

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.35/2006.

Jaipur, this the 2<sup>nd</sup> day of February, 2006.

**CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.  
Hon'ble Mr. A. K. Bhatt, Administrative Member.**

Smt. Kamla Bai  
W/o Late Shri Moolchand B.  
Aged 52 years,  
R/o Ward No.24, opposite Ware House,  
Gangapur City,  
District Sawaimadhopur.

... Applicant.

By Advocate : Mr. Narendra Mishra.

Vs.

1. Union of India  
Through General Manager,  
West Central Railway,  
Jabalpur.
2. The Divisional Railway Manager (Estt).,  
West Central Railway,  
Divisional Office, Kota Junction,  
Kota.

... Respondents.

**: O R D E R (ORAL) :**

The present application has been filed by the widow of Late Shri Moolchand B, who while working on the post of Diesel Driver and posted at Loco Shed Department, Gangapur City, died on 8.5.1982, with the prayer that the respondents may be directed to give appointment to her son on compassionate ground by quashing the notification dated 11.10.2005 (Annexure A/1) whereby the copy of letter dated 7.11.2003 (Annexure A/2) was enclosed, which

we

communication stipulates that the case for compassionate appointment of the applicant was considered and the same was rejected and the widow was informed vide letter dated 13.10.1987.

2. We have heard the Learned Counsel for the applicant at admission stage. Learned Counsel for the applicant could not satisfy this Tribunal as to how the relief claimed by the applicant in the OA can be granted and how the application is within the period of limitation? Learned Counsel for the applicant argued that the applicant was not communicated the rejection of her case prior to the receipt of letter dated 11.10.2005, along with the copy of letter dated 7.11.2003. As such, the present OA is within limitation.

3. We are of the view that such submission made by the Learned Counsel for the applicant deserves outright rejection. Admittedly, in this case the husband of the applicant died on 8.5.1982 and thereafter the applicant moved an application for grant of appointment ~~on compassionate ground~~ on compassionate ground. As can be seen from copy of letter dated 7.11.2003 (Annexure A/2), the applicant was informed about rejection of her claim vide letter dated 13.10.1987. It cannot be expected that the applicant was not aware about the rejection of her claim for about two decades and she only came to know about the rejection of her claim when intimation was received by her vide order dated 11.10.2005. It was incumbent upon the applicant to

pursue the case when she had moved an application for grant of appointment on compassionate grounds and should have waited for reasonable period, In case no intimation in that behalf was received from the authorities, But certainly it was not open for the applicant to slept over the matter for a period of two decades. Thus, we are of the firm view that the present application is hopelessly misconceived and time barred and the same deserves rejection on this score alone.

4. That apart, even on merit, no relief can be granted to the son of the applicant. According to Learned Counsel for the applicant when the deceased employee died on 8.5.1982, son of the applicant was not born. He was born after the death of the applicant's husband. Learned Counsel for the applicant could not satisfy as to how the son of the applicant was entitled for compassionate appointment as the eligibility has to be seen as on 8.5.1982 when the husband of the applicant died. Admittedly, on that date the son of the applicant was not born, as such, it cannot be said that he was eligible for compassionate appointment. At this stage, it will be useful to quote the decision of the Apex Court in the case of Sanjay Kumar v. State of Bihar, AIR 2000 SC 2782, whereby the Apex Court has held that vacancy cannot be reserved for the dependent/claimant who was minor at the time of death of employee till he attains majority after number of years. It was further held that such

62

reservation would be against the intent behind compassionate appointment namely to provide immediate relief to family of deceased employee. The ratio as laid down by the Apex Court in the case of Sanjay Kumar (supra) is squarely applicable to the facts of the present case. Further, the Rajasthan High court, Jodhpur Bench in the case of Union of India vs. C.A.T. & Ors., 2003 (3) SLR 310, has held that the Railway Board's circular which empowers the authority to give appointment even after 20 years of the death of employee is contrary to the general provision providing appointment and accordingly the judgment rendered by the Jodhpur Bench of this Tribunal whereby the appointment was given to the son of the deceased employee pursuant to Railway Board circular dated 6.10.1995 was set aside. At this stage, it will be useful to quote Para 8 & 9 of the said judgment which is squarely applicable to the facts of the present case, which is as under :-


"8. Thus, the Railway Board's circular, referred to above, which empowers the authority to give appointment even after 20 years of the death of employee is contrary to the general provision providing appointment, to the extent it travels beyond providing appointment to a member of the family of the deceased to tide over the sudden crisis, such appointment interferes with the right of other persons who are eligible for appointment to seek employment against the post which may be made available to them. The Apex Court in Director of Education (Secondary) and Another v. Pushpendra Kumar and Others reported in 1998 (5) SCC 192 : [1998(4) SLR 386 (SC)] dealing with such a situation observed :


" On such a construction, the said provision in the Regulations would be open to challenge on

the ground of being violative of the right to equality in the matter of employment inasmuch as other persons who are eligible for appointment and who may be more meritorious than the dependents of deceased employees would be deprived of their right of being considered for such appointment under the rules."

9. Thus, the circular relied upon by the second respondent, unduly interferes with the right of other persons who are eligible for appointment, is arbitrary and discriminatory to the extent indicated above. Thus, we are of the view that the Central Administrative Tribunal, Jodhpur has committed serious illegality in adopting a very generous, general and casual approach and thereby issuing directions to the appellant to consider the case of the respondent for appointment on compassionate ground."

5. For the foregoing reasons, we are of the view that the present application is wholly misconceived and the same is dismissed at the admission stage with no order as to costs.

  
(A. K. BHATT)  
ADMINISTRATIVE MEMBER

  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

P.C./