

CENTRAL ADMINISTRATIVE TRIBUNAL**CUTTACK BENCH****OA No. 165 of 2013**

Present: **Hon'ble Mr. Gokul Chandra Pati, Member (A)**
 Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Romesh Ashok, S/O Ashok Kr. Gishwami, Resident of Gomoh, PO. Gomoh, PS- Hariharapur, Dist-Dhanbad,(Jharkhan) at present working as Helper, East Coast Railways, Khurda Road, Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, ECO Rail Sadan, South Block, 2nd Floor, Mancheswar, Bhubaneswar-751017.
2. Member Secretary, Railway Recruitment Board, Secunderabad, At/PO-South Lallaguda, Dist-Secunderabad-500017(A.P).
3. The Chief Personnel Officer, ECOR Sadan, South Block, 2nd Floor, Mancheswar, Bhubaneswar-751017.
4. Railway Board, represented through its Secretary, Rail Bhawan, Rafi Marg, Ministry of Railways, New Delhi-110001.

.....Respondents.

For the applicant : Mr. B. B. Mohanty, counsel

For the respondents: Mr.D.K.Mohanty-A, counsel

Heard & reserved on : 25.11.2019

Order on : 05.12.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed this consolidated application (in short OA), seeking the following reliefs:-

“The applicant most humbly pray that this Hon'ble Tribunal may graciously be pleased to quash the order of rejection dated 07.02.2013 passed by the C.P.O Eco, Railways and to issue appropriate direction to the respondents to issue appointment letter in favour of the applicant as against the post of Ticket Collect/ECCA immediately and forthwith on the basis of the recommendation of/empanelment made in pursuance of Employment Notice No. JE NO 1/18 by the Railway Recruitment Board Secunderabad or in the alternative the applicant may be adequately and suitably compensated by the respondents for the loss sustained as the applicant has been deprived of appointment for no fault him which this Hon'ble Tribunal may think fit and proper in the facts and circumstances of this case”.

2. The facts in brief are that he was a candidate for the Employment Notice No. JE No. 1/2008 was issued by the Railway Recruitment Board, Secunderabad (in Short RRB) for the post of Commercial Clerk and Ticket Collector. The applicant had participated in the said process for the post of Ticket Collector. After being successful in the written examination, document verification was done on 14.09.2009. He was finally selected for appointment as Ticket Collector on the basis of final result dated 15.09.2009 (Annexure-A/1). His name was recommended for appointment as Ticket Collector to the Chief Personnel Officer, East Coast Railway (Respondent No.3), as per the information received by the applicant from the Member Secretary, Railway Recruitment Board, Secunderabad. However, since no appointment order in consequence of the recommendation by the respondents, was received by him, the applicant sought for information under RTI Act by which respondents in their letter dated 1.09.2011 (Annexure-A/2) informed that the matter is pending for consideration.

3. The applicant being aggrieved filed OA No. 169/12 before Patna Bench of the Tribunal, which was withdrawn for filing before appropriate Bench having jurisdiction over the matter vide order dated 14.12.2012 passed in OA No. 169/12 (Annexure-A/4). The applicant filed another OA No. 26/13 which was disposed of by this Bench of the Tribunal vide order 29.01.2013 with a direction to the Respondent No. 3 to consider and dispose of the grievance of the applicant. Respondent No. 3 communicated the order dated 07.02.2013 (Annexure-A/6), by which representation of the applicant has been rejected due to non-availability of the vacancy. It was also mentioned that validity of the panel has expired, since it could not be extended with the approval of the competent authority.

