

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/887/2019

Hyderabad, this the 9th day of January, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

Between:

A.Ramulamma, W/o. late Swamy,
Aged about 50 years, Occupation: Housewife,
R/o. 3-158, Village, BO Bollepally Mandal,
Bhongir – 508 285.

... Applicant

(By Advocate Mr. K. Siva Reddy)

Vs.

Union of India, Rep. by

1. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway,
Secunderabad Division, Secunderabad.

... Respondents

(By Advocates: Mr. B. Sreehari, Proxy Counsel for
Mr. D. Madhava Reddy, SC for Rlys)

ORDER (ORAL)
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the order dated 6.4.2018 in regard to compassionate appointment.



3. Brief facts are that when the applicant sought compassionate appointment for her son consequent to the demise of her husband, who worked for the respondents and died in harness on 22.1.2005, the request was rejected on the ground that her son was not having requisite educational qualifications and was medically incapacitated. Later, son died due to ill health on 29.05.2015. Applicant had a daughter who was married when the Applicant's husband was alive. However, the daughter and the son-in-law of the applicant had to come and live with the deceased employee's family due to matrimonial issues. After the death of the husband and son of the applicant, the daughter was taking care of the applicant's welfare. Later, the daughter took divorce from her husband vide decree passed in OP No 73/2014 on 26.9.2014 by the court of the Senior Civil Judge, Bhongir. Consequent to the death of her son, applicant preferred an application for compassionate appointment on 22.3.2018 for her daughter, which too was rejected on the ground that the daughter was married at the time of the occurrence of the death of the ex-employee and that she was divorced after his death. Aggrieved, OA has been filed.

4. The contentions of the applicant are that compassionate appointment has to be offered only after examining as to whether the applicant and the



married daughter were depending on the income of the deceased employee at the time of his death. Married daughter is eligible for compassionate appointment as per DOPT letter dated 5.5.2016, if she were to depend on the deceased employee at the time of death. Further, as per the impugned letter dated 21.11.2001 divorced daughter is eligible for compassionate appointment. The rejection on the ground that the divorce was taken after the death of the ex-employee is unreasonable. Applicant relied on the judgment of decision of Hon'ble Ernakulam Bench of this Tribunal in OA 92/2016 in support of her contentions. The first respondent is empowered to consider belated cases of compassionate recruitment up to 25 years from the date of the death of the employee. Family is in financial distress and hence, is in desperate need of a job to take care of the family.

5. Respondents state in the reply statement that the probable reason in not applying for compassionate appointment for several years is that the family of the deceased employee is not into any financial crisis. On the demise of applicant's husband, Welfare Officer was deputed to explain and assist the family in respect of offering compassionate appointment to any eligible dependent member. Applicant, after being silent for 9 years represented on 16.12.2014 seeking compassionate appointment stating that the daughter is qualified and divorced, which was rejected and the same has been suppressed by the applicant. Another representation made on 22.3.2018 was also rejected on 6.4.2018. Reason for belated submission of the application has not been answered in the OA. As the family could manage itself for many years after the demise of the ex-employee it

requires no compassionate appointment. The OA is also barred by limitation as the cause of action arose on the date of death of the deceased employee, which is around 14 years back. Respondents have cited the judgments of Hon'ble Apex Court and Hon'ble Principal Bench of this Tribunal in support of their contentions in regard to limitation and compassionate appointment.



6. Heard both the counsel and perused the pleadings on record.

7. I) It is an undisputed fact that the applicant's husband died while working as Gangman in the respondent's organisation. A Gangman's wife understanding of the intricacies of the welfare schemes of the respondents organisation would be very little and in particular, during the mourning period, when the visit of the Welfare Officer occurred. Therefore, it is understandable that it would have taken some time for the applicant to approach the respondents to seek any legitimate relief. In the OA at para 4 (i), it is averred that the applicant sought compassionate appointment for her son, which, she claims, was not considered. There is no reply to this averment in the reply statement. After the claim of the son was rejected, the claim of the daughter arose and that too, after the applicant has gone through the trauma of the loss of husband, son and divorce of her daughter. It is these events which require consideration in evaluating the reasons for any delay in preferring application for compassionate appointment to the divorced daughter. True, that the applicant was married when the deceased employee was alive, but the events that unfolded after the marriage took



place leading to the daughter's family living with the deceased employee and later ending in divorce have not been assessed by the respondents by deputing a responsible official consequent to the first visit. The legal heir certificate issued by the Mandal Revenue Officer on 27.4.2005 (Annexure A-6) indicates that the married daughter was also shown as legal heir of the deceased employee, which usually is not the case unless the daughter was dependent on the deceased employee. Further DOPT, which is the nodal agency for personnel matters, has made it lucid vide letter dated 16.1.2013 that there is no time limit to apply for compassionate appointments. Moreover, DOPT has stressed vide cited circular that compassionate cases of wards of lower rung deceased employees like in the present case of Gang man, should be processed with sympathy and empathy. Respondents look towards DOPT for guidance and submit so in very many cases before this Tribunal like the recent case pertaining to reservations in promotions. Hence, the DOPT ruling referred to, applies to the present case lock, stock and barrel. Even more, the first respondent has been empowered vide Serial Circular No.77/2011 dt 15.6.2011 to consider cases of compassionate appointment up to 25 years from the date of the death of the employee. Hon'ble Supreme Court has also held in **2008 (1) SCJ 707** that once a claim is made within the period prescribed by the department, then the claim should not be rejected on grounds of delay. Hence, the objection raised on grounds of delay to consider the case of the applicant's daughter for compassionate appointment is devoid of reason.

