

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 55 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

T.Govinda Rao aged about 27 years, S/o Late T.Venkanna, permanent resident of Vill-Gandavaram, PO/PS – Padmanabham, Dist.- Visakhapatnam, (Andhra Pradesh), at present residing C/o Krushna Nanda Sahu, At/PO- Gosani Nuagaon, Berhampur, Dist.- Berhampur, (Orissa).

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, 2nd Floor, South Block, Rail Sadan, Samanta Vihar, Bhubaneswar, PO/PS-Chandrasekharpur, Dist.- Khurda.
2. The Chief Personnel Officer, East Coast Railway, 2nd Floor, South Block, Rail Sadan, Samanta Vihar, Bhubaneswar, PO/PS-Chandrasekharpur, Dist.- Khurda.
3. The Divisional Railway Manager, East Coast Railway, Waltair Division, At/PO/PS-Waltair, Dist.-Visakhapatnam (A.P.)
4. The Sr. Divisional Personnel Officer, East Coast Railway, Waltair Division, At/PO/PS-Waltair, Dist.-Visakhapatnam (A.P.)
5. The Section Engineer, East Coast Railway, Waltair Division, At/PO-Kottavalasa, Dist.-Visakhapatnam.

.....Respondents.

For the applicant : Mr.R.K.Samantsinghar, counsel

For the respondents: Mr.S.K.Ojha, counsel

Heard & reserved on : 6.3.2020

Order on : 20.03.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The OA has been filed by the applicant seeking the following reliefs :

“Under the facts and circumstances of the case, the Hon'ble Court may kindly graciously be pleased to admit the original application, issue notice to the respondents and after hearing both the sides quashed the Annexure A/14 and further be pleased to direct the Respondents to appoint the applicant in any Group 'D' post under Rehabilitation Assistance Scheme.

And pass such other order/orders as may deem fit and proper for interest of justice.”

2. The applicant's father expired on 26.3.1992 while in service under the respondents – Railways. On 13.12.1993 the mother of the applicant applied for an appointment on compassionate ground. The respondents got the matter enquired through the Welfare Inspector who submitted the report in the matter on 29.3.1994. Her case was recommended for appointment. When the matter

was pending with the respondents, the mother of the applicant expired on 13.4.1998 leaving behind the present applicant who was a minor and one minor daughter and two major daughters. The applicant also applied for compassionate appointment on 3.10.2005 (Annexure A/9) after he became a major. Some further queries were raised by the respondents which were complied. However, no decision was taken till submission of the representation dated 8.9.2010 (Annexure A/13). The proposal was rejected vide order dated 21.5.2012 (Annexure A/14) which stated as under :

“During staff grievance interview with General manager on date 05.03.2012, you had represented the General manager, regarding employment assistance on compassionate grounds in favour of you. General Manager has asked you to writ “Swati Public School, Kottavalasa”, but you could not write it in English, although having the qualification of IXth Class pass with 38 marks in English.

In view of the above the case has been examined by the General Manager and he has regretted it.”

3. The said order is challenged in this OA mainly on the following grounds :

(i) The case of the applicant has been rejected vide order at Annexure A/14 in an arbitrary manner. The applicant's mother was not allowed the appointment and reasons for the same are not communicated by the respondents. Further, the respondents have not mentioned any reasonable ground while rejecting the case and it is stated to be malafide and arbitrary.

(ii) The objective of the compassionate appointment scheme is to mitigate the financial distress caused by the sudden death of the bread earner. The respondents without following the Railway Board's guidelines have harassed the applicant as well as his deceased mother. This matter has been dealt with arbitrarily by the respondents.

(iii) Although the respondents have been satisfied about the indigent condition of the applicant as revealed in the enquiry report, but the appropriate decision was not taken by the authorities.

