

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH: JAIPUR.

OA NO. 274/1996

Date of order: 17.5.96.

Smt. Bhanwari Devi : Applicant

vs.

1. Union of India through the
General Manager, Western Railway,
Churchgate, Bombay-20.

2. Chief Works Manager,
Loco Workshop, Western Railway,
Ajmer Division, Ajmer.

: Respondents

Mr. S. K. Jain, counsel for the applicant

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

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

Smt. Bhanwari Devi has filed this application under section 19 of the Administrative Tribunals Act, 1985 for seeking compassionate appointment of her daughter's son Shri Mukesh Kumar on account of the death of her husband Shri Khem Chand on 26.2.1971 who was working as B.R.A. in Millwright Shop Loco, Ajmer of the respondent department.

2. Facts as alleged by the applicant are that her husband Shri Khem Chand Mali died on 26.2.1971 while he was on duty with the Respondents Railways at Ajmer. She moved an application for her appointment on compassionate grounds in 1972 which was rejected by the respondents on 26.3.1979 vide Annexure A-2. It is the case of the applicant that after the death of her husband she had nobody to look after her and therefore she kept the son of her daughter Shri Mukesh Kumar who was borne to her daughter Smt. Sampat Devi on 19.11.1975. It is further the case

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of the applicant that she moved an application for giving compassionate appointment to Shri Mukesh Kumar as her 'near relative' vide application dated 22.6.1993 (Annex.A-4). She addressed further applications on 14.10.1993 (Annex.A-5) and gave another representation to respondents No.1 and 2 on 20.6.1994 (Annex.A-7). It is further the case of the applicant that vide letter dated 12.6.1995 (Annex.A-9) the applicant was called in the office of S.P.O. Ajmer but since nothing was heard thereafter she gave another representation on 17.11.95 (Annex.A-10) to which vide letter dated 18.3.1996 (Annex.A-1) the claim made by the applicant was rejected on the ground of policy decision dated 13.12.1995 which puts a bar on appointment of near relative on compassionate grounds. The applicant, therefore, has sought the quashing of the impugned order dated 18.3.1996 (Annex.A-1) with a further direction to the respondents to consider the case of Shri Mukesh Kumar for appointment on compassionate grounds on account of the death of her husband Shri Khem Chand.

3. I heard the learned counsel for the applicant at great length at the stage of admission.

4. It has been vehemently urged by the learned counsel for the applicant that since the Respondent Railways have rejected the claim made by the applicant for appointment of the son of her daughter Shri Mukesh Kumar only on the basis of Railway Board's letter dated 13.12.1995, the action of the respondents is liable to be quashed. The argument of the learned counsel for the applicant is that Shri Mukesh Kumar attained the age of majority on 19.11.1993 and since

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she had made a representation to the respondents and the respondents have failed to extend the relief to her the order of the Respondent Railways dated 13.12.1995 by which the provision of appointment of 'near relative' on compassionate ground is said to have been deleted is not applicable and moreso it has to come into operation prospectively and not retrospectively. It has also been urged by the learned counsel for the applicant that in the Rules made for compassionate appointment in the Respondent Railways there is no condition about the existence of the indigent circumstances and hence the applicant is entitled to seek the relief claimed in his OA.

5. I have given anxious thought to the arguments addressed to by the learned counsel for the applicant and have gone through the provision made by the Respondent Railways for appointment on compassionate grounds. Although there has been a provision for appointment of a near relative on compassionate ground in place of the deceased railway employee vide notification dated 12.9.1990, yet the position as it stands today is that after 31.12.1995 the provision of appointment of a near relative on compassionate ground have been deleted. This has been done by the Respondents Railways in pursuance of the judgment of Honourable the Supreme Court in the case of Auditor General of India and others vs. Shri G. Ananta Rajeshwra Rao, (1994)1 S.C.C. 192. The question before Hon'ble the Supreme Court has been that whether the compassionate appointment of a near relations amounts to appointment on the basis of descent. Hon'ble the Supreme Court has held that such an

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appointment of near relations tantamounts to appointment on the basis of descent and is violative of Article 16(2) of the Constitution of India. The law, therefore, is that after the pronouncement of the judgment of Hon'ble the Supreme Court in the case of Auditor General of India and others vs. Shri G. Ananta Rajeshwra Rao (Supra), no near relative will henceforth be eligible for appointment on compassionate grounds. This has been adopted and reiterated by the Respondent Railways vide their notification dated 13.12.1995 (Annex.A-11).

