

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00387/2019

Dated this Thursday, the 01st day of August, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)

1. Smt. Alka Govind Kumbhar, Age 49,
Wife of Late Govind Ragho Hivarkar,
residing at Post Paladhi, Taluka Dharangaon,
Dist Jalgaon 425 103.
2. Smt. Namrata Dhiraj Kumbhar, Age 29,
Residing at Mandar Building, Room No.5,
Near Kalika Mata Mandir, Kolshewadi,
Kalyan East 421 306.

.. ***Applicants***

(By Advocate Shri Vishal P. Shirke)

VERSUS

1. The Union of India, Through the General Manager,
Central Railway, Mumbai CSTM, Mumbai 400 001.
2. The Divisional Railway Manager, Central Railway,
Bhusawal Division, Bhusawal 425 201.

... ***Respondents***

ORDER (Oral)

This application has been filed on
08.03.2019 under Section 19 of the
Administrative Tribunals Act, 1985 seeking the
following reliefs :-

“8.a. This Hon'ble Tribunal may graciously be
pleased to call for the records of the case from the
Respondents and after examining the same the
impugned letter dated 09.03.2018 be quashed and set
aside and the Respondents be directed to consider the
case of the Applicant No.2 for grant of compassionate
appointment and if found fit, appoint her on a suitable
post.

8.b. Costs of the application be provided for.

8.c. Any other and further order as this Hon'ble

Tribunal deems fit in the nature and circumstances of the case be passed."

2. The matter had been heard earlier on 30.06.2019 and notices had been issued to the respondents who have not appeared today nor have they filed their reply. In the circumstances, the matter has been taken up by hearing the applicant.

3. The applicant No.1 is the widow of the deceased employee of the respondents who expired after about five years of service on 20.05.1991 and left behind his widow who is applicant No.1 and his daughter who is applicant No.2 and who was aged 11 months at that point in time. It is stated that the applicant and her daughter returned to their parental home thereafter but it is admitted that she did not file any application for compassionate appointment with the respondents or nor did she set up any claim within a reasonable time of her husband's death for enabling her daughter to make a claim for compassionate appointment when she attained maturity.

4. On 15.02.2017, the applicant No.2 filed a request for compassionate appointment, when she was aged 27 years at that point of time.

The respondents have given a very brief reply to her in the impugned letter dated 09.03.2018 which she had not received and then finally obtained by personal approaching the office of the respondents in May, 2018 and thereafter, filed this OA. In the impugned letter, the respondents have stated that her request for compassionate appointment is more than 25 years old and that her daughter did not approach the respondents immediately after she attained maturity.

5. The learned counsel for the applicant argues that the daughter attained maturity only in 2008 and, therefore, it cannot be argued that her application is 25 years old. Further, he also refers to the circular instructions of the Railway Board in E(NG)II/98/RC-1/64 dated 31.05.2011 wherein the General Managers have been granted the power to consider and decide time-barred cases of compassionate appointment which are up to 25 years past the date of death or medical unfitness of the ex-employee. He, therefore, argues that the impugned letter was only issued by the DRM who had no authority to deal with such requests and he should have referred the matter so that applicant could receive the

benefit of consideration by the General Manager.

6. The learned counsel for the applicant has been being heard and pleadings have been examined.

7. The scheme of compassionate appointment visualizes the provision of support to the family in considerable distress because of the loss of the sole bread winner. In this case, the applicant No.1's husband died in 1991 and the applicant returned to her parental home. Although she would submit that her circumstances at that point of time were grave for financial distress, she provided no opportunity for the respondents to make such an assessment especially in the context that the scheme of compassionate appointment is a departure from the Constitutional scheme of public employment and since she would need to be considered and held against a waiting list comprising 5% of the available vacancies. Therefore, in the absence of any proper assessment of her financial distress at that point of time, no assumptions can be made by the respondents nor claimed by the applicant, 26 years after the event.

8. The learned counsel has argued that

there is a contradiction between the two reasons provided in the impugned order. As we can perceive, the first aspect related to the time-barred character of the application. The second aspect that she did not apply on becoming an adult also reiterates the delay although 17 years elapsed from 1991 to 2008. Even in such a case, it is the admitted case of the applicant that she never made any application prior to 2017 and therefore, the question of consideration of her indigence at the time of death of her husband never came to the attention to the respondents so that they could make their assessment and reserve her claim on behalf of her daughter until the time she became an adult. It is also noticed that the applicant No.2 in the present OA who is the daughter of the ex-employee is also married and it is stated that when she applied for compassionate appointment in 2017 at the age of 27 years she was still unmarried. To that extent, the position of her claim has also changed drastically.

9. The learned counsel for the applicant has referred to the circular instructions of the Railway Board dated 31.05.2011 which are explicit about considering the cases that are

25 years later to the date of death. The instruction themselves have been issued with a view to achieving the very objective of the appointment on compassionate ground and this is the reason why the power has been delegated to the General Manager alone to be exercised in rare and exceptional cases. In the present case, the 25 years limit is well past and moreover, as we can see that there appear to be no special circumstances that could bring the present applicant within the compass of that circular.

10. In the circumstances, this OA is dismissed without any order as to costs.

(R. Vijaykumar)
Member (Administrative)

*kmg**