

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA no. 97/95

: Date of order : 5.1.96

Abdul Rehman

... Applicant

Vs.

Union of India & Another ... Respondents.

CORAM

Hon'ble Mr. Rattan Prakash, Member (Judicial)

For the Applicant ... Mr. C.B. Sharma

For the Respondents ... Mr. S.S. Hassan

O R D E R

(PER HON'BLE MR RATTAN PRAKASH, MEMBER (JUDICIAL))

The applicant, Shri Abdul Rehman, has filed this application u/s 19 of the Administrative Tribunals Act, 1985, to seek appointment on compassionate grounds on any suitable post on account of the death of his father, Shri Ghasi, on 10.2.86.

2. The undisputed facts are that Shri Ghasi was working in the Jaipur Division of the Western Railway on the post of Phatakwalla (Gateman) who died while on duty on 10.2.86. The applicant at the time of his father's death was only about 11 years of age, his date of birth being 1.6.75. He studied upto the level of 9th standard. It is the case of the applicant that ^{at} the time of death of his father, his two elder brothers were married and were living separately with their families. Besides him, one younger brother and a sister is also there in the family alongwith the widow of the deceased, Shri Ghasi. It is the grievance of the applicant that on attaining majority, an application was submitted to the respondent no. 2, the Divisional Railway Manager, Western Railway, Jaipur on 29.8.88, requesting for compassionate appointment on account of the death of his father. The respondents

did reply to the application but ultimately vide letter dated 17.1.95 (Annexure A-1), the applicant was informed that his case has not been accepted by the Railway Board for compassionate appointment after the death of his father as his case is very old. The applicant has now approached this Tribunal to seek the aforesaid relief.

3. The respondents have contested this application by filing a written reply to which no rejoinder has been filed. The stand of the respondents is that since the applicant has attained 18 years of age on 1.6.93 and application was moved by the widow on 3.7.93, the case being highly belated, it has not been possible for the Railway Board to extend compassionate appointment to the applicant. It has, further, been averred by the respondents that since the amendment cited by the applicant in the OA came into force w.e.f. 22.12.94 and the case of the applicant was decided prior to 12.2.94, hence no advantage can be taken by the applicant of the said amendment. It has, therefore, been insisted that the OA deserves rejection.

4. Heard the learned counsel for the applicant, Shri C.B. Sharma, as also Shri S.S. Hassan, learned counsel for the respondents; and have examined the record in detail. The only point for consideration in this OA is whether the applicant has any vested right for consideration of his name for appointment on compassionate grounds on account of death of his father while in service with the respondents.

5. The main thrust for the learned counsel for the respondents has been that it is beyond the competence of the Tribunal for extending appointment on compassionate grounds and that it is only an administrative matter

which merits consideration of the case by the Railways whether appointment on compassionate grounds can be given or not. It has also been argued by Shri Hassan that the application made by the applicant is delayed on one and it has been rightly rejected by the respondents. In support of his arguments, the learned counsel for the respondents has cited the decisions in L.I.C. Of India Vs. Asha Ramchandra Ambedkar (1994) 2 SCC 718 Umesh Kumar Nagpal Vs. State of Haryana, 1994(4)SCC 138 and State of Haryana Vs. Naresh Kumar Bali (1994) 4 SCC 448. The arguments of the learned counsel for applicant is that since the application of the applicant for appointment on compassionate grounds has been rejected only on the basis of delay, the respondents have not exercised their discretion in accordance with their own circular dated 19.1.95 (Annexure A-10) issued by the Head-Quarters Office of respondents' Western Railways. The learned counsel has specifically drawn attention to para 3 & 4 of this circular. Para 4 of this circular which is relevant is reproduced as under:-

"Board have decided that the above mentioned conditions may be modified as under:-

- (a) The case should not be more than 15 years old from the date of death; and
- (b) the request for compassionate appointment should have been received by the railway Administration as soon as the first child or wherever the family desires for some satisfactory reasons, the first son/first daughter to be considered for appointment, becomes a major. The General Manager will, however, have the power to relax this period upto a maximum of two years of attaining majority by the candidate, with the educational qualification for the purpose of appointment being taken as that acquired at the time of attaining majority."

A perusal of this circular letter makes it abundantly clear that even before the issuance of circular letter dated 19.1.95; consideration of cases of appointment on compassionate grounds were guided

by the Board's letter dated 18.4.85. In the letter dated 18.4.85, the conditions stated were as under:-

- "3(ii) The case should not be more than ten years old as reckoned from the date of death.
- 3(iii) The request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter (clarified in the first ward (son/daughter) Vide Board's letter no. E(NG)II/91/RC-1/65 Policy dated 7.8.91) to be considered for compassionate appointment has become a major, say within a maximum period of six months (subsequently modified as one year vide Board's letter of even number dated 18.4.1990.)

Looking to the facts of the present application in this background, it is made out that after the death of his father, the applicant became major and attained 18 years of age on 2.6.93. He made an application to respondent no. 2 on 9.7.93 (Annexure A-8). It is evident that he moved the application within the period of six months prescribed in the earlier circular; i.e. before the issuance of order dated 19.1.95. Moreover, vide circular dated 19.1.95, the period of 10 years x relating to the age of case has been extended to 15 years as is explicit from para 4(a) of this provision and the period of six months prescribed for moving the competent authority has been extended to attaining the age of majority by the concerned individual who is seeking such an appointment.

6. Thus, in view of their declared policy, the respondents have no option but to consider the application of the applicant and then decide whether he is still entitled to seek appointment on compassionate grounds after the death of his father. Since the respondents vide Annexure A-7 dated 17.1.95 have rejected the application of the applicant merely on account of delay,

it would be in the interest of justice that necessary


directions be given to the respondents to pass appropriate order in the matter.

7. Accordingly, this application is disposed of by giving the following directions to the respondent)

Railways:-

- (i) to consider the case of the applicant to give him appointment on compassionate grounds in view of the revised policy laid down under circular letter dated 19.1.95 (Annexure A-10) after evaluating the cases of the applicant and not to reject this application merely because of delay.
- (ii) to comply with the above directions within a period of four months from the date of the receipt of the copy of this order.

8. The OA is disposed of, as above, with no order as to costs.


5.1.96.
(RATTAN PRAKASH)
MEMBER (J)

AHQ.