

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 555/2013

ORDER RESERVED ON: 23.02.2015

DATE OF ORDER: 27.2.2015

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Banwari Lal Parashar S/o late Shri Madan Gopal Parashar,
aged about 38 years, R/o Malniyon Ka Chowk, Badi Basti,
Pushkar, Ajmer, Rajasthan.

...Applicant

Mr. P.P. Mathur, counsel for applicant.

VERSUS

1. Union of India through the General Manager, North Western Railway, Head Quarter Office, Jawahar Circle, Jaipur, Rajasthan.
2. The Divisional Railway Manager, Ajmer Division, North Western Railway, Ajmer.
3. The Deputy Chief Electrical Engineer, Ajmer Division, Power House, Nasirabad Road, North Western Railway, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondent nos. 1 & 3
Mr. R.G. Khinchi, counsel for respondent no. 2.

ORDER

The applicant has filed the present Original Application
praying for the following reliefs: -

- "(i) That the impugned order dated photocopy of the order dt. 20.2.2013 (Annexure A/1) may be quashed and set aside.

Anil Kumar

- (ii) That the respondents may be directed to consider the case of the applicant for compassionate appointment on merits and considering his indigent circumstances.
- (iii) Any other appropriate order or a direction which is deemed just and proper by this Hon'ble Tribunal may also be passed in favour of the applicant.
- (iv) The Original Application may kindly be allowed through-out with costs.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the father of the applicant died on 28.04.1978 while in service of the respondent-department. At the time of his death, he left behind his widow, Smt. Kamla Devi Parashar, and two sons namely Kaniya Lal, aged about 10½ years and Banwari Lal, aged about 3 years.

3. The mother of the applicant was not in a position to work with the respondent-department due to her ill-health. She applied for giving compassionate appointment to her elder son Kanhiya Lal alias Amit Kumar when he became adult in the year 1987. The application was rejected by the respondents on the ground that the name of her son Amit Kumar Parashar was not mentioned in the details of the family, mentioned in certain official papers by the deceased. This fact was communicated vide letter dated 04th July, 1987 (Annexure A/2).

Amit Kumar

4. The respondents did not agree to provide appointment on compassionate ground to the elder son of the deceased; therefore, the widow of the deceased submitted an application dated 14.08.1988 (Annexure A/5) to the respondent no. 3 wherein she requested that the compassionate appointment may be given to her second son i.e. the applicant of the present O.A. On 13.07.1993, Smt. Kamla Devi (widow) again requested the respondent no. 3 to give compassionate appointment to her younger son as he attained the age of 18 years (Annexure A/6).

5. The respondent no. 3 informed the applicant that since the matter was an old one, the matter could only be considered at the level of the Railway Board or the Railway Minister. Smt. Kamla Devi submitted various representations thereafter to the higher authorities and to the Railway Minister vide letter dated 24.05.1995, 14.08.1995, 25.07.1996, 17.05.1997, 25.08.1998, 13.04.1999, 29.06.1999, 25.06.2000, 17.03.2001, 22.04.2002, 16.02.2003, 15.06.2004, 13.05.2005 and 09.07.2006. The photocopy of representation dated 24.05.1995 and 09.07.2006 have been annexed as Annexure A/7 and A/8, respectively.

Anil Kumar

6. The applicant also submitted representation on 31.12.2007 wherein he pointed out that there is no discrepancy in his name and there was no reason as to why compassionate appointment was not granted to him. The respondents, however, did not give any response to the applicant or to the mother of the applicant.

7. Subsequently, the respondent no. 3 vide letter dated 18.01.2008 (Annexure A/11) informed that one of the applications dated 29.06.1999 has been sent to the Railway Minister after 11½ years of the rejection of the candidature of the elder son, for providing employment to her younger son on the basis of compassionate grounds. This letter was addressed to the Railway Minister, therefore, the respondent no. 3 can act on the basis of this letter only when he receives some communications from the office of the Railway Board / Ministry of Railways.