4. The Counter has been filed by the respondents, stating that the proposal of compassionate appointment of the applicant's mother was referred to the respondent No.1 as per the Railway Board's guidelines dated 31.12.1986 (Annexure R/1) but before any decision could be taken the applicant had applied for employment assistance for himself vide his application dated 21.1.2003, informing that his mother has expired on 13.4.1998 and his three sisters have got married. It is further stated that the General Manager after going through the details of the case, rejected the request as there was no dependents except the candidate himself and observing that the employment assistance is not a matter of right. The decision of General Manager was communicated vide letter dated 3.5.2010 (Annexure R/2) followed by DRM's letter dated 10.6.2010 (Annexure R/3). Thereafter the applicant met the General Manager personally. The General Manager rejected the case vide order

dated 21.5.2012 (Annexure A/14). It is also stated in the Counter that the fact that his case was considered by the General Manager vide orders at Annexure R/2 and R/3 of the Counter, has been suppressed by the applicant since the fact is not disclosed in the OA. So as laid down by Hon'ble Apex Court in the case of *Abhyudya Sanstha -vs- Union of India & Ors.* [2011 (4) Supreme 148, para 16], in the case of *Steel Authority of India -vs- Madhusudan Das* [(2009) 2 SCC (L&S) 378] and *Local Administration Dept. & Anr. -vs- M. Selvanayagam @ Kumaravelu* [AIR 2011 SC 1880], appointment under compassionate ground cannot be claimed as a matter of right. It is also stated that the OA is also liable to be dismissed on the ground of limitation and it is devoid of merit. In such cases neither the Welfare Inspector nor any other authority except the General Manager is competent to take a decision. It is further stated in the Counter that as stated in para 4.12 of the OA the applicant's representation at Annexure A/13 has already been considered by the authorities and he was called by the General Manager not on the basis of Annexure A/13 but on the basis of his representation dated 5.3.2012, which has been referred to in the order at Annexure A/14. The applicant had filed an affidavit stating that immediately after death of the mother on 13.4.1998, he was a minor and his application for family pension was not considered and after attaining majority his request for compassionate appointment has been rejected.

5. Rejoinder has also been filed by the applicant. He reiterated the point that the impugned order of rejection does not contain any reason. It is stated that the respondents have examined the genuineness of the applicant's educational certificate but his suitability test was not conducted in accordance with the Railway Board's instructions. Hence, the impugned order dated 21.5.2012 is not sustainable. It is further stated in the Rejoinder that the father of the applicant was referred wrongly by the Welfare Inspector as CPC Gangman instead of regular Gangman. Therefore, the Railway Board's letter vide Annexure R/1 is not applicable to the applicant's case. It is stated that the suitability test conducted by the Respondent No.1 where the applicant was asked to write correctly a sentence in English, is not in accordance with the Railway Board circular on compassionate appointment.

6. Heard learned counsel the applicant and the respondents and also perused the materials available on record. Learned counsel for the applicant files copy of the "Basic guidelines for compassionate ground appointment" dated 18.10.2010 issued by the Railway Board. At the time of hearing, it was also pointed out that in the guidelines dated 27.8.2000 under the subject "Appointment on compassionate grounds in Group 'D' post minimum educational qualification", it is stated that the cases which were under consideration for scrutiny for compassionate appointment before issue of the Railway Board's letter dated 4.3.2009, would be exempted from possessing

minimum qualification of 8th Class. There is also a guideline dated 7.6.2018 in RBE No. 18/2018 of the Railway board in which it is stated as under :

“3. It has come to the notice that not only the procedure adopted for conducting suitability test and additional chances to be given to candidates for appointment on compassionate grounds by the Zonal Railways vary from the instructions issued at paras 1 and 2 above, but the directives/intent of stipulation made in the instruction *ibid* are also not being followed in true spirit.

4. Accordingly, the matter has been looked into. It has now been decided by the Board that in compliance of letters mentioned at para 2 above, maximum of three such chances to the wards and four chances may be given to widow/wife commensurate with their educational qualification to the post and suitability may be adjudged accordingly. Second chance should be given as a rule and uniformly followed.

5. It is also reiterated that 2nd chance to wards and widow should be given with the approval of competent authority (DRMs/HODs/CWMs as the case may be). However, 3rd chance to ward/widow/wife and 4th chance to widow/wife will require personal approval of the General Manager.”

7. Learned counsel for the respondents has filed his written note of submission highlighting the issue of delay and suppression of earlier decision vide letter dated 3.5.2010 (Annexure R/2) on the part of the applicant. Although he has disputed in an affidavit about service of the said letter, but no such point was made in his rejoinder. Learned respondents' counsel has also cited the judgment of Hon'ble Apex Court in the case of State of Chhatisgarh – vs- Dhirjo Kumar Sengar [(2010) 1 SCC (L&S) 281], in which it is held that if the family could be able to tide over the first impact no further justification for compassionate appointment under the scheme is available.

