionate appointment to ^{award of} the deceased railway employee if they fulfil the requisite conditions. The applicant in this case having failed to comply with the requisite conditions issued by the Railway Board from time to time and her claim being highly belated, her application is liable to be dismissed. It is settled law that no person as of right can claim compassionate appointment. It is only in the discretion of the competent authority or even in the case of General Manager where he finds that a case is fit one

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then only it can be examined exhaustively and could be referred at the most to the Railway Board before any action to give compassionate appointment is extended by the General Manager. In this case, respondent No.2 Divisional Railway Manager, Jaipur has not found the case as a fit one and, therefore, it does not call for need reference even to the General Manager.

6. In view of above, the application fails not only it being time barred but also on merits and is dismissed accordingly with no order as to costs.



(RATAN PRAKASH)
MEMBER (J)