

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA /310/00716/2019****Dated Friday, the 3rd day of January, 2020****PRESENT****Hon'ble Mr. T. Jacob, Member (A)**

B.S. Reeta,
D/o. Sriramulu (Late),
No.363, Dr.Ambedkar Nagar,
IInd Cross Street, Chennai – 600 012.Applicant

By Advocate M/s P. Chandrasekaran.

Vs

1. Union of India,
Rep by its Secretary,
Ministry of Railway Department,
New Delhi.
2. The Divisional Railway Manager Office,
Personnel Branch,
Chennai Division, Southern Railway,
Chennai –600 003.Respondents

By Advocate M/s K.Vijayaraghavan.

O R D E R
(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"....to set aside the letter dated 25-03-2019 of the Second Respondent in No.M/PB/CS/22/06/2013 rejecting the request of the applicant seeking compassionate appointment and direct the respondents to provide appointment to the applicant on the ground of compassionate in the Second Respondent's Office".

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's father B. Sriramulu while working as a Senior Technician in the Second respondent office died on 05-09-2002. He had two wives, one by name Smt. Sathyavedhamma and the second Smt. Thiruppammal. His first wife Sathyavedhamma died on 25-02-2008. His two sons, namely Anthony Babu and Ravi born through his first wife also died on 31-07-2011 and 06-06-2010 respectively. Thus all the Legal Heirs (first wife and her children) are not alive. Now, only the applicant B.S. Reeta and her mother Smt. Thiruppammal, the second wife of the deceased employee survive. During the life time of Smt. Sathyavedhamma, the second respondent informed her and the applicant B.S.Reeta, the daughter of the second wife to receive the retiral benefits of Late. Sriramulu and to apply for compassionate appointment. On 15-09-2004 within two years period from the date of death of B. Sriramulu, the applicant submitted an application requesting the second respondent requesting for compassionate appointment. On 02-01-2014 after the period of ten years the application of applicant was rejected by the Second Respondent on the only ground that she is the daughter of the second wife Sriramulu.

The applicant filed O.A No.374 of 2017 for setting aside the order dated 2-1-2014 of the Second Respondent and directing him to provide compassionate appointment to the applicant. The applicant was constrained to challenge a supplementary circular in R.B.E.No.1 of 1992 No.5 to Master Circular 16 dated 02-01-1992 prohibiting the consideration of a daughter through a second wife for appointment. The said Circular dated 02-01-1992 had already been quashed by the Hon'ble High Court in W.P.No.41091 of 2015 dated 03-01-2017. On 01-10-2018 O.A.No. 374 of 2017 was finally disposed of by this Hon'ble Tribunal directing the respondents to consider the applicant for compassionate appointment as per the scheme in vogue on relative merits. On 29-10-2018 the applicant gave an application enclosing copy of the Order. On 25-03-2019 the Second respondent rejected the application of the applicant stating that she is married and as no Heir of B.Sriramulu to support as stated above the mother of the applicant Smt. Thirupammal the second wife of B. Sriramulu is still alive and being supported by the applicant. Hence the present OA seeking the above reliefs, inter alia on the following grounds:-

- i. The impugned letter dated 25.03.2019 of the second respondent in this Letter No.M/PB/CS/22/06/2013 to the applicant suffers from the vice of arbitrariness and total non-application of mind. Smt. Thirupammal, who led live in Relationship with the deceased employee B. Sriramulu and mother of the applicant is still physically alive and living with the applicant. It is settled law that when a man and women live under the same roof for years together is legally recognised as husband and wife by the public in the eye of law. Thus the said Smt. Thirupammal who is living with the applicant is to be taken care

of by the applicant. Hence the finding of Second respondent in Para 13.0 stating that B.S. Reeta does not have any other person in the family of the deceased to be taken care of her is totally contrary to the fact. Further, the legal heir certificate issued by the Tahsildar Purasawakkam-Perambur Taluk on 08.11.2004 describes Thiruppammal as the wife of deceased Sriramulu and B.S.Reeta, the applicant herein as his daughter. Also the Election I.D., Ration Card and Aadhar Card prove Thiruppammal is the wife of B.Sriramulu.

