

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16655 of 2024

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

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikash Kumar V.Kumar, Advocate.
For the Respondent/s : Mr. Anshay Bahadur Mathur, CGC.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 30-04-2025

1. Heard learned counsel for the parties.

2. The present writ petition has been filed for

following reliefs:-

i. For issuance of writ in nature of certiorari for quashing the order dated 06.08.2019 passed by the learned Central Administrative Tribunal, Patna Bench, Patna in O.A./570/2018 with M.A. No.269/2018 whereby and whereunder learned Court has dismissed the M.A. No.269 of 2018 for condonation of delay in filing the present O.A. and O.A. is also dismissed on merit.

ii. For issuance of writ in the nature of



mandamus for direction to the respondent authority to appoint the petitioner on compassionate ground after death of his father in duty period working as Class IV employee in Sonepure Division.

3. The facts of this case in brief is that the father of petitioner late Dinanath Paswan was appointed as Trackman on 01.01.1984 and while working on the post of Trackman under Sonepur Railway Division, he died on 31.07.2011. The deceased had solemnized two marriages during his life time. First wife Lalo Devi died on 10.04.1977 and second wife Uma Devi died on 15.10.1986. The deceased employee had two sons namely (i) Subhas Paswan who was born from his first wife and (ii) Paras Paswan (petitioner), who was born from his second wife. The petitioner who is second son of the deceased employee applied for his appointment on compassionate ground on 21.02.2013 alongwith required documents. The Divisional Personnel Officer, East Central Railway, Sonepur informed the petitioner vide communication dated 08.12.2015 that his petition for compassionate appointment has been rejected by competent authority stating therein that his eligibility for appointment on compassionate ground is not valid in view of over age of both brothers, being no other dependent and major contradictions in age declared by his father in dependency declaration form in



2005 and 2007, and his date of birth recorded in the 8th class educational certificate.

4. Instead of filing O.A. before Central Administrative Tribunal, petitioner made various representations for reconsideration of his case which was rejected. Against the communication/order dated 08.12.2015, the petitioner filed O.A. No.507 of 2018 with M.A. No.269 of 2018 (for condonation of delay) before Central Administrative Tribunal, Patna Branch, Patna on 15.05.2018 stating that he had no knowledge about the law of limitation and due to poverty and sickness of his wife, he was unable to move to the Tribunal, which were dismissed vide impugned order dated 06.08.2019.

5. Learned counsel for petitioner submitted that the petitioner was dependent on the deceased employee. His date of birth is 12.08.1979 which is correct and genuine. It has been recorded in his school transfer certificate which is the only authentic document for age proof of the petitioner. The father of the petitioner was illiterate person who had put his LTI on the declaration form of railway pass which was submitted by him in the year 2005 and it was filled up by someone else, inadvertently the age of petitioner was mentioned 38 years and the age of his father has been declared as 49 years which is



liable to be ignored. The petitioner is landless having no source of income and he along with his family, he was totally dependent upon the financial support of his deceased father and after his death, the petitioner is facing financial crisis. He further submitted that there was 'sufficient cause' shown by the petitioner for condonation of delay in filing O.A. and the learned Tribunal ought to have a liberal approach in deciding the limitation petition. He further submitted that the impugned action of Railway Authority is illegal, arbitrary and unconstitutional. Therefore, the impugned order of Central Administrative Tribunal is liable to be set-aside and the Railway Authority/respondents may be directed to consider the appointment of the petitioner on compassionate ground after death of his father in duty period working in Sonapur Division of respondents as Class IV employee.

6. Learned counsel for the Union of India submitted that petitioner has filed O.A. beyond the prescribed limitation period having no sufficient/cogent reason. He further submitted that on merit also the learned Central Administrative Tribunal rightly dismissed O.A. and held that the petitioner failed to establish his eligibility for claim and appointment on compassionate ground which requires no interference by this



Court in this writ jurisdiction and the learned Tribunal rightly noted that submission of various representations against the final decision cannot save the limitation. It is further submitted that even considering that the applicant was born on 12.08.1979 and was around 39 years of age at the time of filing of O.A. in 2018 his elder brother had himself got an employment in the Railway. Since the applicant was already more than 30 years of age at the time of filing the O.A., it is unlikely that he was dependent on the deceased and therefore, is not entitled to compassionate appointment.

7. In the present case, the learned Tribunal dismissed M.A. No. 269 of 2018 for condonation of delay in filing the O.A. on the ground that the petitioner has not shown cogent reason for condonation of delay. The learned Tribunal also dismissed the O.A. on merit and held that there is no infirmity in the decision of the competent authority who has considered the application of petitioner for appointment on compassionate ground and did not find it appropriate for recommendation.

8. Before considering the merit, it is relevant to examine whether the petitioner had shown 'sufficient cause' for condonation of delay in filing O.A.



9. Section 21(a) of the Administrative Tribunal Act, 1985, stipulates that in a case where final order as is mentioned in clause (a) of sub-section (2) of Section 2 has been made in connection with the grievance under the application within one year from the date on which such final order has been made, a Tribunal shall not admit an application.

