

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 04.3.96.

OA 57/95 with MA 54/95

Smt.Sohani Devi and Shri Kishan Lal ... Applicants

Versus

Union of India and others ... Respondents

CORAM:

HON'BLE MR. O.P. SHAFMA, MEMBER (A)

HON'BLE MR. PATTAN FFAI'ASH, MEMBER (J)

For the Applicants ... Mr.Shiv Kumar

For the Respondents ... Mr. M.Rafiq

O R D E R

PER HON'BLE MR. O.P. SHAFMA, MEMBER (A)

In this application u/s 19 of the Administrative Tribunals Act, 1985, Smt. Sohani Devi w/o Late Shri Ehura Baldev, and Shri Kishan Lal s/o Late Shri Ehura Baldev, have prayed that the order dated 6.7.93 (Ann.A-1), by which the prayer for appointment on compassionate grounds was rejected on the ground that it was time barred, may be quashed and the respondents may be directed to consider the appointment of applicant No.2, Shri Kishan Lal, on any suitable post on compassionate grounds in the Railways in accordance with the instructions issued by the Railway Board, with all consequential benefits.

2. The case of the applicants is that Shri Ehura Baldev, a railway servant, husband of applicant No.1 and father of applicant No.2, was employed as Gangman during the period 21.2.61 to 2.6.80. He expired on 2.6.80. He was a permanent employee of the Railways. He had four dependents, including his mother, at the time of his death. Shri Kishan Lal, son, was minor, aged 7 years, at the time of the railway servant's death. At the time of the railway servant's death an amount of Rs.5000/- was paid to his wife. She is at present getting pension of about Rs.700/- per month. Applicant No.2 became major on 27.6.89 and on his attaining majority, applicant No.1 by applications dated 30.7.89 and 28.12.89 requested the authorities for considering the appointment of applicant No.2 on compassionate grounds. Subsequently, after applicant No.2 had passed 10th standard examination, another representation was made on 21.12.92 (Ann.A-2). Yet another representation was made on 25.6.93 (Ann.A-3). Respondent No.2, the Divisional Railway Manager, rejected representation dated 25.6.93 vide order dated 6.7.93 on the ground that the claim of the applicant was time barred. Rejection letter is Ann.A-1. The applicants'

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case is that it was within the powers of the General Manager to relax the time limit and entertain the application for appointment on compassionate grounds. The period of five years, prescribed for making a request for compassionate appointment, should have been counted from the date of attaining of majority of applicant No.2. Therefore, rejection of the prayer for compassionate appointment has been assailed as not having been made on valid ground. Subsequently, the applicants brought on record a circular letter dated 22.12.94 by filing a Misc. Application, according to which, inter-alia, the General Manager is empowered to consider cases which should not be more than 15 years old from the date of death of the railway servant. It was, therefore, prayed that since the prayer for appointment on compassionate grounds in respect of applicant No.2 was made well within this period of 15 years, the rejection of the claim as being time barred was not valid.

3. In their reply, the respondents have taken the stand that even if Shri Nishan Lal was minor at the time of the death of the railway servant, his father, it was necessary to have his name registered with the Railways for appointment on compassionate grounds. The time limit laid down for making an application for consideration for appointment on compassionate grounds is five years from the date of death of the railway servant but the application in this case was made beyond the aforesaid period of five years.

4. The Misc. Application for taking the circular letter dated 22.12.94 on record has already been allowed vide order dated 9.11.95. The applicants had also filed a Misc. Application (No.54/95), seeking condonation of delay in filing the OA. The said application has not yet been disposed of. The respondents have opposed this application by filing a separate reply stating therein, amongst others, that no sufficient cause has been indicated for delay in filing the application.

5. We have heard the learned counsel for the parties and have gone through the material on record.

6. The OA was filed on 2.1.95. According to the applicants, the order challenged in the OA is dated 6.7.93 and, therefore, the application should have been filed by 6.7.94. However, there is delay of about six months in filing the application. The reasons given for seeking condonation of delay are that the applicants were given assurance that their matter was being considered by the General Manager, Western Railway, and they also could not manage any fund for filing the application. It was only after they were

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able to get some help from a well wisher that they were able to make this application. Although the reasons given for seeking condonation of delay in filing the OA are not so very strong, yet, in the circumstances of the present case, we are inclined to the view that a fresh look is required to be made at the application in the light of the fresh instructions dated 22.12.94, which have been taken on record. Therefore, in the interest of justice, we have condoned the delay of about six months in filing this application.

7. Earlier, the prayer for grant of appointment on compassionate grounds was rejected vide Ann.A-1 dated 6.7.93 on the ground that the prayer was time barred. The learned counsel for the respondents stated during the arguments that circular dated 22.12.94 can only have prospective application and cases already decided cannot be reopened. We are of the view that since the period of 15 years had not elapsed when representation Ann.A-3 was made, the case of the applicants deserves to be considered on merits.

8. The railway servant died on 2.6.80 and the representation, which was rejected by the respondents, Ann.A-3, was made on 25.6.93. Earlier also the applicant No.1 had made various representations but it was this representation, at Ann.A-3, which had evoked a reply from the respondents and was rejected vide order dated 6.7.93 (Ann.A-1). Thus, even this last representation was made within a period of 15 years from the date of death of the railway servant. In these circumstances, we are of the view that request of applicants No.1 and 2 for appointment of applicant No.2 on compassionate grounds should be considered afresh by respondent No.1, the General Manager, Western Railway, on merits. Such consideration shall be made within a period of three months from the date of receipt of a copy of the order of the Tribunal. To enable fresh consideration of the applicants' case for compassionate appointment of applicant No.2 being made, Ann.A-1 dated 6.7.93 is set aside.

9. OA and MA both stand disposed of accordingly, with no order as to costs.



(P. P. PRAKASH)

MEMBER (J)



(O. P. SHAFMA)

MEMBER (A)