II) When an application was made, with developments which require verification, it would have been proper for the respondents to

depute the Welfare Officer to ascertain as to whether the changed family circumstances stated warranted any assistance of offering compassionate appointment. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture, if compassionate appointment is offered the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events, as observed by the Hon'ble Apex Court in **Balbir Kaur & Anr vs Steel Authority Of India Ltd. & Ors** on 5 May, 2000, Appeal (Civil) 11881 of 1996, Appeal (Civil) 11882 of 1996 as under:



“As a matter of fact the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach everyone and the ideals of the Constitution framers would be achieved since the people would be nearer the goal set by the Constitution - an ideal situation but a far cry presently.

But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction. “

III) Respondents without proper verification have rejected the request twice i.e. in 2016 and 2018 on the same ground that the applicant



was married when the deceased employee was alive and that her divorce took place after the death of the employee. Documents testify an event based on the trail of events that occur on the ground leading to issue of a document. Hence it is not just the date of the divorce document but the event analysis in the intervening time period resulting in the grant of the divorce which is crucial to know the ground reality. Exactly this is what is to be reckoned in cases of compassionate appointments and in the present case it is the factor of dependency of the Applicant's daughter on the deceased employee at the time of the death of the ex-employee which is the determining factor of the case. A report on this aspect is missing and without the same rejecting the request by merely reckoning the date of grant of the divorce decree would only perpetuate the grievance. The reason is that it does not give a realistic picture of the issue as is required to take a genuine decision. The primary condition to offer compassionate appointment is that the family should be living in indigent circumstances and secondarily whether applicant's daughter was dependent on the deceased employee even after her marriage. Applicant claims that her daughter was with the deceased employee in view of the daughter's disturbed family life and hence was dependent on the deceased employee at the time of his death. Respondents have not submitted any report of the visit of the welfare officer when he visited the deceased employee's family on the eve of the death of the employee. Such a report would have clarified as to the dependency of the applicant's daughter on the deceased employee at the relevant point of time. Without such a document on record the respondents assertion that the applicant's daughter is married when the ex-employee was alive and that she was divorced after the death of the ex-



employee, is irrational. The reason being that as per rules of the respondent's organisation married and divorced daughters are eligible for compassionate appointment subject to they being dependent on the ex-employee at the time of his/her death. This key link of the dependence of the applicant's daughter on the deceased employee at the time of his death is missing in the entire chain of events. Therefore, the resultant legal wrangle. Without adhering to this basic parameter and lack of response to the averment made by the applicant that her son's request was rejected at the first instance but finding fault with the applicant for alleged delay is not in resonance with the observations of the Hon'ble Supreme Court as under:

- (i) *The Apex Court in a recent case decided on 14.12.2007 (Union of India vs. Sadhana Khanna, C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees.*
- (ii) *In yet another recent case of M.V. Thimmaiah vs. UPSC, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*
- (iii) *It has been held in the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 wherein the Apex Court has held "The mistake or delay on the part of the department should not be permitted to recoil on the appellants."*

Apparently, it was the mistake of the respondents in not assessing the crucial facts of the case and thereupon, take a decision. Without doing so, claiming that it was the mistake of the applicant in not applying in time, which is also not true given the applicable rules of the respondents, is against the observations made by the Hon'ble Apex Court cited supra.

IV) Besides, Hon'ble Ernakulam bench of this Tribunal in OA 92/2016 on 6.3.2017 in a similar case has held as under:



“It appears that the respondents have been unduly giving more importance to the decree of divorce as a precondition for appointment on compassionate grounds as the applicant herein was a married daughter. The scheme of compassionate appointment has been now modified to bring in its fold the applications made by the married daughters also. Therefore, the relevancy of a decree of divorce is absolutely irrelevant, if the applicant makes a declaration that she would look after the widow and other dependents of the deceased employee. The record in this case show that from May 2003 the applicant was living separately from her husband and had taken refuge under her father. Her father died only on 21.12.2011. She states in the meantime she had secured a court order for maintenance for her girl children from her husband. Annexure A 3 is the copy of the order passed by the Judicial Magistrate, First Class, Pattambi wherein it is noted that the applicant started residing with her parents when she was manhandled by her husband while she was carrying the second child. Annexure A6 is decree she obtained on 29.1.2015 wherein also it has come on record that due to harassment of her husband she was living separately from him from 12.5.2006.”

The claim of the applicant is that her daughter has been staying with them when her husband was alive because of the torture to which her daughter was subjected by her paramour. After the death of applicant's son as well as her husband, it is the daughter who is taking care of her. The daughter has the requisite educational qualifications to be considered for compassionate appointment. Therefore in view of the aforesaid circumstances an acute deficiency in the decision making process in regard to offering compassionate appointment to the daughter of the applicant is overtly evident. Hence the judgments cited by the respondents in support of their contentions are not relevant to the instant case. *De facto*, Hon'ble Apex Court has held in a catena of judgments that the courts should not question the decision but need to interfere when there is deficiency observed in the decision making process. In the present case the deficiency is about not verifying the indigent circumstances plus the dependency as is required

under the rules. Consequently, for the plethora of reasons discussed above, the impugned order dated 6.4.2018 is quashed.

V) Resultantly, respondents are directed to depute a Welfare Officer and enquire about the assertions made by the applicant in regard to the dependency of her daughter, indigent circumstances of the family and thereafter, submit a report. On receipt of the same, respondents are directed to reconsider the case of the applicant's divorced daughter for compassionate appointment, keeping in view the extent Rules, Judgments of the Hon'ble Supreme Court and Hon'ble Ernakulam Bench of this Tribunal referred to in paras *supra* and issue a speaking as well as reasoned order, within a period of 3 months from the date of receipt of this order.



VI) With the above directions, the OA is disposed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/