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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH: JAIPUR.

O.A.NO.483/1995 & MA 493/95

Date of order: 26.2.1997

1. Smt. Bimla Devi Saxena W/o late Shri Ram Prakash Saxena, aged about 50 years, resident of C/o Sh. Sunehri Lal Cloth Merchant Vill. & Post Jarar, Distt. Agra (UP) (her husband late Shri Ram Prakash Saxena was employed on the post of Fitter at Achnera Western Railway of Jaipur Division.).

2. Nirdosh Saxena S/o late Shri Ram Prakash Saxena, aged about 24½ years, resident of C/o Sh. Sunehri Lal Cloth Merchant, Vill & PO Jarar, Distt.Agra(UP) (His father late Shri Ram Prakash Saxena was employed on the post of Fitter at Achnera, Western Railway of Jaipur Division.)

:Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Chairman Railway Board, Fail Bhawan, New Delhi.

:Respondents.

Mr. Shiv Kumar, counsel for the applicants
Mr. S.S.Hasan, counsel for the respondents

CORAM:

HON'BLE SHRI PATAN PRAKASH, MEMBER(JUDICIAL)

O R D E R

PEP HON'BLE SHRI PATAN PRAKASH MEMBER(JUDICIAL)

Smt. Bimla and Shri Nirdosh Saxena have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to seek a direction against the respondents to consider the appointment of applicant No.2 Shri Nirdosh Saxena on compassionate ground on a suitable post with all consequential benefits.

2. Facts relevant for disposal of this application in brief are that applicant No.1 Smt. Bimla Devi's husband was a permanent railway servant with the Respondents Railways serving on the post of Fitter at Achnera Railway Station, Western Railway. He died on 3.3.1976 while in service. At the time of his death, he left the following surviving members in the family:-

1. Smt. Bimla Devi Wife

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2. Sh. Hirdosh Saxena	Son	Six years
3. Sh. Hari Shankar	Son	8 Years
4. Im. Samashya	Daughter	11½ Years.

It is the case of the applicants that the deceased did not leave any property and the family had no source of income except they were paid 5000/- as PF and other dues upon the death of the deceased railway servant. Since both the sons of the deceased Railway employee were minor, he could not seek employment at that time. Since the eldest son of the applicant No.1 got himself separated from family and there was no one to support the family, the applicants were left with no option except to seek employment on compassionate grounds for applicant No.2 on attaining his age of majority by moving an application on 26.12.1989 (Annx.A/2) with the Respondents Railways. Nothing was heard from the respondents inspite of repeated reminders and for the firsttime on 14.12.1992 vide communication Annexure A/3, respondent No.2 informed that the matter was very old and was not within limitation, hence they are unable to give any appointment on compassionate ground to applicant No.2. The applicants also clarified their position vide letter dated 4.1.1993 (Annx.A/4) which was subsequently rejected by the respondents vide their letter dated 4.2.1993 on the ground that no application was moved on attaining the age of majority of applicant No.2 and hence the applicants have been constrained to approach this Tribunal to seek the aforesaid reliefs on the basis of a circular issued by the Railway Board vide Annexure A/6 dated 21.8.1987.

3. The respondents have opposed the application by filing a reply to which no rejoinder has been filed in spite of availing a number of opportunities to file it. The stand of the respondents has been that the application having been filed after ^a lapse of 17 years, is time barred and the family being not in any indigent circumstances at the time of death of deceased railway employee and have survived all through, this application deserves rejection. A preliminary objection regarding the

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jurisdiction of this Tribunal has also been raised. It has also been averred that the provision to give compassionate appointment to a deceased Government servant is meant to give ^{immediate} ~~minimum~~ relief to the dependants of the deceased and not to such ^a family which ~~has~~ ^{is} maintained itself all though for ~~the~~ ^{the} past 17 years.

4. The applicant in support of his application has also filed a Misc. Application No.493/95 for condonation of delay in filing this OA which has also been replied to by the respondents.

5. I have heard the learned counsel for the parties at great length and have examined the record in great detail.

6. It is an admitted position that compassionate appointment cannot be asked for as of right unless case is covered by the specific guidelines, directions and circulars issued by the competent authority or there are any statutory rules to this effect. It has been argued by the learned counsel for the applicant that the elder son of the deceased Railway Servant having separated and there being no member to support the family an application to seek compassionate appointment in place of the deceased father was made for the first time on 26.12.1989 to which no response was given by the respondents in spite of repeated reminders. Other representations were also made by the applicants on 4.1.1993 (Annx.A/4) and 23.3.1994 (Annx.A/5) in this behalf. It has, therefore, been urged by the learned counsel for the applicants that looking to the financial status of the family, the respondents should have exercised their discretion under clause (6) of the Railway Board's Order dated 22.12.1994 published at page 194 of the Railway Boards' Orders on Establishment Matters (Bahri Brothers) 1994 Edition. On the basis of this clause, it has been urged by the learned counsel that even in cases where the death of Railway Servants took place over 15 years ago and where the application for compassionate appointment is made after

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attaining the age of majority, the prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma, where the application is made for other than the first child/first son/first daughter. The application by applicant No.2 having been made for the appointment of second son of the deceased Railway Servant, it should have been considered by the General Manager in this perspective and the case should have been forwarded to the Railway Board for compassionate appointment to him. The applicant having died in the year 1976 and also that applicant No.2 having moved for seeking compassionate appointment within two years of the date of attaining majority by sending an application on 26.12.1989, the respondents should have considered his case for compassionate appointment.

