

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 951 OF 2014**

Smt. Kanta Gautam Horshil and anr. .. Petitioners.

vs.

General Manager,
South Central Railway & ors. .. Respondents.

Mr. Uday P. Warunjikar for the Petitioners.

Ms Pooja Saxena i/b T.J. Pandian for the Respondents.

**CORAM: D.H. WAGHELA, C.J. AND
M.S.SONAK, J.**

DATE : 8 MARCH 2016.

P.C.:

1] The challenge in this petition is to the judgment and order dated 30 September 2013 made by the Central Administrative Tribunal (CAT) in Original Application No. 117 of 2013 dismissing the petitioners' claim for compassionate appointment of the petitioner No.2 on various grounds, including *inter alia* on the ground that such claim was raised after lapse of fifteen years from the death of petitioner No.2's alleged adoptive father.

2] Mr. Warunjikar, learned counsel for the petitioners, submitted that since the petitioners have produced on record Heir-ship Certificate dated 29 June 2005 issued by the Competent Court, there cannot be any serious dispute with regard to genuineness of petitioner No.2's adoption by late Gautam Horshil, who expired in a train accident on 8 December 1991. Mr.

Warunjikar submitted that the petitioner No.2, at the time of demise of his adoptive father on 8 December 1991, was hardly ten years of age and therefore, the application seeking compassionate appointment, though made after fifteen years from the date of demise of Gautam Horshil, cannot be regarded as delayed. Mr. Warunjikar submitted that the CAT has relied upon the Circular which had prescribed five years as reasonable time, within which to raise such a claim. However, he submitted that later on, another Circular has been issued, in which, no time limit has been prescribed and each case has to be considered on its own merits. For all these reasons, Mr. Warunjikar submitted that the impugned judgment and order warrants interference under Articles 226 and 227 of the Constitution of India.

3] Having heard the learned counsel for the parties, perused the record as well as the impugned judgment and order, we see no reason to interfere. It is settled position in law that the compassionate appointment is an exception to the general rule. The general rule that all eligibles must have adequate opportunity for being considered for public employment, should not be departed from, unless, there are compelling circumstances. In this context, delay in raising a claim for compassionate appointment is certainly, a relevant factor to be taken into consideration. The object of grant of compassionate appointment is not to render public offices heritable nor is it some bonanza or some primary source of recruitment. The reason why schemes providing for such appointments are sustained, is to enable the family, which has lost

its bread-winner to tide over the sudden crisis and possible destitution. Even under such schemes, compassionate appointment, can certainly not be claimed as a matter of right and *de hors* rules, regulations and policies. Ordinarily, there is no further scope for concession or relaxations, particularly since the scheme of compassionate appointment is itself, in the nature of a concession.

4] In the facts of the present case, Gautam Horshil, an employee of the Railways died in a train accident on 8 December 1991. Petitioner no.1- Kanta produced before the Railway Authorities Succession Certificate dated 11 January 1996 issued by the Civil Judge, Senior Division at Jalna. In the Succession Certificate only late Gautam's wife (Petitioner No.1) and mother were indicated as successors. There was no reference to the petitioner No.2, who claims to have been adopted on 28 September 1991, i.e., three months prior to demise of said Gautam. Mr. Warunjikar's explanation to that effect that the said Succession Certificate was obtained in order to avail terminal benefits payable to late Gautam or that the petitioner No.2, at the relevant stage was only a minor, is hardly convincing. If, the petitioner No.2, was indeed adopted son, reference to his name in the Succession Certificate issued on 11 January 1996 would be only natural.

5] The CAT has rightly refused to accord much credence to the Adoption Deed dated 28 September 1991. For this purpose,

the CAT has taken into consideration the contention of the Railway Authorities that signature of late Gautam thereon, does not tally with Gautam's admitted signatures in the course of his service with the Railways. Besides, normally names of family members are reflected in the service record, at least for availment of medical benefits. In this case, there was no reference to the name of petitioner No.2 in the service record. The circumstance that the petitioners have raised a claim only after fifteen years and that too, on basis of Adoption Deed dated 3 August 2004 and the Succession Certificate obtained on basis thereof on 29 June 2005, itself casts a very serious doubt as to the authenticity of such adoption. When the Adoption Deed dated 3 August 2004 was executed, the petitioner No.2 was 23 years of age and further, the adoptive father had already expired on 8 December 1991. The CAT, in such circumstances, very rightly, denied the benefit of compassionate appointment to such petitioner-Bharat.

6] The CAT, has referred to letter dated 20 May 1998 issued by the Railway Board in the matter of conditions for appointment of adopted son/daughter on compassionate ground. The relevant conditions in paragraph '2' of the said letter read thus:

“2. A question has been raised whether adopted sons/daughters are eligible to be considered for compassionate appointment. The matter has been considered and the Board have decided that an adopted son/adopted daughter will also be eligible to be considered for appointment on compassionate grounds (in circumstances in which such

compassionate appointment is permissible) in case all the following conditions are satisfied;

(i) There is satisfactory proof of adoption valid legally;

(ii) The adoption is legally recognised under the personal law governing the railway servant;

(iii) The legal adoption process has been completed and has become valid before the date of death /medical decategorisation/medical incapacitation (as the case may be) of the ex-employee.”

7] In the facts and circumstances of the present case, it is quite apparent that the petitioner complies with none of the conditions as aforesaid. There is no satisfactory proof of valid adoption. The Adoption Deed dated 3 August 2004, upon which, the petitioners have placed relied, indicates that the petitioner No.2 was 23 years of age, even though, Hindu Adoption and Maintenance Act, 1956, does not permit adoption of a major. Finally, in this case, the adoption process cannot be said to have become valid before the date of death, on the basis of which, the compassionate appointment is claimed.

8] The Circular upon which Mr. Warunjikar has placed reliance itself provides that normally, all appointments of compassionate appointment should be made within a period of five years from the date of occurrence of the event entitling the eligible person to be appointed on compassionate basis. The Circular also provides that this period of five years may be relaxed

by the General Manager subject to certain conditions. One of the condition is that the case should not be more than ten years old as reckoned from the date of death. Further, the circumstances of the case should be such as to warrant relaxation of the time limit of five years and the reason for relaxation should be placed on record. The request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter to be considered for compassionate appointment has become a major, say within a maximum period of one year. In the facts and circumstances of the present case, obviously, the petitioners can avail no benefit of this Circular as well.

9] For all the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

CHIEF JUSTICE

(M.S.SONAK, J.)