

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

Order Reserved on : 13.12.2018.

Order Pronounced on : 22.01.2019

Original Application No.332/00021/2019

The Hon'ble Mr. Devendra Chaudhry, Member(A)

1. Smt. Nahida Khatoon, W/o Late Ex. T. N.C. Clerk under CYM/UDL Mohd. Masu Khan, Asansol Division (Eastern Railway) aged about 51 years, Smt. Nahida Khatoon, applicant No. 1, w/o Late Ex. T.N.C. Clerk under CYM/UDL Mohd. Masu Khan, Asansol Division (Eastern Railway) aged about 51 years, R/o: C/o Deepcharansingh, Near Shiva Public School Shahid Path, Kanpur Road, Lucknow (U.P) & Permanent R/o: Vill, Mania, P/O Mania, P/S: Gahmar, Distt. Gazipur, (U.P.) 232333.
2. Md. Wasim Akaram Khan, W/o Late Ex. T. N. C. Clerk under CYM/UDL Mohd. Masu Khan, Asansol Division (Eastern Railway) aged about 28 years Smt. Nahida Khatoon, applicant No. 1, W/o Late Ex. T. N. C. Clerk under CYM/UDL Mohd. Masu Khan, Asansol Division (Eastern Railway) aged about 51 years, R/o: C/O Deepcharansingh, Near Shiva Public School Shahid Path, Kanpur, Road, Lucknow (UP) & Permanent R/o Vill. Mania, P/O: Mania, P/S: Gahmar, Distt: Gazipur, (U.P.)-232333.

....Applicant

By Advocate: Shri Girish Tiwari

VERSUS

1. Union of India through General Manager, Eastern Railway, Kolkata.
2. Chief Personnel Officer/R, Fairla Place, Eastern Railway, Kolkata-700001.
3. Competent Officer, Accountant Department, 17, N. S. Road, Kolkata-700001.
4. Executive Director Estt/Railway Board Delhi.
5. Senior, Divisional Personnel Officer, Railway Manager, Eastern Railway, PO Asansol, Dist-Burdwan(W.B) 713301.
6. Senior, Divisional Personnel Officer, Railway Manager, Eastern Railway, PO & Dist. Howrah, PIN-711101 (W.B).
7. Accountant, Accountant Section (Pension Section) DRM Building Asansol.

.....Respondents

By Advocate: Shri Mithilesh Kumar

ORDER

The instant matter concerns disposal of the condonation for delay application filed along with O.A. against the impugned order dated 23.08.2016 passed by Respondent No.2 Chief Personnel Officer, Eastern Railway, Kolkata as contained in Annexure No. 1 of the O.A.

2. As per Learned Counsel for Respondents, the O.A. has been filed after unexplained delay of more than 26 years and hence, while deciding the Original Application, it is argued that the condonation for delay application also needs to be decided upon. The Counsel for Applicant is agreeable to the same.

3. The case of the applicant, in brief whose joint application has been allowed under Rule 4(5)(a) of CAT (Procedure) Rules, 1987 is that the husband of the Applicant-1 was appointed as TNC Clerk in 1974 and thereafter, promoted as Assistant Guard whereafter he served for about more than 18 years in service. That in 1992, the husband of the Applicant No. 1/father of Applicant No. 2 went un-traceable and therefore, an FIR was lodged by applicants on 01.04.2010. That meanwhile, the husband of applicant No.1 was removed from service vide order dated 19.03.1999 in illegal and arbitrary manner on the grounds of unauthorized absence. That the present O.A. has been filed against the impugned order dated 23.08.2016 by which, the Respondent No.2 has rejected the case of compassionate appointment of applicant No.2 (the son of untraceable employee). That the Applicant No.2 is entitled for compassionate appointment as his father (husband of applicant No. 1) visited his home in the year 1992 and after completing his leave period, he joined his duties at Undal Railway Station under the Asansol Division and thereafter went untraceable. That the Applicant-1 is illiterate and poor and has no knowledge of her missing husband and that in spite of several letters sent to Respondent starting from the year 2000 up to 2009 (as mentioned in para 4.9 of the O.A.) no action has been taken with regard to the plea of compassionate appointment of applicant No.2, who is the biological son of the Applicant No. 1 and the missing employee. That, it was the responsibility of the employer which is the Railways to find out about the whereabouts of the applicant's husband who went missing since 1992 and so the rejection of the compassionate appointment is erroneous under the extant provision regarding the same. That the delay of more than 26 years cannot be attributable to any negligence on the part of the Applicants as the impugned order has been issued only on

23.08.2016 and the O.A. has been filed in 2018 (03.07.2018). That since the Respondents did not file any FIR or give any information with regard to the husband/father of the applicant-1/2, the Applicants were in no position to have knowledge of the untraceability of Shri Mohd. Masu Khan, the husband of Applicant No. 1 and therefore, the delay is not willful. That, the Applicant No.1 sent several applications/complaints since 11.08.99 prior to lodging of FIR on 01.04.2010 at the Police Station, Dildarnagar, Hazipur. However, Police has done nothing about the F.I.R. in tracing the missing employee. That in spite of several applications under RTI Act, 2005, no action has been taken by the respondents and therefore, it is the respondents who are fully responsible for the delay and hence the case of the applicant No. 2 should be considered for compassionate appointment as prayed in the O.A. by condoning the delay and rejecting the objections against delay condonation by the Respondents as also considering the prayer of compassionate appointment on merits.

