

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00829/2019****Dated Thursday ,the 30th day of January, 2020****PRESENT****Hon'ble Mr.T.Jacob, Member(A)**

R.Kala,
W/o (late) P.Renu.

R.Vivek,
S/o (late) P.Renu,Applicants

Both residing at:-
No. 248/C, Bair Line,
Kaspa, Vellore – 632 001.

By Advocate M/s R. Pandian

Vs

1. Union of India rep. by
The General Manager,
Southern Railway,
Park Town,Chennai
2. The Senior Divisional
Personnel Officer,
Chennai Division,
Southern Railway,
NGO Annexe, Park Town,
Chennai – 600 003.Respondents

By Advocate Dr. D. Simon

ORDER**(Pronounced by Hon'ble Mr.T.Jacob, Member (A))**

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

"I. To call for the records relating to the rejection of the claim of the 2nd applicant for appointing him on compassionate grounds, consequent to the demise of his father Mr.P.Renu while in harness, to quash the impugned order No.M/P/CS/22/108/2017 dated 11.04.2019/02.05.2019 passed by the Senior Divisional Personnel Officer, Chennai (2nd respondent); consequently to direct the 2nd respondent to:-

- i. appoint the 2nd applicant (Mr.R.Vivek) in any suitable post on compassionate grounds; and
- ii. to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

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

Mr. P. Renu (deceased railway servant), husband of the 1st applicant/father of 2nd applicant, was working as Safaiwala under the respondents, got married to 1st applicant on 30.08.1976 (love marriage). Later, on 14.07.1978 he got married to another lady due to his parents compulsion. But, the 2nd applicant's father caused the names of his first wife (1st applicant), daughters and a son (2nd applicant) included in the records of the respondents and all the welfare measures provided by the respondents were availed by them. On 19.10.2009 Mr. P. Renu died in harness and when the 1st applicant approached for terminal benefits and for compassionate ground appointment for the 2nd applicant, she was directed to get succession certificate from a competent court impleading the other claimant (second wife of Mr. P. Renu). The Succession OP filed by the second applicant's mother was resolved through the

Lok Adalat and according to the Award passed by the Lok Adalat the 2nd applicant is entitled to seek appointment on compassionate grounds. But, despite repeated representation and submission of the copy of Award passed by the Lok Adalat the respondents have failed to sanction appointment on compassionate grounds in favour of the 2nd applicant. Hence, the 2nd applicant approached this Tribunal in O.A.801/2017 and this Tribunal vide its order dated 09.06.2017 directed the 2nd applicant herein to submit a fresh detailed representation to the respondents and also directed the respondents to pass a reasoned order. In compliance thereof, the 2nd respondent considered the representation of the second applicant but however, rejected his claim for appointment on compassionate ground. Hence the applicant has filed this OA seeking the above reliefs inter-alia on the following grounds:

- i. The marriage between the 1st applicant and late Mr.P.Renu was solemnised on 30.08.1976 prior to the marriage of Mr.P.Renu with Mrs.Anthoniamma which was claimed to have been held on 14.07.1978. Hence the second marriage of Mr. P .Renu is illegal. As such the 2nd applicant being a son born out of first marriage is entitled to appointment on compassionate grounds, rejecting the same on extraneous reasons is non-est and hence unsustainable.
- ii. As per the arrangement accepted by the dependants of both the first and second wives of (late) Mr.P.Renu, the Lok Adalat passed the Award (LAC No. 51/2015 in SOP No. 170/2010 before Hon'ble Subordinate Judge, Vellore) conferring the right on the 2nd applicant for seeking appointment on compassionate grounds. As the decision to permit the 2nd applicant to seek compassionate ground appointment was made by a Competent Court of law, denying the same stating that the public office cannot be shared, even though when no such sharing proposed by the Lok Adalat, is against the law of the land and

hence unsustainable.