ii. It is the foremost duty of the applicant to support and take care of her mother Smt. Thiruppammal. The second marriage, when the first marriage is subsisting is legal.

iii. The marriage by itself does not disqualify a person seeking compassionate appointment. Hence the applicant, who is married is justified in law to claim compassionate appointment.

iv. The application dated 15.09.2004 finally negatived by the second respondent on 02.01.2014 is beyond the period of 10 years. The respondent department is expected to consider and pass order on the application for compassionate appointment within a reasonable time so as to help the family to survive.

v. The judgement relied on by the Second Respondent have no application to the facts of case of the applicant.

vi. The instructions contained in R.B.E No.42 of 2018 dated 21.03.2018 is having a prospective effect and has no application to the facts of the case of the applicant.

3. The respondents have filed a detailed reply statement in which it is stated that in the family composition the applicant has been declared as daughter by the deceased employee. The applicant submitted a representation on 20.12.2012 seeking compassionate ground appointment in her favour. Along with this representation, she had enclosed copies of her earlier representations (dated 21.11.2003, 15.09.2004, 05.06.2006 & 12.03.2008) stated to have been submitted by her. However, the earlier representations stated to have been sent by her were not received at this office and Ms. Reeta had also not submitted any proof whatsoever for having submitted the earlier representations. The representation of the applicant dated 20.12.2012 was the first representation received at the office of Senior Divisional Personnel Officer, Chennai Division on 02.01.2013 for seeking compassionate ground appointment in her favour. In OA. 374/2017 filed by the applicant before this Tribunal, she had mentioned only about her representation dated 15.09.2004 and not whispered anything regarding the representations dated 21.11.2003, 05.06.2006 and 12.03.2008 stated to have been sent by her. However, her request for appointment on compassionate ground has been considered and rejected by the respondents on the ground that the deceased employee married her mother Smt. Thirupamma when the first wife was alive. Aggrieved by the order dated 02.01.2014, the applicant filed OA. 374/2017 before this Tribunal, wherein by order dated 01.10.2018 this Tribunal disposed of the OA stating that there is no time limit for considering compassionate appointment cases, the case of the applicant should be considered as per the scheme in vogue on relative merits. In pursuance thereto the request of the applicant was considered by the respondents but however, rejected stating that the request of the

applicant was not rejected on the ground that she was the daughter of second wife rather it was rejected mainly on the ground of delay and not having any financial crisis at this distant date. Hence the respondents pray for dismissal of the OA. Respondents also relied on the following judgements of the Hon'ble Supreme Court in support of their submission:-

“ i) Life Insurance Corporation Vs. Mrs. Asha Ramchandra Ambekar reported in [1994 SCC [L&S] 737);

ii) Director of Education (Secondary) and Anr Vs. Pushpendra Kumar & Ors reported in (1998 SCC(L&S)1302);

iii) Umesh Kumar Nagpal vs. State of Haryana reported in [(1994)4SCC 138]

iv) Union Bank of India & Ors. Vs. M.T. Latheesh reported in [(2006)7 SCC 350]

v) MMTC Ltd. Vs. Pramoda Devi reported in (1987) 11 SCC 390)

vi) Govt. of India & Anr. Vs. P. Venkatesh in Civil Appeal No. 2425 of 2019 (@SLP(C) No. 5810 of 2017) dated 1.3.2019.

4. Heard the learned counsel for the respective parties and perused the pleadings and materials on record.

5. The rejection of the case of the applicant by the respondents is on two grounds namely (a) L imitation and (b) on merits. As such, the point for consideration in this case is whether the request for seeking compassionate ground appointment in favour of Ms. Reeta deserves acceptance or not.