4. Per contra, the Respondents have filed counter affidavit which is taken on record. As per CA, it is submitted that the employee concerned has been absent from duty since 1992 without any information and accordingly adopting 07 years principle, which is trite law, his services were terminated on the grounds of un-authorized absence from duty. That, it is only after the removal of her husband vide order 19.03.1999, that the Applicant-1 started filing complaints, etc. as on own admission since 11.08.1999 (emphasis added). Since the subject case has been treated as of removal from service, therefore payment of Provident Fund amount (Rs. 13042/-) has been made to the eligible member of the employees' family. However, since the employee has been removed on the grounds of absence from duty, consideration of compassionate appointment in favour of wife/ward of such an employee is not covered under the purview of extant rules and hence OA needs to be dismissed on merit itself. Further, it needs to be dismissed also on the grounds of delay as per trite principle of law that one who sleeps loses right for relief, as in the present case the employee concerned who has been missing since 1992, therefore, perforce the Respondents were compelled to remove the employee after 07 years as per extant regulations, which was done in the year 1999 and as the present OA has been filed in 2018 that is after the delay of more than 20 years it deserves to be dismissed on grounds of limitation also apart from merits as already submitted above. Further, since the employee concerned was removed from service, hence, there is no

provision for granting family pension much less the compassionate appointment. That the Applicant-1 filed representation only vide date 26.07.2017 (Annexure- CR-1) in which she claimed that Md. Masu Khan (employee) was missing since February, 1992, which itself is a delay of of 25 years. When this fact is juxtaposed with the fact that applicants lodged F.I.R. as per own admission on 01.04.2010, this brings lie to the fact, that the husband/father of the Applicant-1/2 was the only bread earner evenwhile the Applicants did not bother to lodge F.I.R. for more than 18 years (1992 to 2010). It is matter of record also that a child name of Md. Danish Khan was born on 10.07.1997 as per admission card of CBSE Board, Delhi in which Md. Masu Khan's name has also been recorded as father of Md. Danish Khan. Thus it may be seen that the claim of the Applicant-1 that her husband was missing from 1992 is nothing but a concocted story with the malicious goal of taking benefit from Government for compassionate appointment.

5. The wife is playing innocent fully well knowing the willful absence of her husband-employee who has been lawfully removed from service. That, even if the plea of the Applicant-1 that she started representing since 1999 w.r.t. missing of her husband is taken at face value then also the delay of 6 years when her husband was missing since 1992 is un-explained particularly when it is claimed in parallel that her husband was the only bread earner.

Hence on the basis of available facts and every circumstantial evidence put forth by the Applicants, it is clear that Md. Masu Khan has been willfully missing from 25.07.1992 when he last attended office as per attendance register. The fact that a male child was born the couple on 10.07.1997 as per date of birth entered in admit card of Class-10 Board examination conducted by CBSE, Delhi where name of both the parents i.e. the applicant no. 1 and ex-railway employee name is found recorded adds to this grounds of willful absence fully and squarely. In fact, it is well nigh also mischievous on part of the Applicants that onus is being shifted on the Railways w.r.t. lodging of the F.I.R. when the Applicant-1 is fully aware of the untraceability/questionable availability of employee given the above circumstances of missing since July- 1992 and birth of their son in 1997. Further, no purpose would, therefore, be served w.r.t. any further pleadings from the Applicant's side in the above circumstances and facts.

6. In conclusion, therefore, it is abundantly clear that the Applicant has no case for consideration of compassionate

appointment either on ground of merits or on the unexplained delay of 26 years, which cannot be condoned as the same has not been explained in any substantive manner. It is trite law as per catena of rulings of the Hon'ble Apex Court that every day of the delay has to be explained. In the instant matter, years have gone past without any explanation of the delay. On top of it there seem to be grounds are malifcence wherein the fact of the son being born to the employee from the Applicant-1 being mother, in 1997 has been deliberately omitted by the Applicant and they have not come to the Court with clean hands.

7. In sum, therefore, the delay of 26 years cannot be condoned. The claim in the OA is also not maintainable on merits and so both condonation of delay application and OA are hereby dismissed on merits. No Costs.

(Devendra Chaudhry)
Member-A

JNS

