

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA 050/00570/2018
 [MA/050/00269/2018]

Order dated: 06.08.2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)

Paras Paswan, Son of Late Dinanath Paswan, R/o Village-Mansi Araiya, P.S. Mansi, District- Khagariya.

..... Applicant.

By advocate: Sri Uma Kant Mishra.

Verses

1. The Union of India through the Chairman Indian Railway Board, Govt. of India, New Delhi.
2. Zonal Manager, E.C. Railway, Hajipur, PIN-844101.
3. Divisional Rail Manager., Sonepur, E.C. Railway, PIN-841101.
4. Divisional Personnel Officer, E.C. Railway, PIN-841101.

..... Respondents.

By advocate: Sri Vinay Kumar.

ORDER [ORAL]

Per Jayesh V. Bhaiaravia, Member (J):- The instant OA has been filed by the applicant against the order dated 08.12.2015 whereby his request for appointment on compassionate ground has been made unacceptable.

2. The facts of the case of the applicant is as under :-

[i] The father of the applicant, late Dinanath Paswan, while working on the post of Track Man under S.E./P.Way/Dighwara at Dighwara under Sonepur Railway Division died in harness on 31.07.2011. After the death of his father, the applicant submitted his application on 21.02.2013 for appointment on compassionate ground. It is contended by

the applicant that his application was rejected by the respondents on 08.12.2015 [Annexure-1 page 8 of the OA].

[ii] The applicant submitted that vide letter dated 25.01.2015 [Annexure-5], the Divisional Railway Manager [P], E.C. Railway, Sonpur sent a letter to District Education Officer, Saharsa [Bihar] for verification of genuineness of School Leaving Certificate, and in reply thereto, the District Education Officer, vide his letter dated 17.06.2015 sent a letter to Mr. Ujjawal Anand, the DRM [P], E.C. Railway, Sonpur stating therein that the school leaving certificate of the applicant is correct and genuine. It is submitted that in the said School Leaving Certificate which was issued on 22.02.2004 and it is mentioned in the said certificate that the applicant was studying in Class VIII, the date of admission in the school was 30th Jan., 1992 and the reason for leaving the said school on 31.12.1992 was due to wish of guardian [abhibhawak ki iccha]. The date of birth stated in the said school leaving certificate was 12.08.1979. Therefore, the applicant's case was not considered by the respondents in its true spirit and erroneously his case for appointment on compassionate ground has been rejected.

[iii] The applicant submitted that on 08.12.2015, the respondents rejected his claim for appointment on compassionate ground, on the ground of age difference

between his father and him, which has already been verified and confirmed by the District Education Officer.

[iv] The applicant has filed supplementary affidavit and further contended that the case of the applicant was rejected based on fake, manipulated railway pass declaration, as such the railway to family members is admissible beyond 18 years of age in case of students.

[v] The applicant submitted that he belongs to Scheduled Caste community and he is financially backward and down trodden, landless having no source of income. His father has already been died who was the only earning member of the family, therefore, his case for compassionate appointment ought to have been considered by the respondents sympathetically. Hence this OA.

(vi) The applicant has also filed an MA 269 of 2018 for condonation of delay in filing this OA on the ground that he came to Patna in January, 2017 when a lawyer suggested him to send a legal notice to the respondents, which was sent on 20.06.2017 which is still pending. The applicant referred to a judgement rendered by Hon'ble Supreme Court in the case of Anantnag and Ors. vs. Most. Katiji and Ors. reported in 1987 [2] SCR 387 wherein it has been by the Hon'ble Apex Court that power to condone the delay in approaching the courts had been conferred upon the courts to enable them to do

substantial justice to parties by disposing of matters on merit. The applicant also relied upon a judgement rendered in the case of Nand Kishore vs. State of Punjab reported in 1995 [10] SCC 614 wherein the Hon'ble Apex Court under the peculiar circumstances of the case, condoned the delay in approaching the court of about 31 years.