4. The grounds advanced in the present OA are that the respondents have issued a notification subsequently being notice No. 4/2010 dated 27.02.2010 for the post of Ticket Collector, for which, the contention that non-availability of vacancy of Ticket Collector at the relevant point of time to consider the case of the applicant, is not correct. It is further stated that action of the respondents not to appoint applicant is clearly arbitrary and it is highly discriminatory since the vacancy earmarked for direct recruitment through RRB sponsored candidate has been filled up by appointment on compassionate ground. It is stated that as per the DOPT, ceiling of 5% of the vacancies in direct recruitment posts are to be filled up by compassionate appointment. It is stated that the Railway Board's letter dated 24.01.2002 (Annexure-A/8) and 11.02.2002 (Annexure-A/9) clearly stipulated that the vacancy position intimated to the RRB to be reconfirmed again before six weeks time of Written

Examination scheduled to be held for the purpose, so as to ensure appointment of all empanelled candidates duly sponsored by the RRB. It is stated that in this case the vacancy was also intimated to RRB in terms of Railway Board letter dated 24.01.2002 as informed by the letter dated 28.07.2015 (Annexure-A/10).

5. Respondents have filed counter without disputing the facts. It is stated in the Counter as under:

“However, the empanelled candidates including the applicant could not be appointed due to filling up of vacancies by candidates awaiting job against compassionate ground which is filled against Direct Recruitment Quota. As per instruction of Railway Board, the currency of RRB Panel is for one year and the same can be extend by one more year with the personal approval of the General Manager. Further, extension of currency of the panel requires the approval of the Railway Board.

That in the instant case a proposal for extension of the currency of the panel was asked from the Board to safeguard the employment opportunity to the applicant also with other in the year 2012 when the vacancies arose, but same was not agreed to by the Railway Board. As such, all the recruitment papers of 17 candidates were returned to RRB/SC”.

It is also stated that in present case the proposal for extension of currency of the panel was requested from the Railway Board in the year 2012 so as to appoint the applicant against future vacancy when it arose, but same was refused by the Railway Board. The allegation of inaction on the part of the respondents is denied. It was also stated in Para-11 of the counter that although the vacancy is available in Group-D cadre, no vacancy for Group C was available at the relevant point of time to appoint the applicant.

6. The applicant has filed rejoinder reiterating the contentions in the OA and stated that the then General Manager decided not to extend the validity of panel was in the Railway Board, when the matter consider on the Railway Board and it was rejected with the approval of the same officer who as General Manger had rejected the proposal after his appointment as Member (Staff) in Railway Board. It is alleged by the applicant as under:-

“Therefore, it is crystal clear that the Railway Board has clearly acted illegally and by meeting out discrimination and Mr. A. K. Vohra in particular in the capacity of Member staff has exercised his power improperly and unreasonably to the prejudice and detriment of selected candidates like the applicant. Therefore, the applicant has been victimized for the illegal, arbitrary, unreasonable and discriminatory treated meted at the hands of the Respondents-Authorities. For better appreciations copy of the information under RTI regarding the note sheet in file of Railway Board from 23.08.2012 to 28.08.2012 and copy of the letters dated 09.07.2015 and 03.01.2017 of the Railway Recruitment Board, Bilaspur are annexed as Annexure-A/16 and A/17 and A/18 respectively.”

7. The applicant filed MA No. 72/17 with a prayer for amending the OA by incorporating certain additional grounds in the first application filed by him. However, that MA was rejected vide order 02.11.2017, which was challenged before the Hon'ble High Court in W.P. (C) No. 25404/17. The W.P. was disposed of with a direction to file better application for amendment. Subsequently, the OA was amended and consolidated application was filed by the applicant. It was stated in the counter that the Administration had right to cancel all notified vacancies in the notification. It was stated that the validity of panel could not be extended since it was not approved by the General Manager and Railway Board. It is further stated that the ceiling of 5 % of vacancies for compassionate appointment is not applicable for the Railways. It is also contended that the applicant could not be accommodated against the vacancies of other division since there were empanelled candidates available for such appointment on recommendation of the RRB, Bhubaneswar.

8. Rejoinder has been filed by the applicant broadly reiterating stands taken into consolidated OA.

9. Heard Ld. Counsel for the applicant, who broadly reiterated contentions in the OA. It is stated that as per the information received under the RTI Act, which has been enclosed with the OA at Annexure-A/11, 15 candidates were appointed on the ground for compassionate appointment from 1.7.2007 to 31.1.2009. Annexure-A/1 letter of selection dated 15.09.2009 of the applicant. Ld. Counsel for the respondents submitted that the ceiling of 5% vacancies for compassionate appointment is not applicable for the Railways as stated para-11 of the counter.