iii. The 2nd respondent in para 10 and 11 of his letter No. M/P.353/CC/OA 801/2017 dated 02.02.2018 has accepted to implement the decision arrived at before the Hon'ble Subordinate Judge, Vellore in S.O.P No. 170/2010 (Award passed by the Lok Adalat conducted by the District Legal Services Authority, Vellore on 13.03.2015 – LAC No. 51/2015).

iv. As the 2nd respondent implemented the Award of the Court in part by arranging payment of DCRG to the 1st applicant and his children and Family Pension to 2nd wife of late Mr.Renu, the authority cannot now deny compassionate ground appointment to the 2nd applicant finding fault in the very Award of the Lok Adalat arrived at as per the directions of Hon'ble Subordinate Judge, Vellore. Going back from the assurance given vide No. M/P.353/CC/OA 801/2017 dated 02.02.2018 is against the spirit of law. As per the Railway Board Letter No.E(NG)II/81/RC-1/251 dated 06.02.1982, 24.05.1982 and 27.12.1983 as reproduced in the Master Circular No.16 issued by the Railway Board, appointment on compassionate ground is made to dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service. As the husband of the 1st applicant had died in harness, the ex-employee's son (2nd applicant) is bestowed with the privilege of seeking appointment on compassionate grounds. As such denying compassionate ground appointment to the 2nd applicant on unsustainable grounds is against equity, Fair play and good conscience.

v. As per RB Letter No.E(NG)II/84/RC-1/26 dated 18.04.1985 (RBE 112/1985) and E(NG)II/84/RC-1/26 dated 18.04.1990 (RBE 68/1990) appointment on compassionate ground 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 this ground. This period of five years may be relaxed by the General Manager. In this

instant case the 1st applicant made representation for compassionate ground appointment in favour of the 2nd applicant within three months from the date of death of Mr. P. Renu, the ex-Railway employee and hence the claim is well within the normal time frame stipulated by the Railway Board. Hence, rejecting the request for appointment to the 2nd applicant on compassionate ground is against all canons of law and hence unsustainable.

vi. According to RB Letter No.E(NG)III/79/RC-I/47 dated 29.11.1979 as reported in Master Circular No. 16:-

"Normally the persons seeking appointment on compassionate grounds should fulfil the conditions of eligibility regarding age and educational qualifications prescribed for appointment to the posts or grade concerned. However, the upper age limit may be freely relaxed on merits of the cases".

As the applicant fulfils all the conditions stipulated in the above order with regard to educational qualification and age limit, he should have been considered for appointment. As per stipulations by RRBs, the age limit for appointment to Popular General Categories (Group C posts) for OC candidates is 30 years, OBC 33 years, SC/ST 35 years. As the 2nd applicant belongs to 'SC' community he should be considered for appointment unless he crossed 35 years of age. Rejecting the claim stating that 2nd applicant has completed 27 years of age now is in gross violation of rules hence unlawful in the eyes of law.

vii. The respondents have sanctioned and appointed many persons on compassionate grounds, who are more than 27 years of age. Denying similar treatment to the 2nd applicant is violative of equality clauses i.e Art.,14 & 16 of the Constitution of India and hence ultra virus.

3. The respondents have filed a detailed reply statement wherein it is stated that Shri.P.Renu, Safaiwala, Health Unit /KPD died on 19.10.2009. In the