8. The respondents should have appointed a Welfare Inspector to assess the correct position of the family status including financial status and also judge the requirement of compassionate appointment to one of the family members of the deceased employee. Unfortunately, the respondents did not appoint any Welfare Inspector for this purpose. The applicant has received the final reply on 20.02.2013 along

Anil Kumar

with the other reply dated 01.01.2013 and 29.01.2013. It is apparent from the said communication dated 01.01.2013 that since the matter was 20 years old, no relief can be granted at the end of Deputy Chief Electrical Engineer. However, it is submitted that the General Manager has power to deal with the applications which are even more than 25 years old, which is evident from one of the news items published in Dainik Bhaskar on 19.08.2011 (Annexure A/17).

9. Thus, it is apparent that the case of the applicant for appointment on compassionate grounds has not been considered on merits even after more than 20 years of the applicant's first application made in 1993.

10. On the other hand, the respondents have submitted their reply. In the reply, the respondents have stated that the applicant has not enclosed nor challenged the office order dated 29.01.2013 (Annexure R/1) whereby his request for compassionate appointment was turned down vide letter dated 01.01.2013. However, the applicant has challenged the communication dated 20.02.2013, which is nothing but reiteration of communication dated 29.01.2013 / 01.01.2013. The respondents have further stated that as per Master Circular No. 16 where there is more than one

Anil Kumar

minor son, it is only the eldest minor son and not any of the minor sons when attains majority should be considered for appointment. Besides that one must apply within five years from the death and two years from attaining majority. Even General Managers are empowered to consider the cases upto 20 years old from the date of death of the employee. The same is subject to further consideration as per rules. Admittedly, the applicant is not the eldest minor son of the deceased employee late Shri. Madan Gopal Parashar. Shri Madan Gopal Parashar died in 1978. The applicant has survived since death of his father in 1978 till date without such appointment. The applicant attained majority some time in 1993. The application for compassionate appointment was submitted in 1999. It being after 5/20 years was barred by law and, therefore, rightly has been rejected vide communication in 1999 and the mother of the applicant was informed vide letter dated 06.09.1999. Yet she failed to challenge the same within limitation. The cause of action, if any, arose in 1999, therefore, the present Original Application is barred by limitation. Mere filing representation does not extend limitation as has been held by the Hon'ble Supreme Court in the case of **Union of India and others vs. M.K. Sarkar** reported in (2010) 1 SCC (L&S) 1126 : (2010) 2 SCC 59.

Anil Kumar

11. Moreover, the applicant has failed to demonstrate any illegality in the action of the respondents in rejecting his request for appointment on compassionate grounds. The applicant is not the eldest son of the deceased. The father of the applicant died in 1978. The request for compassionate appointment to the eldest son was turned down in 1987. The request for appointment to the applicant on the compassionate grounds was also turned down in 1999. Yet they survived without such appointment. Discretion is to be exercised in deserving cases only. The case of the applicant is not of such nature, which requires discretionary powers of the General Manager. The applicant cannot ask to be considered for compassionate appointment on that ground. Therefore, the Original Application has no merit and it should be dismissed.

12. Heard learned counsel for the parties, perused the documents available on record and the case law as referred to by the learned counsel for the parties.

13. Learned counsel for the applicant reiterated the facts which have been stated in the O.A. He argued that the application with regard to the younger son i.e. the applicant was given when he attained majority in 1993 and not in 1999 as stated by the respondents. In support of his

Anil Kumar

arguments, he referred to the letter dated 13th July, 1993 (Annexure A/6). Moreover, he placed reliance on the order of the Central Administrative Tribunal, Ahmedabad Bench dated 02nd September 1998 in the case of **Devjibhai Lavjibhai vs. Union of India and Ors.** In para 9 of this order dated 02nd September, 1998, the Tribunal has held that "the aforesaid Railway Board Rules clearly provides that the Railway Administration may refer the case for relaxation of time-limit for compassionate appointment to the Board in special circumstances even beyond 20 years of the death of the employee with the approval of the G.M. in case of death while on duty. In the said case before the Tribunal, the Divisional Railway Manager, Vadodara, has disposed of the application for compassionate appointment of the applicant from his level without giving proper thought to the aforesaid aspect of the matter and rejected the application only on the ground of its being time barred following to the letter of the aforesaid circular to its bitter end. A duty was cast upon the respondents to ensure proper guidance and to keep track by maintaining record, as to the age of attaining majority of the children of the deceased and to advise on time properly in the matter of compassionate appointment. The Tribunal has further held that there is nothing on record to show that the respondents discharged their duty as enjoined upon them in