10. The respondents in the impugned speaking order dated 7.2.2013 (A/6) have mentioned the justifications for their decision not to appoint the applicant by stating that the panel sent by the RRB could not be operated since the vacancies were filled up by the candidates selected for compassionate appointment. Another reason mentioned was that the panel had expired by the time vacancy arose, since its validity could not be extended with approval of the competent authority. The applicant opposes these grounds by stating that the compassionate appointment could not have been given for the posts for which the requisition was sent to RRB and that as per the DOPT guidelines for compassionate appointment, the ceiling of 5% of the vacancy is applicable for compassionate appointment.

11. The respondents in reply to the contentions of the applicant, have mentioned that the ceiling of 5% of the total vacancy applicable as per the DOPT guidelines, is not applicable for the guidelines of the Railway Board. In

other words, in Railways, there is no limit for compassionate appointment, implying that 100% of the direct recruitment vacancies can be filled up by compassionate appointment. In this case, even the vacancies for which the requisition had been sent to the RRB and available after publication of Employment notice in question, have been filled up by compassionate appointment. As a result, a meritorious candidate like the applicant, recommended by the RRB, were not appointed within validity of the panel on the ground that the vacancies have been filled up by compassionate appointment. What was the urgency for diverting the vacancies for which the requisition was placed with the RRB, for compassionate appointment, has not been explained satisfactorily, except that there were a number of candidates awaiting for compassionate appointment after selection/screening.

12. In para 5(ii) of the OA, it is averred that for the candidates for compassionate appointment, many other category of Group-C & Group-D posts were available. The respondents have denied the contentions in para 19 of the Counter, stating that the candidates for compassionate appointment give their option and those who opt for Group-C post and are found fit, then they are adjusted in Group-C post. Otherwise, they are adjusted in Group-D post. The reply in the Counter is not satisfactory, since it does not explain why the candidates for compassionate appointment were not adjusted in posts other than the vacancies for which requisition was placed with the RRB, violating the stipulations in the Railway Board circular dated 24.1.2002 (Annexure-A/8). The reasons for not complying with the circular dated 24.1.2002 of the Railway Board have not been explained in the Counter. It is stated in para 12 of the Counter that the reconfirmation of vacancy was not sent to the RRB as required under the Railway Board's guidelines. There is nothing in the pleadings of the respondents if any responsibility was fixed for such a serious lapse and if any action has been taken against the official who failed to act in accordance with the stipulations of the Railway Board's guidelines in this regard.

13. In the written notes of submission filed on behalf of the Railway respondents, it has been stated clearly that there is no ceiling in filling up of the posts by compassionate appointment and the ceiling fixed as per the DOPT guidelines for filling up of the vacancies through compassionate appointment is not applicable for the Railways, as per the DOPT OM dated 28.3.2017, copy of which has been enclosed with the written note of the respondents. But no circular or guidelines applicable for the Railways has been furnished by the respondents, stating that the candidate for compassionate appointment will be given preference even for the vacancies earmarked for filling up on the basis of merit through the RRB.

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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.....

7. In *Umesh Kumar Nagpal v State of Haryana & Ors.*, (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

‘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..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

Xxx xxx xxx xxx

4. The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

Xxx xxx xxx xxx

6. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis.' (Emphasis added)

.....

15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme.”

15. In the case of Bhawani Prasad Sonkar vs. Union of India & Ors. [(2011) 1 SCC (L&S) 667], it was held by Hon'ble Apex Court as under:-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized 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 the service rules.....”

