

CENTRAL ADMINISTRATIVE TRIBUNAL.

**Original Application No.536/2016 with
Misc. Application No. 351/2016**

Ahmedabad : this is the 22nd of April, 2019.

CORAM:

HON'BLE SH. JAYESH V. BHAIKAVIA, Member (J)

- 1- Smt. Makniben Wife of Late Shri Virjibhai Hathila aged 60 years, Ex. ELF/SSE/ Sub Stn. VLP.
- 2- Shri Minesh S/o Late Shri Virjibhai Hathila, aged 23 years, yet to be appointed in the Railways.
Residing at Prathampur Dholi, Dholi Faliya, Ta.Jhalod, Dist. Dahod-389151.

Applicants

[By Shri M.S.Trivedi, Advocate]

Versus

- 1- The General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- 2-The Divisional Railway Manager, O/o. DRM, Western Railway, Bombay Central Division, BCT, Churchgate, Mumbai – 400 020.

Respondents

[By Shri V.K.Singh, Advocate]

O R D E R (Oral)

JAYESH V. BHAIKAVIA, MEMBER (J)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs :

- “(A) That the Hon’ble Tribunal be pleased to allow this petition.**
- (B) That the Hon’ble Tribunal further be pleased to quash and set aside the impugned order / communication No. EP/890/13/103-13 dated 18.11.2013 issued by the respondent No. 2 rejecting the claim of son of the deceased / missing employee on compassionate ground.**
- (C) That, the Hon’ble Tribunal further be pleased to direct the respondents to consider the claim / case of the applicant No. 2 for appointment on compassionate ground, as per policy of the respondents without further delay.**
- (D) Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”**

2. The brief facts of the instant matter are that husband of the applicant No. 1 i.e. Shri Virjibhai Hathila, who was serving as ELF-1 under the respondents is missing since 14.08.2010 from the Railway Hospital. Applicant No. 1 Smt. Makniben, wife, made a request on 15.10.2010 and again on 6.7.2011 to the respondents to consider her claim for appointment of respondent No. 2 Shri Minesh, son of missing employee, on compassionate grounds. It is pleaded that since no heed was paid, applicants had moved earlier O.A. No. 267/2012 which was disposed of on 20.11.2012 directing the respondents "to consider those representations as per rules and pass appropriate orders trying to redress the grievance of the Applicant within a period of three months from the date of receipt of a copy of this order." Thereupon, respondent No. 2 passed an order dated 18.11.2013 (Annex.A/1) rejecting the claim of applicant No. 2 for grant of compassionate appointment for the reason that the ***"employee had less than two years to retire, on the date from which he has been missing."***

3. Being aggrieved by the impugned order at Annex. A/1, applicants have approached this Tribunal for the reliefs stated supra and further prayed that the delay occurred in filing the O.A. be condoned and accordingly M.A. No. 351/2016 be allowed.

4. Respondents have filed their written submissions in M.A. also and vehemently opposed the averments raised by the applicants. Respondents inviting attention of this Tribunal have categorically submitted that in view of the Circular of the Railway Board dated 26.07.1998 (Annex.R/1), request of applicant No. 1 for considering compassionate appointment of applicant No. 2 cannot be considered as this benefit cannot be given in case of a Railway employee who had less than two years to retire on the date from which he has

been missing. The respondents have therefore averred that on no ground O.A. is maintainable on account of clear-cut provisions of the Railway Board on the issue.

5. For the reasons narrated in the M.A. No. 351/2016 filed for condonation of delay, the delay in filing the O.A. is condoned.

6. I have heard the learned counsel for the parties and perused the record of the case.

7. From the records, it is apparently clear that applicant was aged 58 years and 29 days and he had less than 2 years to retire on 14.08.2010 when he was reported missing. According to the DOP&T OM dated 31.10.1997 norms have been laid down for compassionate appointment(s) in the case of missing Government servants and the claim of compassionate appointment in favour of son of the missing employee was considered in the light of instructions on the subject and since this benefit will not be applicable to such missing Railway employees who had less than two years to retire on the date from which he has been missing, thus, the respondents did not commit any error in rejecting the case of applicants. In the result, I found that applicants have not been able to make out any case for consideration and there appears no infirmity in the impugned order passed by the respondents at Annex. A/1, accordingly, having no merits, the O.A. is dismissed. No order as to costs.

(Jayesh V. Bhairavia)
Member (J)