3. The respondents have filed their written statement on 03.12.2018 and contested the case. According to them, late Dinanath Paswan was appointed on 01.01.1984 as Trackman/Engg. He passed away on 21.07.2011 as mentioned in the death certificate dated 01.02.2012 [Annexure-R/1]. After the death of late Dinanath Paswan, his younger son Shri Paras Paswan submitted an application in the prescribed format for appointment on compassionate ground on 04.11.2013 [Annexure-R/2]. The respondents submitted that according to enquiry report of Staff Welfare Inspector and the documents submitted by the applicant, the deceased had solemnized two marriages during his life time. The name of the first wife is late Lalo Devi, who died on 10.04.1977, vide death certificate dated 04.12.2013 [Annexure-A/3] and the name of second wife is Uma Devi, who died on 15.10.1986, vide death certificate dated 04.12.2013 [Annexure-A/4]. The respondents submitted that the deceased employee has two sons, [i] Shri Subhash Paswan, who born from the first wife

and Shri Paras Paswan, who has born from the second wife, Late Uma Devi.

4. The respondents submitted that Shri Subhash Paswan, first son of the deceased employee, was appointed as Trackman in the Railway on 12.08.1983 and he retired from the Railway on 31.12.2010. The respondents submitted that on the basis of service record, the date of birth of Shri Subhash Paswan is 10.12.1950 and his father late Dinanath Pawan's date of birth is 31.01.1956 [it appears to be factually incorrect], the respondents submitted that there appears to be discrepancy in age between Shri Subhash Paswan and his father Dinanath [Annexure-R/5].

5. The respondents further submitted that the applicant, Shri Paras Paswan [second son of the deceased] applied for appointment on compassionate ground in the year 2013 and when the matter was enquired into by the Staff Welfare Inspector and on the basis of documents submitted by the applicant, it came to light that in the declaration form of railway pass submitted by the father of the applicant in the year 2005, it is found therein that the applicant's age is mentioned 38 years and the age of Dinanath, i.e. father of the applicant has been declared 49 years [Annexure-R/6], whereas in the School Leaving Certificate of 8th Class issued by the Headmaster, M.D.D.K.High School, Telwa, Mahishi [Saharsa] his date of birth has been mentioned as 12.08.1979.

The respondents submitted that the present age of the applicant is approximately 51 years as per the pass declaration and 39 years as per the educational certificate.

6. The respondents further submitted that the elder son Shri Subhash Paswan being ex-employee of the Railway is already getting pension since his retirement w.e.f. 31.12.2010. That apart, he has already been paid a sum of Rs. 1,50,800/- towards DCRG, Leave Encashment Rs. 1,20,389/-, GIS Rs. 2984/- and Pension Rs. 5200/-.The respondents submitted that on the basis of excess age of both the sons, no other dependent and discrepancy in age, the claim of the applicant was not considered for appointment on compassionate ground by the competent authority. It is further submitted that according to Railway Board letter dated 06.01.2009, the competent authority should satisfy himself/herself on the basis of balanced and objective assessment, the financial condition of the family, having regard to the number of dependents, assets and liabilities left by the deceased employee, income of any member of the family as also his liability including the aspect of the earning member is residing with the family and whether he provides any support to any other members of the family [Annexure-R/8]. It is submitted that in the case of the applicant, his age has been found a major discrepancy and did not found him the sole dependent on the deceased railway employee. Therefore, the competent

authority did not found him suitable for recommendation for appointment on compassionate ground.

7. The respondents have replied to the representation/application of the applicant and intimated that the case of the applicant has been regretted. The respondents submitted that in view of the aforesaid facts and circumstances, compassionate appointment of the applicant has not been considered fit and his case is accordingly rejected by the competent authority.