Anil Jaiswal

the matter. Accordingly, rejection of the application by the respondent no. 2, on the ground that it was time barred, does not appear sustainable. The Tribunal under the circumstances, directed the respondents to consider afresh the case of the applicant for compassionate appointment keeping in view the financial condition of the family. The learned counsel for the applicant submitted that the case of the applicant in the present O.A. is similar to the case of **Devjibhai Lavjibhai vs. Union of India and Ors.** (supra), therefore, the respondents be directed to consider the case of the applicant on merits; rather than rejecting it on the technical ground of delay.

14. On the other hand, learned counsel for the respondents argued that the case of the applicant as well as his elder brother were duly considered and have been rejected as per the provisions of law. It is admitted that the father of the applicant died in 1978. Now we are in 2015. Therefore, he submitted that the case of the applicant is more than 36 years old and, therefore, the case of the applicant is hopelessly time barred. Not only this, the mother of the applicant was informed in the year 1999. The applicant could not be considered for appointment on compassionate grounds. Neither the applicant nor the mother of the applicant challenged that communication. Even from 1999,

Anil Kumar

16 years have passed. Therefore, the applicant has no ground to seek appointment on compassionate grounds at this stage. He submitted that the case law referred to by the learned counsel for the applicant i.e. **Devjibhai Lavjibhai vs. Union of India and Ors.** (supra) is not applicable under the facts and circumstances of the present case. Therefore, he argued that the present Original Application be dismissed with costs.

15. Having heard the rival submissions of the parties, after careful perusal of the documents on record and the case law as referred to by the learned counsel for the parties, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal.

16. It is admitted that the father of the applicant died on 28.04.1978 while in service. Both sons of the deceased employee were minor at that time. When the elder son attained majority, he applied for appointment on compassionate grounds, which was rejected by the respondents vide communication dated 04th July, 1987. Subsequently, the mother of the applicant applied for appointment on compassionate grounds for her younger son i.e. applicant vide application dated 13th July, 1993 (Annexure A/6). According to the respondents, this

Anil Kumar

application was not received in the office of the respondents. Even if, for the sake of arguments, it is accepted that this application was made by the mother of the applicant in 1993, however, case of the applicant was rejected in the year 1999 vide letter dated 06.09.1999 (Annexure R/2). Neither the mother of the applicant nor the applicant challenged this order at the appropriate time. The respondents again vide letter dated 01.01.2013 (Annexure R/1) informed the applicant that his application for appointment on compassionate grounds was already rejected vide letter dated 06.09.1999 on the ground that his case was more than 20 years old and, therefore, as per the policy of the Railway Board, no further action could be taken in the case of the applicant for providing employment on compassionate grounds.

17. I have carefully perused the order of the Central Administrative Tribunal in the case of **Devjibhai Lavjibhai vs. Union of India and Ors.** (supra) and I am of the opinion that the ratio decided by the Tribunal in this case is not applicable under the facts and circumstances of the present case.

18. Moreover, the Hon'ble Supreme Court in the case of **Punjab National Bank & Ors. vs. Ashwini Kumar**

Anil Kumar

Taneja [JT 2004 (6) SC 418 : 2004 (7) SCC 265] has observed as under: -

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises."

19. The Hon'ble Supreme Court in the case of **State of Jammu and Kashmir & Others vs. Sajad Ahmed Mir** [JT 2006 (6) SC 387 : 2006 (5) SCC 766] has held as under: -

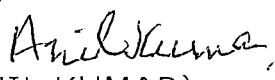
"Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and livelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

20. The Hon'ble Apex Court in the case of **State Bank of India and another vs. Raj Kumar**, (2011) 1 SCC (L&S) 150 : (2010) 11 SCC 661, has held that compassionate appointment is a concession and not a right.

Anil Kumar

21. Thus, on the basis of the ratio decided by the Hon'ble Supreme Court in the above judgments, I am of the opinion that the applicant is not entitled for any relief in the present Original Application; particularly after more than 36 years of the death of his father.

22. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kurnawat