

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.215/95

Date of order: 23.1.96

Pokar Mal

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.Ajay Gupta

: Counsel for applicant

Mr.K.N.Shrimal

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Pokar Mal has prayed that the action of the respondents in denying to the applicant appointment on compassionate ground may be declared as null and void and the respondents may be directed to give appointment to the applicant on a suitable post under the rules relating to appointment on compassionate ground immediately with all consequential benefits.

2. The case of the applicant is that his father, a Railway servant, expired on 1.6.1972, while in service, working on the post of Pointsman. At the time of his father's death the applicant was only 9 years of age, his date of birth being on 1.5.1963. He is the only son of his father. Immediately after attaining majority the applicant moved an application on 1.10.81 before the respondents for providing him employment on compassionate ground. He passed his Secondary School Examination in 1983 and Higher Secondary Examination in 1984. The applicant repeatedly requested the authorities during his studies as also thereafter in 1985 for providing him appointment on compassionate grounds. The Divisional Personnel Officer, Northern Railway, Bikaner, vide his letter dated 22.8.85 (Annx.A5) called from the applicant certificates regarding his date of birth and educational qualifications.

These certificates were duly submitted by the applicant. However the applicant's request for appointment on compassionate ground was turned down by the Divisional Railway Manager, Northern Railway, Bikaner on 7.11.86 (Annx.A6) on the ground that the applicant had applied after a lapse of 4 years after completion of his age of majority. The applicant was the only son of his father and his mother is illiterate. He had applied for compassionate appointment on 1.10.81 and thereafter he had repeatedly requested the authorities to provide him employment on compassionate ground.

3, Further according to the applicant he submitted a representation dated 8.2.92 (Annx.A7) to the General Manager, Northern Railway. When his request for appointment on compassionate ground were not heeded, he sent a notice for demand of justice on 10.3.95 (Annx.A8). However, there has been no satisfactory response from the authorities. According to him, the action of the respondents in not providing him employment on compassionate ground is illegal and arbitrary, inasmuch as there are clear provisions for providing employment on compassionate ground to members of family of the deceased. The respondents have deprived the applicant of his livelihood by denying him the appointment.

4. The respondents in their reply have taken a preliminary objection to the effect that the application is barred by limitation. According to their record, the applicant applied for appointment on compassionate grounds for the first time on 1.7.85. ~~(Annx.A1)~~. The applicant's request was turned down vide letter dated 23.9.85 (Annx.P2) which was received by the applicant on 5.10.85. The cause of action accrued to the applicant from 5.10.85 but the applicant has not approached the Court within the requisite period. Therefore, the application deserves to be dismissed on the ground of

limitation. They have also taken the stand that the applicant has not filed the application for condonation of delay in filing the O.A. As regards the merits of the case, they have stated that the scheme of appointment on compassionate ground is intended to provide help to the needy members of the family of the deceased. Whether the applicant's family is indigent or not is a matter to be decided on facts according to the prevailing economic and social conditions. The applicant's mother is in receipt of Family Pension. The applicant's family cannot be considered to be indigent, therefore. The applicant's request for appointment on compassionate ground was duly considered but was rejected. There were no compelling circumstances to merit this appointment and he has not fulfilled the conditions laid down in the Railway Board's letter dated 18.4.85 with regard to appointment on compassionate ground.

5. The applicant has filed a rejoinder to the reply filed by the respondents and he has also placed on records the rules relating to appointment on compassionate grounds. He has also filed an application for condonation of delay in filing the O.A. The O.A. was filed on 20.4.95 and the application for condonation of delay in filing the O.A. was filed on 18.5.95. In the application seeking condonation of delay in filing the O.A., the applicant's stand is that at the time of his father's death he was only 9 years of age and he attained majority on 1.5.83 and just after attaining majority he had applied for appointment on compassionate ground. He had been repeatedly requesting the respondents to grant him appointment on compassionate ground. He being a villager and having no other support, he had no knowledge of law but continued to meet the respondents personally for appointment. According to him any delay in filing the application is not deliberate, it is

bonafide and deserves to be condoned.

6. During the arguments, the learned counsel for the applicant reiterated the facts stated in the application, rejoinder and the application for condonation of delay. He read out from the rules to show that in suitable cases appointment on compassionate ground can also be granted, if applied for, within a period of 15 years from the date of death. He however accepted the fact that in the rejoinder filed by the applicant, the claim of the respondents that the applicant had been informed vide letter dated 23.9.85 that his request for compassionate appointment could not be acceded to had not been denied. He prayed that in the circumstances of the case and looking to the background of the case, the delay in filing the O.A deserves to be condoned and a direction needed to be given to the respondents to consider the applicant's case on merits. The learned counsel for the respondents reiterated that the application was barred by limitation and even otherwise on merits there was no case for providing him employment on compassionate ground.

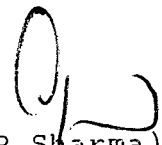
7. We have heard the learned counsel for the parties and have gone through the records. The applicant's father expired on 1.6.1972 when the applicant was 9 years old. He claims to have attained majority on 1.5.81. It is his further claim that he had applied for appointment on compassionate ground on 1.10.81, i.e. soon after attaining majority. However, there is no evidence with him to support this claim. The respondents have denied that the applicant had made any application for such appointment on 1.10.81. The first application according to them was made on 1.7.85. There is a reference to the application made on 1.7.85 in Annx.P4 which is the representation from the applicant addressed to the Divisional Railway Manager, Northern Railway, Bikaner. A final reply to

this representation was sent by the respondents by Annx.F2 dated 23.9.85 rejecting the applicant's request. The receipt of this communication has not been denied by the applicant. Still however the applicant has not made any mention of receipt of communication dated 23.9.85 but has instead stated that the communication containing a rejection of his plea for compassionate appointment was received by letter dated 7.11.86 (Annx.A6). Now if the communication rejecting the applicant's request for compassionate appointment is dated 23.9.85 and it was received by the applicant shortly thereafter on 3.10.85, as seen from Annx.F3, the application has been filed late by about 10 years. No doubt, there is an application for seeking condonation of delay in filing the O.A. The grounds given in the application for seeking condonation of delay are general in nature such as that the applicant was from a village and he had no legal advice, etc. Fact is that the applicant continued to pursue his matter regarding appointment on compassionate ground even after rejection of his request vide communication Annx.F2. It is, therefore, not possible to accept the grounds for condonation of delay given by the applicant.

8. Considering all the circumstances of the case, it is held that the O.A. is very much time barred. Since, there are no valid grounds in the M.A. seeking condonation of delay in filing the O.A, the delay in filing the O.A cannot be condoned. The O.A. is, therefore, rejected as time barred.

9. The M.A, seeking condonation of delay in filing the O.A. is also dismissed accordingly.

9. There shall be no order as to costs.


(O.P.Sharma)

Member(Adm.).