8. The applicant has filed rejoinder on 31.01.2019 whereby he submitted that the father of the applicant was illiterate person and know nothing except putting L.T.I. The Pass Declaration Form was filled up by somebody else. It appears to have been manipulated. As per Railway Pass Rule, beyond 21 years, no pass is admissible to family members and dependents, therefore, there is no question of furnishing name of wards in pass declaration form beyond 21 years except in case of student, unmarried daughter or widow daughter, hence no need to give any declaration for family members or son beyond 21 years. As contained in Rules 225 R-1 Indian Railway Establishment Code-I, the School Certificate, certificate granted by Registrar Death and Birth and now Aadhar Card are the only authenticated documents for age proof. The date of birth of the applicant is 12.08.1979 as per educational certificate which is also corroborated by Aadhar

Card, as such the genuine date of birth of the applicant is 12.08.1979. The Pass declaration is nothing but it is a manufactured, fabricated document submitted by the respondents to deprive the applicant from his genuine claim of appointment on compassionate ground.

9. The counsel for the respondents further submitted that the case of the applicant has been correctly examined by the Welfare Officer and after considering the overall condition of the applicant they did not found it appropriate to accept the claim of the applicant as beneficiary of compassionate appointment. The applicant failed to establish his eligibility for claim of appointment on compassionate ground. He also failed to establish cogent reason for filing the present OA beyond the prescribed time limit under the A.T. Act.

10. Heard the learned counsel for parties and perused the records.

11. Admittedly, the present applicant is over 38 years of age. The father of the applicant died in harness on 31.07.2011 and after the death of his father, the applicant filed his application on 21.02.2013 for appointment on compassionate ground, which was rejected by the respondents on 05.12.2015 [Annexure-A/1] mainly on the ground that as per the available service record of the deceased employee and the necessary documents of the applicants as well as service record of his

brother who was said to be a railway employee, the respondents have found the age difference between his father and him, as also on consideration of School Leaving Certificate of the applicant, as well as the report of Welfare Officer, who has not found the applicant as dependent not only that not found in beneficiary of welfare scheme, i.e. appointment on compassionate ground. The said decision dated 08.12.2015 has been intimated to the applicant long back which is under challenge in the present OA. The applicant has filed the present OA on 15.05.2018 challenging the order passed by the respondents on 08.12.2015, after a lapse of over two and a half years. The reason for condonation of delay stated by the applicant in his MA 269/2018 are not supported by any cogent reason and satisfactory explanation for approaching this Tribunal. The applicant has only stated that he is having no knowledge about the law of limitation, and due to poverty and sickness of his wife, unable to move before this Tribunal. In the year 2017 he came to Patna when he was advised to file the present OA since he was vigorously pursuing his claim before the respondents. In this regard it is noticed that after the impugned decision dated 08.12.2015, the applicant had submitted representation dated 08.02.2016 and 22.02.2016, and in response to it, the respondents, vide their letter dated 28.02.2016 again intimated the applicant that vide letter dated 08.12.2015 and 01.02.2016, his application for appointment on

compassionate ground has not been accepted by the competent authority.

Subsequently, it appears that on 20.06.2017, one legal notice through the lawyer was issued to the respondents. It is apt to mention here that under the provision of Section 21[a] of the Administrative Tribunals Act, 1985, stipulates that in a case where a final order such as is mentioned in clause [a] sub-section [2] of Section 2 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made, a Tribunal shall not admit an application. Admittedly, the respondents had issued final decision on 08.12.2015 and again intimated to the applicant about rejection of his application vide letter dated 28.03.2016 by rejecting the representation of the applicant. Therefore, the cause of action was arose on 08.12.2015 itself. Submission of various representation against the final decision cannot save the period of limitation. The delay cause in filing the present OA has not been sufficiently explained, the reason stated by the applicant cannot be said to be a cogent reason, therefore, the said MA for condonation of delay is not acceptable. Even as discussed hereinabove the application of the applicant for appointment on compassionate ground has been considered by the competent authority and did not found it appropriate for recommendation. I do not find any infirmity in the said impugned decision.

12. Under such circumstances, MA No.269/2018 for condonation of delay in filing the present OA is dismissed. The OA is also dismissed as barred by limitation and on merit. No costs.

Sd/-

[Jayesh V. Bhairavia]/M(J)

BP/