6. Admittedly this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.374/2017 before this Tribunal wherein this Tribunal by order dated 01.10.2018 disposed of the said OA with the following observations and

directions:-

“10. On consideration of the above deliberations, the 1st aspect is to decide the validity of the RBE Circular No. 1/1992 dt. 2.1.1992 in question. I find that the validity of the RBE No.1/1992 dated 2.1.1992 had been decided by the Hon’ble High Court of Madras in W.P. No. 41091 of 2015 dated 03.01.2017 as stated above and the RBE No 42/2018 dated 21.3.2018 is in supersession of RBE.No.01/1992 dated 02.01.1992. Further the respondents have also admitted in their counter at para 4 of the reply to the rejoinder that the applicant's case has already been considered by overlooking the fact that she was the ward of second wife. Therefore, the impugned order does not sustain in the eye of law and the same is liable to be quashed and set aside in view of the aforesaid judgment of the Hon’ble High Court. Accordingly the impugned order is quashed. In so far as the RBE No 42/2018 dated 21.3.2018 is concerned which is in supersession of RBE No.01/1992, the same is not under challenge in this OA.

11. Considering the overall conspectus of the case and the rule position that there is no time limit for considering compassionate appointment cases, the case of the applicant....”.

7. Pursuant to the above, the applicant submitted an application dated 29.10.2018 for appointment on compassionate grounds. The second respondent after considering the same rejected the claim of the applicant holding that there is no legal heir of Sriramulu by letter No.M/PB/CS/22/06/2013 dated 25.03.2019 stating that the claim of the applicant was not rejected based on the RBE No. 42/2018. The request was rejected mainly on the ground that the applicant did not have any other person in the family of the deceased employee to take care of Smt. Sathyavedhammal who died on 20.05.2008 and the case was hit by delay and laches and that the repeated representations would not extend the period of limitation. It was not rejected on the ground that she was the daughter of second wife rather it was rejected mainly on the ground of delay and not having any financial crisis at this distant date. The Staff and

Welfare Inspector had also reported that Shri. B. Sriramulu was married to one Smt. Sathyavedamma, who had two sons by name Shri. Anthony Babu and B. Ravi. Both Shri Anthony Babu and B. Ravi expired. Further, the wife namely Smt. Sathyavedamma also died due to kidney failure. Therefore there is no family or nobody whom the applicant could support. The respondents submit that the applicant is married to one Shri Joseph while the employee was alive and she was well settled. She discontinued her studies in +2 in the year 2004. Further the rejection is mainly on other grounds namely that she is married and well settled in life and thereafter, there was no financial crisis existing at this distant date. If at all the applicant was aggrieved by financial and dependency factors, she might have approached these respondents, in time when Smt. Sathyavedamma and the elder married son Shri. Anthony Babu were alive. According to the respondents in the family composition, the applicant was declared as daughter by the deceased employee. The following is the family composition of the employee :-

Sl. No.	Name	Relationship	Date of birth
1	Shri. B. Sriramulu	Self	09/10/43
2	Smt. S. Sathya Vedamma	Wife	02/02/51
3	Rita	Daughter	12/10/83

8. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As

per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a Government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

9. As per extant rules, it is reiterated that at the time of considering such requests for compassionate appointments, the competent authority should satisfy himself / herself 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 provides any support to other member of the

family. Other provisions contained in Board's letter No. E(NG)-II/98/RC-1/64 dated 28.07.2000 has to be followed. This Tribunal is satisfied that the financial condition of the applicant and the family of the deceased, obviously is not that bad to justify compassionate appointment. The reasoning afforded by the respondents in rejection of the application for compassionate appointment stands to reason and as such there is no arbitrariness.

10. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No.8635 of 2012 decided on 30.11.2012 has held that

“Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

11. In Umesh Kumar Nagpal Vs. State of Haryana, 1994 S.C.T. 174: (1994) 4 SCC 138, this Court held thus:

"2...The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The

posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

12. Bearing in mind the above principles, the Apex Court held:

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

13. Inasmuch as there is no essential need of the family like marriage of a daughter or education of any minor child and the family of the deceased employee was not found to be in indigent condition, she is not entitled for any relief from the respondents. There is also no procedural infirmity in the order rejecting the request of the applicant for appointment on compassionate ground.

14. In the conspectus of the above facts and circumstances of the case and in view of the Judgement of the Hon'ble Supreme Court referred to supra, I do not find any merit in the claim of the applicant for grant of the relief as prayed for by her in this OA. In the result, the OA is liable to be dismissed and is accordingly dismissed as devoid of merit, however with no order as to costs.

(T. Jacob)
Member (A)

.1.2020

/Kam/