family composition, he had declared one Smt. Kala as his wife, R.Vivek as his son and R.Surekha as his daughter respectively. While the settlement benefits were being processed in favour of Smt.Kala, the first applicant herein, one Smt. Aanthonyamma submitted a representation dated 06.01.2010 stating that she was married to late P. Renu on 14.10.1978 and enclosed her marriage registration certificate in proof of the same. Subsequently, vide letter No.M/P3/500/I&II/PR/October 2009 dated 02.02.2010 both Smt. Kala and Smt. Anthonyamma were advised to produce Succession Certificate from the competent Court of law duly impleading each other and the Railway administration. While the Succession Original Petition No.170/2010 was pending before the Sub Ordinate Judge, Vellore District, Smt. G. Anthoniamma sent a lawyer representation stating that she had filed an Original Petition before the High Court of Madras under OP Diary No.2506 and 2507 of 2010. Subsequently, the enquiries revealed that no such Petition was pending before the High Court of Madras and presently also there in no such case filed by Smt. G.Anthoniamma. In the meanwhile, both Smt. Kala and Smt. G.Anthoniamma referred the dispute before the Lok Adalat, Vellore for a compromise. There, the dispute was settled between them amicably and the Lok Adalat passed an Award in terms of the following:-

- i. Shri Vivek, S/o P.Renu was entitled to get appointment on compassionate grounds.
- ii. All the petitioners namely Smt. Kala and her children were entitled to receive DCRG and Group Insurance benefits and also to receive other benefits, if any.
- iii. Smt. Anthonimma was entitled to receive the arrears of pension

and also the family pension till her lifetime.

In compliance with the Lok Adalat Award, it has been decided by the Competent Authority to consider the applicant's claim for a job on compassionate grounds subject to the extant rules governing such appointment and Smt. Anthoniamma was granted family pension and the arrears of family pension and Smt. R. Kala, the applicant herein and her children were granted the other benefits namely DCRG, Group Insurance Scheme, P.F, Leave salary if any of the deceased railway employee. Accordingly the settlement benefits were paid and thereafter, the applicant's claim for compassionate ground appointment to her son was considered by the competent authority. While sanctioning Family pension and arrears of family pension to Smt. Anthoniamma, it was noticed in the legal heirship certificate dated 13.01.2010 issued by the Tahsildar, Vellore that Smt. Anthoniamma is stated as 1st wife and the 1st applicant is stated as second wife of the deceased employee. Being aggrieved, the 2nd applicant filed OA.801/2017 and this Tribunal by order dated 09.06.2017 directed the 2nd applicant (Vivek) to submit a detailed representation to these respondents and the respondents were directed to consider and pass a reasoned order. The applicant submitted a representation dated 14.09.2017 wherein she stated that her son had already submitted a detailed representation dated 29.06.2017 seeking appointment on compassionate grounds. However, during the discreet enquiry it came to light that Smt. R.Kala (1st applicant herein) has not submitted any documentary proof in support of marriage contracted with the deceased Railway servant and the first applicant is employed in Municipality of Vellore as Safaiwala and

earning gross salary of Rs.34,130/- per month. Therefore, she could manage the family in the absence of bread winner since 19-10-2009. The first applicant made request for compassionate ground appointment on 29-06-2017 to her son after 8 years from the date of death of the railway servant. This clearly demonstrate that the family was able to survive without any difficulty and there was no financial crisis whatsoever for the last 10 years. Hence the respondents pray for dismissal of OA.

4. The respondents have filed the following citations in support of their submissions:-

- i. The order of the Hon'ble Supreme Court in State of Jammu & Kashmir Vs Shajad Ahmed Mir 2006 SCC (L&S) 1195.
- ii. The order of the Hon'ble Supreme Court in Government of India Vs Venkatesan Civil Appeal No. 2425 of 2019 @ SLP © No. 5810 of 2017 dated 1st March 2019.

5. Heard learned counsel for both sides and perused the pleadings and documents on record.

6. The object of the compassionate appointment scheme is to grant appointment to a dependent family member of a railway employee dying in harness or who is retired on medical grounds, thereby leaving his/her family in penury and without any means of livelihood and to relieve the family of the railway employee concerned from financial destitution and to help it get over the emergency. Further, the appointment on compassionate ground is not actually a right, but only a concession and it cannot be reduced into a method of appointment. It is being given to deserving family in destitution owing to the

demise of the bread winner of the family to tide over the immediate financial crisis. Mere death of an employee does not entitle his family to compassionate ground appointment. The above position has been succinctly brought out by the Supreme Court in MMTC Ltd. Vs. Pramotla Devi- (1987)11 SCC 390.