6. It is, therefore, in the above background it has to be examined whether the applicant can be granted any relief in this QA.

7. At the out-set it has to be stated that the applicant has not approached the Tribunal with clean hands. Nowhere in the OA she mentioned that Shri Mukesh Kumar is her adopted son. It is for the first time that in a representation made on 27.11.1995 (Annex.A-10) that she mentioned that she had adopted her daughter's son and that she is seeking appointment of Shri Mukesh Kumar on that basis. On the contrary, in all the representations made by her right from 22.6.1993 (Annex.A-4) onwards, she had been mentioning Shri Mukesh Kumar as her son and the respondents have also been considering her matter treating Mukesh Kumar as the son of the deceased Railway Servant Shri Khem Chand. It is also pertinent to mention that not only her husband Shri Khem Chand died on 26.2.1971 but her daughter ~~Married~~ only in the year 1974 and Shri Mukesh Kumar who is now alleged by the applicant to be

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her son was borne in the year 1975 (19-11-1975) i.e. after more than four years of the death of her husband Shri Khem Chand. At the time of the death of the deceased Railway servant there had been no minor son or near relative in existence. It was in this background that the applicant herself moved an application for compassionate appointment of herself as early as in 1972 which according to her was rejected by the Respondent Railways as early as on 26.3.1979. It appears that she did not pursue the matter of her appointment on compassionate grounds thereafter. Even after attainment of majority by her alleged son (which has not been established by the applicant) on 19.11.1993 she kept silent even after non-receipt of any reply to her within the period prescribed under Section 20 of the Administrative Tribunals Act. The letter dated 12.6.95 (Annex.A-1) sent by the Chief Works Manager to the applicant could not be deemed to have extended the limitation for filing this OA since her first representation on this account is said to have been made by the applicant on 22.6.1993 (Annex.A-4). It was incumbent upon the applicant to have taken necessary legal steps to claim the relief for seeking appointment on compassionate grounds of Shri Mukesh Kumar. She having failed to pursue the matter within the limitation prescribed under Section 20 of the Administrative Tribunals Act, 1985, this application is barred by limitation and is liable to be dismissed on this ground alone.

8. The arguments of the learned counsel for the applicant that since the applicant has moved the

Respondent Railways in the year 1993 it was incumbent upon the Respondent Railways to give appointment to Shri Mukesh Kumar on compassionate grounds in the year 1993 itself and hence the notification dated 13.12.1995 cannot be given any retrospective effect to construe that there has been a deletion of the provisions of appointment of near relative on compassionate grounds. This argument of the learned counsel is not tenable. Firstly because the applicant did not pursue the remedy within the time and limitation permitted under the Administrative Tribunals Act, 1985. Secondly also as today it is now unquestionable that the provision of appointment of a near relative on compassionate grounds stands deleted from the provisions of giving compassionate appointment to near relatives under the Respondent Railways as well. It is settled law that every matter has to be examined by a court of law on the basis of law as it stands on the date of consideration. The applicant has moved this application on 23.4.1996 and the applicant cannot be permitted to take the plea that the provisions regarding appointment on compassionate grounds which were in vogue before 13.12.1995 have to be made applicable in the case of the applicant. This is more so when the applicant herself has been guilty of laches as her husband died in the year 1972 but efforts have been made to seek appointment on compassionate grounds of her daughter's son (near relative) in the year 1996 when even on the date of death of the deceased Railway servant neither the daughter of the applicant was married, nor her daughter's son has seen the light of the day.

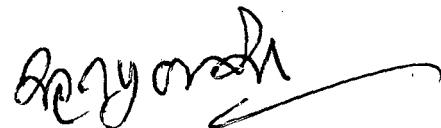
9. In view of the facts as are evident in this OA,

Dr I do not consider it necessary to examine the applicability/

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non-applicability of the indigency of the applicant
moreso when it has not been made a ground of rejection
by the Respondent Railways rejecting the request
made by the applicant vide their order dated 18.3.96
(Annex A-1).

10. Accordingly in view of what has been said
and discussed above, I do not find any merit what-
soever in this application which is dismissed at
the stage of admission itself.



(RATAN PRAKASH)
MEMBER (J)