

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.57/2015

Date of Decision: 06th October, 2017

CORAM: Hon'ble Shri R. Vijaykumar, Member (A)

Smt. Shakuntala G. Ahirwar,
Wd/o Shri GyaSiram S. Ahirwar,
Age : 55 years, Occupation: Nil,
Residing at : Room No.3, Chawl No.2,
Shiv Sadan Society, Near Jari Mari garden,
Kalyan (E), Kalyan, Distt. Thane (M.S.).

...Applicant.

(By Applicant Advocate: Shri.V.P. Pandey)

Versus.

1. Union of India
Through General Manager,
GM's office,
Central Railway, C.S.T., Mumbai,
Maharashtra-400 001.

2. Chief Workshop Manager,
Central Railway, CE Workshop,
Manmad-423 104.

... Respondents

(Respondents by Advocate Shri V.S. Masurkar) .

Reserved on : 12.09.2017.

Pronounced on : 06.10.2017.

ORDER

Per:- R. Vijaykumar, MEMBER (A)

This application was filed on 18.07.2014 seeking the following reliefs:-

“(a). This Hon’ble Tribunal be pleased to call for records and proceedings of the case and after examining the legality and propriety of the same, be pleased to direct the Respondents to consider the Applicant’s Application for appointment on compassionate grounds.

(b). This Hon’ble Tribunal may further be pleased to direct the Respondents to consider the Applications dated 08.05.2014, 16.07.2012 & 05.07.2011 of the Applicant on its own merits and pass appropriate orders in the light of appropriate Laws.

(c). Interim and ad-interim reliefs in terms of prayer clause (b) above.

(d). Cost of this Original Application be provided for.

(e). Any other and further reliefs/ be granted and orders be passed as this Hon’ble Tribunal may deem fit, just, legal, proper and necessary in the facts and circumstances of the case.”

2. The facts of the case are that the applicant’s husband died on 29.09.2003 and on 10.10.2003 she applied for appointment of her son (DOB 09.03.1979) aged 24 years on compassionate

grounds. She claims that her brother filed fake documents asserting that her son passed 8th standard in support of his application and she had no knowledge of this matter nor on what action had been taken on her application from the year 2003 up to the year 2008. Only on 11.09.2008, when she received a letter from the respondents stating that the application for appointment of her son was rejected since a fake mark sheet had been submitted, did she come to know of this fact. She then submitted a representation dated 05.12.2008 clarifying the allegations but the respondents again confirmed their rejection of her request on 11.09.2009. Subsequently, her son passed 8th standard in 2010 and 10th in 2012 following which, she made a mercy appeal on 05.07.2011, 16.12.2012 and 08.05.2014. Not having received any reply, she approached to this Tribunal.

3. The applicant has urged the above facts and argued that she was not aware of the submission of the forged documents on behalf of her son by her own brother who was assisting her in this matter.

She has also argued that a Personnel Inspector had visited her house to verify documents on or around 2009 and had advised her son to complete 8th standard and submit the mark sheet. She had denied her responsibility for submitting forged mark sheet in 2003 and attributed the delay in consideration of her request to the respondents. In her MA for condonation of delay she has argued that she was an illiterate widow and she was not aware of her rights and that she had been continuously requesting respondents from 2011 up to 2014 and the subsequently delay was only 18 months and requested for condonation.

4. The respondents argued that the applicant's husband expired on 29.09.2003, eleven years ago, and that her request for compassionate appointment was extremely belated and could not be accepted for which they have cited a catena of eleven judgments. In addition, they have referred to the decision of this Tribunal in **OA No. 92/2006**

Kaushal Kishore vs. Union of India & Others

decided on 12.12.2006 which also relied on the judgment of the Hon'ble Apex Court in the case of

Arun Agarwal vs. Nagreeka Exports reported in (2002) 10 SCC-101. They have also raised preliminary objections on the issue of limitation which could be decided first. They have also cited the judgment in the case of **Union of India vs. M.K. Sarkar reported in (2010) 1 SCC (L&S) 1126** to deny consideration by the Tribunal of stale claims. Further, the Hon'ble Apex Court in **General Manger SBI & Another vs. Anju Jain reported in (2008) 8 SCC 475** has held that appointment on compassionate ground is never considered a right of a person since such appointment is violative of the rule of equality. Further, that in certain circumstances appointment on compassionate ground of dependents of the deceased employee could be considered inevitable so that the family of the deceased employee may not starve. Such appointments are therefore an exception to the general rule of equality and not another independent and parallel source of employment.

