

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1671/2016

Tuesday, this the 8th day of May 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Shri Gaurav Kumar, age 28 years
s/o late Shri Arun Kumar
r/o 3/1753
Bari Bagh, Saharanpur

..Applicant

(Mrs. Meenu Mainee, Advocate)

Versus

Union of India through

1. General Manager
Northern Railway, Baroda House
New Delhi
2. Divisional Railway Manager
Northern Railway
DRM Office, Ambala Cantt.

..Respondents

(Mr. S M Arif, Advocate)

O R D E R (ORAL)

The applicant's father, late Shri Arun Kumar, was appointed as a substitute Khallasi / Callman on 19.11.1985 in the Ambala Division of Northern Railway. His services were terminated vide order dated 25.06.1987 on the charge that he had secured the employment through forged documents. Late Shri Arun Kumar, along with 3 others, who were also sailing in the same boat, challenged the termination order before this Bench of the Tribunal in O.A. No.1192/1987, which was allowed vide order dated 21.05.1990; operative part of the order reads as under:-

“We, therefore, order and direct that the applicants should be taken back on duty and treated to have continued in service from 25.6.1987 with full back wages. The respondents shall however be at liberty to prosecute the case of forgery/fraud against the applicants under the law/Discipline & Appeal Rule in accordance with paragraph 2511 read with Chapter XXIII of the Indian Railway Establishment Manual.”

2. In compliance of the *ibid* directions of the Tribunal, late Shri Arun Kumar was reinstated in service and was paid back-wages.

3. In terms of the liberty granted by the Tribunal vide order dated 21.05.1990, a major penalty charge sheet dated 22.11.1993 was issued to late Shri Arun Kumar on the ground that he had produced false/bogus appointment letter. The disciplinary authority finally imposed the penalty of removal from service on late Shri Arun Kumar vide order dated 14.06.1996.

4. Late Shri Arun Kumar, along with few others, challenged the said order dated 14.06.1996 in O.A. No.777/1997 before this Bench of the Tribunal, which was allowed vide order dated 04.08.2000. The respondents were directed to reinstate him in service within 3 months with 50% back-wages.

5. The order of the Tribunal was challenged by the respondents before the Hon'ble Delhi High Court in CWP No.7574/2000, which was dismissed vide order dated 29.08.2001 and the order of the Tribunal was upheld. However, the Railway Department sought clarification to its order dated 29.08.2001 from the Hon'ble Delhi High Court, who, vide order dated

13.12.2002, clarified that late Shri Arun Kumar was not eligible for getting 50% back-wages.

6. Pursuant to the Tribunal's order dated 04.08.2000, Shri Arun Kumar was reinstated in service vide order dated 19.10.2001.

7. Mrs. Meenu Mainee, learned counsel for applicant drew my attention to Annexure A-6 letter dated 28.12.2011 written by the Divisional Railway Manager, Ambala to General Manager, Northern Railway seeking *post facto* approval for engagement of substitute Khallasi / Callman. The list of officials in respect of whom such approval was sought also included the name of late Shri Arun Kumar, who had died by that time (he died on 21.07.2011).

8. The learned counsel also drew my attention to Annexure A-8 letter dated 27.11.2013 of General Manager, Northern Railway to the Divisional Railway Manager, Ambala, which reads as under:-

“With reference to this office it is informed that the case was put to the competent authority and it has been observed that as per document attached, it is evident that the persons in question have been engaged as substitute and hence post facto sanction of GM does not arise.”

9. Mrs. Meenu thus argued that in case of late Shri Arun Kumar, no *post facto* approval was required from the General Manager, Northern Railway for his engagement as substitute Khallasi / Callman. She further stated that after the death of applicant's father, his mother, vide her Annexure A-4 letter dated 19.09.2011, had requested the Deputy Personnel Officer, Northern Railway to grant compassionate appointment to the applicant.

She also referred to Annexure A-12 letter dated 11.11.2014, which was written by the Divisional Railway Manager, Ambala to General Manager, Northern Railway recommending grant of compassionate appointment to the applicant in Pay Band – I with Grade Pay of ₹1800/- as a fresh substitute.

10. Mr. S M Arif, learned counsel for respondents, referring to the averments made in the reply filed on behalf of the respondents, gave factual details of the case. He also stated that other substitutes, who were appointed along with late Shri Arun Kumar, have been later regularized after they were screened.

11. I have given due consideration to the arguments of learned counsel for the parties and have perused the pleadings.

12. It is an established fact that the applicant's father, late Shri Arun Kumar, was appointed as a substitute Khallasi / Callman in the respondent – Railway Department. It is also an admitted fact that the Divisional Railway Manager, Ambala had recommended for his screening along with others with an intent to regularize his services, but unfortunately Shri Arun Kumar died few months prior to the said recommendation. The colleagues of late Shri Arun Kumar, who were also recommended, have since been screened and regularized. Had Shri Arun Kumar remained alive, he would have also got the benefit of regularization. In the totality of the case, one would come to a natural conclusion that, for all practical purposes, Shri Arun Kumar had become eligible for regularization, but for his untimely death, he would have also become a regular employee. The Divisional

Railway Manager, Ambala has taken cognizance of this fact and has also shown compassion towards the applicant in regard to his prayer for compassionate appointment and that is why he has recommended to the General Manager, Northern Railway for granting permission for his appointment on compassionate grounds in the cadre of substitute.

13. In the conspectus, I am of the view that the ends of justice would meet by issuing a direction to the respondents to consider the case of the applicant for compassionate appointment in accordance with their extant guidelines. Let such consideration be granted within a period of 3 months from the date of receipt of a copy of this order.

14. The O.A. is accordingly disposed of. No order as to costs.

(K.N. Shrivastava)
Member (A)

May 8, 2018
/sunil/