7. Admittedly this is the second round of litigation before this Tribunal . The second applicant had earlier filed OA.801/2017 and this Tribunal by order dated 09.-06.2017 directed the 2nd applicant (Vivek) to submit a detailed representation and the respondents were directed to consider and pass a reasoned order. The respondents have passed an order rejecting the claim of the 2nd applicant. However, in compliance of the Lok Adalat Award, the competent authority had considered the applicant's claim for a job on compassionate grounds subject to the extant rules governing such appointment and Smt. Anthoniamma was granted family pension and the arrears of family pension and Smt. R. Kala, the applicant herein and her children were granted the other benefits named DCRG, Group Insurance Scheme, P.F, Leave Salary if any of the deceased railway employee. However, while processing the claim of the second applicant for compassionate appointment it was noted by the respondents that Shri Renu, husband of the 1st applicant died on 19.10.2009, her son, Shri R. Vivek had requested for compassionate appointment on 29.06.2017. The date of birth of Shri R. Vivek is 30.08.1991 and is aged 25 years 09 months 29 days at the time of submitting his application. Presently, he is more than 27 years of age. A son of this age cannot by any stretch of imagination, be treated as a person depending on his father or mother for day-to-day survival and hence rejected

his claim for compassionate appointment. In this regard, the learned counsel for the respondents has relied upon the decision rendered by the Hon'ble High Court of Kerala in OP(CAT)No.35/2017 dated 27.10.2017 Smt. K.K. Sushama vs. General Manager, Southern Railway & 2 Others.

8. Further, during the discreet enquiry made by the respondents, it came to light that Smt.R.Kala (1st applicant herein) has not submitted any documentary proof in support of marriage contracted with the deceased Railway servant and the first applicant is employed in Municipality of Vellore as Safaiwala and earning gross salary of Rs. 34130/- per month. Therefore, she had managed the family in the absence of bread winner since 19.10.2009. Further the first applicant had made a request for compassionate ground appointment on 29.06.2017 to her son after 8 years from the date of death of the railway servant. This clearly demonstrates that the family was able to survive without any difficulty and there was no financial crisis whatsoever for the last 10 years.

9. After death of the Railway servant on 19.10.2009, the first applicant also received terminal benefits as ordered by the Lok Adalat. As per the extant rules, at the time of considering such requests for appointment on compassionate ground, the competent authority should satisfy himself 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 deceased Railway employee, income of any member of the family as also his liability including the aspect whether the earning member is residing with the family of the deceased employee and whether he provides any

support to other members of the family. Since the 2nd applicant did not satisfy the conditions stipulated in the Circular at the time of submission of the application, he is not entitled to claim appointment on compassionate ground.

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 had 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 as much as there is no essential need of the family like education of any minor child etc, and the family of the deceased employee was not found to be in an indigent condition and the first applicant herein is in receipt of terminal benefits as per the award passed by the Lok Adalat and also working in Municipal Corporation, the second applicant 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.

12. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Ltd.(TANGEDCO) in W.P.3882/2014 dated 6.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

"28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the question of providing compassionate appointment to the writ petitioner does not arise at all."

13. Yet in another case, in Union of India vs. P. Venkatesan in Civil Appeal No,2425 of 2019 @ SLP (C) No.5810 of 2017 dated 1.3.2019 the Hon'ble Supreme Court held that the claim for compassionate appointment cannot be granted after a lapse of a reasonable period.

14. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and the Hon'ble High Court of Madras, this Tribunal is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by this Tribunal, so as to provide appointment on compassionate ground. That apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this OA deserve no further consideration.

15. Accordingly the OA stands dismissed. However, there shall be no order as to costs.

(T. JACOB)
MEMBER(A)
30.01.2020

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