8. The pleadings as well as the submissions of learned counsels are duly considered by us. It is stated in the Counter that when the case of the applicant's mother was under consideration of respondent No.1 since 1993 and it was pending with the respondents when the applicant in his letter dated 21.01.2003 informed that his mother had expired on 13.4.1998 [vide para 2(a) and 2(b) of the Counter]. It is clear that although the application of the applicant's mother for compassionate appointment was received in the year 1993, no decision was taken by the competent authority till 21.1.2003 when the applicant informed about death of his mother on 13.4.1998. It implies that no decision was taken on the application for compassionate appointment of the applicant's mother since 1993 till 2003 and no explanation as to the reasons for such delay on the part of the respondents is there as nothing has been mentioned in the Counter explaining such abnormal delay in processing the application of the applicant's mother. In the letter dated 9.9.1994 (Annexure A/6) it is stated that the case of the applicant's mother for appointment as Substitute/casual labour (Group 'D') was submitted to the authorities by the DRM, Waltair. It is seen from the representation of the applicant's mother at Annexure A/8 that she was not receiving any family pension or *ex gratia* as her

husband was not eligible for the same and she had appealed for compassionate appointment. But still no decision was taken by the authorities.

9. The respondents in their Counter have submitted that the case of the applicant was rejected vide order dated 3.5.2010 (Annexure R/2) and 10.6.2010 (Annexure R/3 of the Counter). The reason for rejection mentioned in the said order is not very clear. It is mentioned in the order dated 3.5.2010 (Annexure R/2) as under :

“The date of birth of the candidate is 23.01.1986 and he attained majority on 23.01.2004. But he mentioned that he was major at the time of submission of his application dt. 21.01.2003, which appear confusing. Moreover, compassionate appointment is not a matter of right and the ex-employee has none in his family (except the candidate himself) for which the candidate will be the bread-winner.

Considering the above facts, GM/ECOR did not agree to provide compassionate appointment to the candidate, Sri T.Govinda Rao.”

It shows that on the letter dated 21.1.2003 of the applicant, the decision to reject it was taken on 3.5.2010 which is more than 7 years of the date of request of the applicant to consider his case for compassionate appointment as his mother has expired and he is applying after attaining majority. The reason mentioned in the letter dated 3.5.2010 does not say anything as to why the correct facts about the applicant's statement about his date of birth could not be verified by checking his date of birth as per the prescribed documents/certificates.

10. The respondents have cited some case laws to aver that the compassionate appointment is not a matter of right. While we agree with this principle of law governing the field of compassionate appointment, but at the same time we take note of the fact that the competent authority did not take any decision on the application for compassionate appointment submitted by the applicant's mother from 1993 till 2003 when the applicant informed about his mother's death and then also, no decision was taken on the applicant's case till 3.5.2010, when the case was rejected for a reason which cannot be accepted to be a valid reason to reject the case as per the provision of the scheme. As discussed earlier, there is no whisper in the pleadings of the respondents about such abnormal delay in taking a decision in the matter.

11. The respondents have cited the judgment of Hon'ble Apex Court in the case of Dhirjo Kumar Sengar (supra) and submitted that the family has survived the initial shock. But the applicant's mother and applicant's case for compassionate appointment should have been considered within a reasonable time keeping in view the provisions of the scheme and if the financial condition of the concerned family would have been found indigent, a final decision on the request for compassionate appointment should have been taken by the

respondents. But the respondents did not take any decision in the matter till issue of the letter at Annexure R/2 routinely rejecting the case.

12. It is noticed that as discussed in paragraph 6 of this order, the circular dated 7.6.2018 of the Railway Board (RBE No. 18/2018), a proposal for compassionate appointment can be considered in 3rd/4th chance with approval of the General Manager and no time limit has been specified in the said circular. In this case, the applicant's case has been considered in 2010 and 2012 and his case can be considered once more with approval of the respondent No.1 as per the circular RBE No. 18/2018.

13. In the facts and circumstances of the case as discussed above, I am of the view that in the interest of justice, the applicant's case for compassionate appointment deserves reconsideration of the respondents once more in accordance with the provisions of the scheme. Accordingly, the Respondent No.1 is directed to reconsider the applicant's case once more in accordance with the provisions of the scheme for compassionate appointment, keeping in mind the provisions of the Railway Board circular in the RBE No. 18/2018 dated 7.6.2018 and communicate the decision to the applicant by passing a speaking and reasoned order within four months from the date of receipt of a copy of this order.

14. The OA stands allowed to the extent as above. No order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)