16. It is noticed that the following provisions in para X(c) of the Master Circular No. 16 of the Railway Board on compassionate appointment are relevant in this case:-

“Where a candidate for compassionate appointment is eligible and is also adjudged suitable for a post in Group 'C' but for want of a vacancy in Group 'C', he is offered appointment in Group 'D', which he accepts, his case may be considered for appointment in a Group 'C' post as soon as suitable vacancy arises therein. Such a candidate will have preference for appointment in a vacancy in Group 'C' occurring later, over a candidate in the same priority group, found suitable for such a post at any subsequent date under the same approving authority. In such cases, a specific record, with the approval of the competent authority should be kept to the effect that the candidate was selected for a Group 'C' post but appointed to a Group 'D' post for want of a vacancy in Group 'C' because the candidate needs employment immediately and that he will be considered for a vacancy in Group 'C' as early as possible when a vacancy arises therein subject to his being found medically fit for the post for which he is considered.”

17. In this case, considering the settled position of law and the guidelines of the Railway Board on compassionate appointment as discussed, above, it was open for the authorities not to utilize the vacancies, for which the requisition was sent to the RRB by accommodating the candidates for compassionate appointment against Group-D vacancies for subsequent adjustment in Group-C post as and when vacancy in Group-C arose. It was not at all necessary to utilize the Group-C posts of Ticket Collector, for which requisition was sent to different RRBs, for compassionate appointment in “administrative exigency” as averred in para 11 of the Counter and on that pretext not to appoint the applicant within the validity period of the panel. **It is a matter of concern that the applicant being a meritorious candidate, duly sponsored by the RRB, has been left high and dry by the concerned authorities, who failed to act in accordance with the guidelines of the Railway Board, while making appointments under compassionate appointment and that no action was taken against such officials although the matter was brought to the notice of higher authorities.**

18. The respondents have also argued that the validity of the panel expired and the GM and the Railway Board did not extend the validity of the panel beyond one year. The respondents have cited the following judgments enclosed with the written note in support of their case that the applicant, as a candidate recommended by the RRB, does not have indefeasible right to be appointed.

- i) Kulwinder Pal Singh Etc. -vs- State of Punjab & Ors. [Civil Appeal Nos. 5035-5036 of 2016]
- ii) State of Orissa & Anr. -vs- Rajkishore Nanda & Ors. [2010 (6) SCC 777]
- iii) Dinesh Kumar Kashyap -vs- South East Central Railway [Civil Appeal Nos. 11360-11363 of 2018]

The respondents have referred to the judgment in the case of Dinesh Kumar Kashyap (supra) in which it was held that the select panel has come to an end on the afflux of time and the panel cannot be a perennial source of appointment. But as discussed in paragraph 17 of this order, the authorities were required to appoint the applicant within the validity period of the panel as per the Railway Board circulars/guidelines and it was not necessary to utilize

the vacancy for compassionate appointment since said vacancies were requisitioned to RRB. Further, the judgment in the case of Dinesh Kumar Kashyap (supra) held as under:-

“Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the post. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State.”

19. In this OA, the reasons furnished by the respondents for not appointing the applicant are not as per the guidelines of the Railway Board. Hence, applying the ration of the judgment in the case of Dinesh Kumar Kashyap (supra), the action of the respondents not to appoint the applicant cannot be defended. Similarly, other judgments cited by the respondents in this regard will not be helpful for the respondents' case.

20. In view of the discussions above and taking into account the facts and circumstances of the case, we are of the considered opinion that the action of the respondents not to appoint the applicant within validity period of the panel in this case, violated the guidelines of the Railway Board and hence, the same is not sustainable. For such illegality committed by some of the officers under the respondents, the applicant should not suffer and his case deserves consideration. Accordingly, the respondents are directed to appoint the applicant against any available vacancy of the post, for which he was recommended by the RRB, within three months from the date of receipt of this order. It is clarified that this order is passed by us after taking into account the facts and circumstances of the case of the applicant, who has agitated the matter time and again before the authorities.

21. The OA is allowed as above. Under the circumstances, the applicant is entitled for a cost of Rs. 10,000/- (Rupees Ten Thousand only) as cost, subject to its subsequent recovery by the respondents as per provisions of law from the officials responsible for violation of the Railway Board guidelines as discussed at paragraph 17 of this order.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