10. The law of limitation is a valid substantive law, which extinguishes the right to sue, and/or the right to appeal. Once the application is found to be barred by limitation, there can be no question of any obligation of the Court to consider the merits of the case of the petitioner. However, the Court may only look into the *prima facie* case for appeal. The Court may adopt liberal approach if some plausible cause for delay is shown. The Hon'ble Supreme Court in the case of **State of Uttar Pradesh and Others v. Satish Chand Shivhare and Brothers** reported in **2022 SCC OnLine 2151** in paragraph no.22 observed as under:-

*“22. When consideration of an appeal on merits is pitted against the rejection of a meritorious claim on the technical ground of the bar of limitation, the Courts lean towards consideration on merits by adopting a liberal approach towards 'sufficient cause' to condone the delay. **The Court considering an application under Section 5 of the Limitation Act may also look into the prima***



facie merits of an appeal. However, in this case, the Petitioners failed to make out a strong prima facie case for appeal. Furthermore, a liberal approach, may adopted when some plausible cause for delay is shown. Liberal approach does not mean that an appeal should be allowed even if the cause for delay shown is glimsy. The Court should not waive limitation for all practical purposes by condoning inordinate delay caused by a tardy lackadaisical negligent manner of functioning.”

(emphasis supplied)

11. The Hon’ble Supreme Court in the case of **Pathapati Subba Reddey (Died) by L.Rs. And others v. Special Deputy Collector (LA)** reported in **2024 SCC OnLine 513** in paragraph no.26 observed as under :-

“On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice,



though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;
(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;
(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;
*(vii) **Merits of the case are not required to be considered in condoning the delay;** and*
(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

(emphasis supplied)

12. The Hon'ble Supreme Court in the case of **Dalvinder Pal Sahgal v. Partap Steel Rolling Mills (P) Ltd.** reported in **AIR 2002 SC 451** has held that if the order on merit has been passed without condonation of delay, then it shall be deemed that delay has been condoned.

13. As per the principle of natural justice, a person



should not be denied of his legal rights and benefits available to him under law merely because of his lack of knowledge or inadvertent mistakes done by him. The petitioner was pursuing his matter by filing representations and in the present case, the Central Administrative Tribunal has also passed the impugned order on merit. Considering the facts and circumstances of this case, the petitioner has shown 'sufficient cause' for condonation of delay. Accordingly, delay in filing the O.A. is hereby condoned and M.A. No. 269 of 2018 is accordingly allowed.

14. As per service book, date of birth of deceased-employee Dinanath Paswan is noted as 31.01.1956 and his retirement age is 31.01.2016. Accordingly, in his declaration form submitted by deceased-employee in 2005, he has mentioned his age as 49 years and mentioned the age of petitioner as 38 years i.e., difference of age between father and son is 11 years. In declaration form of 2007, the age of petitioner is noted as 40 years. In transfer certificate dated 22.02.2004 issued by the concerned school, it appears that the age of petitioner is recorded as 12.08.1979 and on comparing the same, there is difference of 13 years. Subhas Paswan, first son of deceased employee was appointed as Trackman in the Railway on 12.08.1983 and retired from the Railway on



31.12.2010 who is getting pension since his retirement and he had also received retirement benefits. It is surprising to note that the age of first son is more than his father's age and also the difference of age between the petitioner and his deceased father in the service record is such that it cannot be believed.

15. The concerned Welfare Officer on enquiry, in his report, has not found the applicant as dependent. As per the service record of the deceased employee, documents of the applicant, service record of his brother who was said to be a railway employee, the respondent found discrepancy in the age difference between the petitioner and his father.

16. There can be no dispute with regard to the general proposition that the compassionate appointment is not a normal source of appointment. Rather, compassionate appointment is an exception to the general rule and, therefore, consideration of the same has to be on the basis of rules, regulations or executive instructions, which may be in force in that regard. There is also no dispute that the railways have a scheme for compassionate appointment. Although, the compassionate appointment is not a matter of right, the dependent of a deceased government employee is entitled for consideration as per rules depending on a number of factors



including the level of indigence and the need of family for such compassionate appointment.

17. The Hon'ble Supreme Court has laid down certain basic principles and guidelines for granting compassionate appointment to the dependents. Compassionate appointment can be given only as relief for minimum succour on the death of a government servant to his family. In **Local Administration Department v. M. Selvanayagamn** reported in **2011 (2) SLJ 260**, the Hon'ble Supreme Court has observed that even a son of deceased government servant if he is able to survive for certain years, it is deemed that the immediate mitigating poverty has been overcome and the applicant will not be entitled to compassionate appointment.

18. It was urged on behalf of respondents that compassionate appointment could not be claimed as a matter of right and a claim for the same must be entertained having regard to the compelling financial circumstances of the deceased's dependent(s). Therefore, entertaining a claim which was made in the year 2013, in year 2025, would be of no avail.

19. As per direction contained in letter dated 06.01.2009 of Railway Board at the time of considering request for compassionate appointment, the competent authority should



satisfy itself on the basis of a balanced and objective assessment of the financial condition of the family that the grounds for compassionate appointment in each such case is justified, having regard to the number of dependents, assets and liabilities left by the railway employee, income of any member of the family, as also his liability including the aspect of whether the earning member is residing with the family of the deceased employee and whether he provided any support to other members of the Family.

20. The Hon'ble Supreme Court in the case of **State of West Bengal v. Debabrata Tiwari and others** reported in **2023 SCC OnLine SC 219** after considering the decisions on the point of compassionate appointment in paragraph no.32 observed as under:-

“32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the



deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.”

21. In the light of aforesaid discussion and taking note of the law with respect to compassionate appointment, the petitioner has not made a case for interference in the impugned order on merits. Hence, this Court is not inclined to interfere with the impugned judgment/order dated 06.08.2019 passed by learned Central Administrative Tribunal, Patna Bench, Patna in



O.A. No.570 of 2018. This writ petition is accordingly
dismissed.

22. There shall be no order as to cost.

(Sunil Dutta Mishra, J)

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