They have also cited the judgment of Hon'ble Apex Court in the case of **Santosh Kumar Dubey vs. S/o UP reported in 2009 (5) SC 67** that the request of

compassionate appointment grounds should be reasonable and proximate to the time of the death of the bread earner of the family since the aim of such an exception was to provide financial help to the family to overcome the sudden economic crisis. They have argued that if the family could survive from the year 2003 until 2014 when this application was filed, there is sufficient reason for the application to lack merits. Further, the delay has to be explained for the entire period and not from some point of time when mercy appeal was filed.

5. In the reply to the main application the respondents have reiterated the issue of limitation and ineligibility. They have referred to her awareness of her rights when she applied to the General Manager on 05.10.2008 and also given a complaint to the Secretary, Department of Public Grievances, New Delhi on 15.12.2008. They have rebutted her claim that the forged documents were submitted by her brother without their knowledge since all such documents are only accepted from the widow or wards. Instead of getting her son who

was 24 years old to pass the 8th standard exam, she has decided to go to her far-off native place to obtain a forged document to avail of the scheme. It is also evident that both the employee and his son were living at the same place at the time of his death and they cannot deny awareness of the forgery. They also referred to the representation dated 05.12.2008 and the reply dated 01.09.2009 which explain in details the difference in date of birth recorded in both schools in Kalyan and in Lalitpur, UP apart from the marks and date of admission and leaving from the school. They have denied any instructions given by the Welfare Inspector for asking her to get her son to pass 8th standard. They have also disputed the 8th standard certificate claiming that her son passed in 2010 since there is no academic session from December, 2009 to April, 2010 and the mark sheet does not also specify any date of issue and academic session of night school, Kanyan. In fact the progress report mentions in the footnote that school will be reopen on 13.06.2011 which suggests that the academic session starts from April, 2010

to May, 2011. They have also stated that the reply issued on 01.09.2009 was at the level of AGM of Central Railways and no new facts have been put up subsequently request warranting further examination.

6. In her Rejoinder the applicant placed the burden of not replying to her mercy appeal on the respondents.

7. During arguments the learned counsel for the applicant urged consideration of applicant's request for compassionate appointment. Learned counsel for the respondents argued that this was a case of limitation since delay extended over several years and that should be decided first. He also argued that compassionate appointment was not a right and the objective was to make an appointment as an exception from the rules so that the family of the breadwinner in the event of his death may not starve. They have argued that the family survived from 2003 to 2014 and there is no compelling case for compassionate appointment. They have also invited attention to the forgery which suggests that they were aware that the

applicant's son was not eligible for appointment.

8. I have gone through the O.A. along with Annexures A-1 to A-10. I have also gone through the Reply, and also reply to the application under Rule 12 of the CAT (Procedure) Rules, 1987 along with Annexure R-1 and R-2 and Rejoinder filed by the applicant and have carefully examined the official policy documents annexed in the case.

9. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

10. In regard to appointment on compassionate ground the rules framed in the Railways do not provide any mercy appeal. The rules provide for making application for compassionate appointment within five years from demise of the employee. In this case, the application was made on time but appears to have been made based on forged documents. The respondents have agreed that first formal rejection letter was issued on 11.09.2008, which

is less than a month prior to completion of five years from the date of demise. A detailed letter of rejection was finally issued on 01.09.2009. Even if this final letter was taken as a basis of consideration, there is considerable delay of as much as five years from 01.09.2009 up to 21.07.2015 which has not been explained by the applicant. More particularly, the applicant has not explained how she managed her family from 2003 to 2008 when she started pursuing with the respondents, by her own admission. Even if the matter could have been considered by the General Manager for a period of five additional years beyond initial period of five years, a number of conditions are required to be satisfied before the General Manager could exercise such personal discretion and that depends on the circumstances of the case warranting relaxation and also based on the consideration that son became major subsequently and had applied within one year of becoming major. None of these criteria are apparent in this case.

11. On the first issue of limitation, it is clear

that the case is barred by limitation and the applicant produced no useful explanation for the delay. Her son was 21 years of age at the time of his father's death and there are no available provisions for her to claim the attention of the General Manager to use personal discretion since getting appointment on compassionate ground is not a right and she also needed to explain her family circumstances and the delay from 2003 to 2008 and then further until the date of this application dated 21.07.2015 to substantiate her grounds for compassion for compassionate appointment. The fact that the applicant and her son did not approach the railways with clean hands and they were adult at that time shows poor conduct which itself is a blot on the son's character which makes him unsuitable for appointment.

12. In the circumstances, both on grounds of limitation and lack of any merits in this case, the OA is dismissed and there will be no order as to costs.

(R. Vijaykumar)

Member (A)

Amit/-