7. As against this, it has been vehemently argued by the learned counsel for the respondents that the applicants have not been able to show why an effort was not made to seek compassionate appointment for the first son of the deceased Railway employee when he according to the applicants' averments attained majority in the year 1986. Secondly, it has been urged that the respondents did not receive any application on behalf of respondent No.2 said to have been made on 26.11.1989. According to the respondents, the first application which has been made in this regard is of the year 1993 which has been duly examined and rejected vide their communication dated 4.2.1993 (Annex A/1). Secondly, it has also been urged that even after the receipt of this letter dated 4.2.1993 by the applicants, this application has been filed after the period of limitation prescribed under Section 21 of the Administrative Tribunals Act having been filed in the year 1995. It has, therefore, been urged that the application for condonation made on behalf of the applicants is also liable to be rejected as no sufficient ground have been disclosed for the delay in filing this O.A. On the legal aspect,

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the learned counsel for the respondents has cited an authority of Hon'ble the Supreme Court in the case of Union of India and others Vs. Bhagwan Singh (1995) 6 SCC 476.

8. I have given anxious thought to the able arguments advanced on behalf of both the sides.

9. It may be stated at the outset that even though the applicants have averred that they made an application to seek a compassionate appointment as early as on 26.12.1989, but no supporting document except a copy of the application dated 26.12.1989 has been filed. A perusal of this application also does not disclose the particulars which normally ^{should} have been incorporated in an application where a person is seeking compassionate appointment on account of the death of his deceased father. This is an application made by applicant No.1 mentioning simply that his son has attained the age of 13 years and hence an appointment be extended to his son Hirdosh. Further also there seems to be some other correspondence in the matter between the applicants and the respondents as is evident from respondents' letter dated 14.12.1992 (Annx.A/3) which refers to an application of the applicants dated 18.3.1992. In this communication, it has been specifically communicated by the respondents that since their case has become more than 16 years old and is not within limitation, hence the competent authority has not considered it proper to give compassionate appointment to applicant No.1's son Shri Hirdosh Saxena. Although respondents have stated that the first communication received from the applicants is dated 4.1.1993 but as is evident from Annexure A/3, the first application which has been received by the respondents from the applicants is dated 18.3.1992. The applicants having been informed as early as on 14.12.1992 they should ^{have 2} _{ear} approach ^{ear} this Tribunal within time to claim the relief in this OA. Even if 4.1.1993 is taken to be the application made by the applicants to the respondents then also they were informed about this

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application on 4.2.1993(Annx.A/1) that no appointment in favour of applicant No.2 could be extended on compassionate ground. It all goes to show that the applicants have not been vigilant in ^{ascertaining} ~~ascertaining~~ their right available under the law. Moreover, merely by mentioning that the elder son has separated from the family does not give a valid ground to the other son to seek employment with the Government on compassionate grounds. This history of this case exhibits that after the death of the deceased railway servant in the year 1976 they have been maintaining themselves till date and this is not a case where the family could be said to be passing through an indigent state of affairs. Even Clause (6) of the Circular dated 22.12.1994 (referred to above) is not of help to the applicant because it is always the discretion of the General Manager in individual cases of merit, where he considers that justification exist for extending the benefit to cases falling beyond the time limit of over 15 years when the death of the railway employees took place. In the instant case, the deceased railway servant died in the year 1976 and as observed above the first recorded application was made by the applicants on 18.3.1992 i.e. after more than 16 years. In view of this, this is not a case wherein the delay in filing the application ^{could be} ~~is~~ condoned, nor a direction could be given to the respondents to consider the case of the applicant No.2 for giving compassionate appointment. Moreover, the authority cited by the learned counsel for the respondents in the case of Bhagwan Singh (supra) has also explicitly laid down that giving of direction to the authorities to consider a case after 20 years of the death of the Railway servant is wholly without jurisdiction. In the instant case, the matter has been agitated by the applicants after almost 17 years and the principle laid down in this authority by Hon'ble the Supreme Court is fully applicable.

10. For all the aforesaid reasons, while dismissing the application for condonation of delay, this OA also failed ² on merits as well as on limitation, with no order as to costs.

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11. Order accordingly.



(FATAN PRAKASH)

MEMBER JUDICIAL