

Reserved

**Central Administrative Tribunal, Allahabad Bench,
Allahabad
M.A. No. 330/1500/2020 in Review Application No. 52/2011 in
O.A. No.330/01154/2008**

This the 8th day of March, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

Vinod Kumar Kushwaha son of late Sri Ram Sajivan aged about 39 years Unemployed, r/o Bye Pass Road, Jhunshi, Allahabad.

Applicant

By Advocate: Sri S.K. Pandey

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.

Respondents

By Advocate: Sri L.S. Kushwaha proxy for Sri S.M. Mishra.

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The present modification application has been filed by the applicant, with prayer to modify the order dated 2.7.2014 passed by this Tribunal in Review Application No. 52/2011, whereby the review application has been rejected by this Tribunal.

2. Heard Sri S.K. Pandey, learned counsel for the applicant and Sri L.S. Kushwaha, holding brief of Sri Shesh Mani Mishra for the respondents. Perused the record.

3. The applicant herein is litigating the matter since long and has earlier approached this Tribunal through several round of litigations.

4. The background facts, in brief are that the father of the applicant was serving as a permanent Electrical Signal Maintainer under the respondents, who died on 8.7.1981. The applicant was a minor at the time of death of his father, who was the sole breadwinner of family. He had left behind him two minor sons, four

minor daughters and a widow (mother of the applicant). The mother of the applicant filed O.A. No. 450/1992, seeking reliefs for terminal benefits and compassionate appointment, which was disposed off on 17.5.2000, with a direction to the respondents to decide the representation of the applicant's mother. However, the respondents rejected all the claims of terminal benefits and compassionate appointment on the ground that father of the applicant had not died in harness. Then the mother of the applicant filed O.A. No. 1279/2001, again seeking the same reliefs and challenged the order passed on her representation, whereby her prayer was rejected by the respondents. The O.A. No. 1279/2001 was allowed vide order dated 20.4.2005, holding that the father of the applicant had died in harness. But when no relief was given to the mother of the applicant, she filed contempt petition, in which the respondents filed compliance affidavit and contempt proceedings were closed. However, the grievance of the applicant's mother still remained the same as in fact, there was no substantial compliance. The applicant filed O.A. with Dy. No. 243/2003, seeking relief of compassionate appointment, which was disposed off on 5.5.2006 with the following directions:-

“5. In view of the above decision, the contention of the respondents vide para 7 of their O.A. will not survive. The provision exists for consideration of compassionate appointment even after years of the demise of the Railway employee to consider the case of compassionate appointment of the ward who was a minor at the time of demise of the railway employee.”

It was also observed in the aforesaid order dated 5.5.2006 that **“It will be appropriate if the case of the applicant is considered on the basis of the Railway Board Circular dated 22.12.1994 read with 6.10.1995 (referred to in para 4.14 of the O.A.) and also**

taking into account the finding of this Tribunal in O.A. No. 1279 of 2001 order dated 1.3.2001 and O.A. No. 1659/199 wherein compassionate appointment were directed to be considered after a lapse of 27 years of demise of the government employees.”

5. However, when no proper response was received by the applicant, he filed contempt application No. 18/2007, which was dismissed on the ground that merits of the order cannot be looked into in contempt proceedings. When nothing happened, applicant filed O.A. No. 1154/2008, in which he challenged the order dated 25.3.2008 passed by the respondents, rejecting his claim for compassionate appointment . However, the same was dismissed vide order dated 11.3.2011.

6. The applicant filed a Review Application No. 52/2011, but the same was also dismissed vide order dated 2.7.2014. It is against this order dated 2.7.2014, the applicant has filed the instant Modification Application.

7. For a ready reference, the order dated 2.7.2014 passed in Review Application is quoted below:-

“Heard Shri S.K. Pandey, learned counsel for the applicant and Shri Arun Prakash, learned counsel for respondents

2. The instant review application has been preferred against the order dated 11.3.2011 passed by this Tribunal in Original Application No. 1154 of 2008 (Vinod Kumar Kushwaha Versus UOI and others).

3. The judgment dated 11.3.2011 passed by Mr. D.C. Lakha is a detailed order taking into consideration all the facts and circumstances of the case and also after perusing and discussing the record/pleadings. The main prayer in the Original Application No.1154/2008 is that

the applicant be considered for getting compassionate appointment up to 20 years after attaining the age of majority as per Railway Board Circular dated 22.12.1994 and 16.10.1995.

4. I have gone through the order in detailed perused the pleadings and heard the rival contentions for both the parties.

5. In my considered opinion, there is no illegality in the order passed by this Tribunal more so as per the O.M. dated 30 May, 2013 published by DOP&T, married sons are not entitled for getting compassionate appointment.

6. Hence, in these facts and circumstances of the case, the death of the applicant's father took place on 8 July 1981, almost 33 years have passed and it is obvious that the family has somehow managed their livelihood and sustained themselves and also the applicant has become more than 40 years of age and must be married also. Hence, taking into consideration all the facts and circumstances, I do not find any merit in the Review Application, hence dismissed. No costs."

8. Learned counsel for applicant has contended that the applicant is still unmarried, for which he has filed several proofs, including the certificate given by the Tehsildar and Gram Pradhan. Moreover, now the married sons are also entitled for compassionate appointment, therefore, an error apparent on the face of record has occurred in the order dated 2.7.2014.. It is further contended that vide order dated 5.5.2006, a specific direction was given to the respondents to consider the case of the applicant for compassionate appointment in accordance with law by affording necessary age relaxation. It was further directed that the

decision to be arrived at judiciously and dispassionately, may be communicated, with an offer of appointment, if so decided, and if not, by a detailed and speaking order to the applicant.

9. It is contended that the aforesaid order has attained finality as it has never been challenged by the respondents. However, the respondents never complied this order. This Tribunal too, while deciding O.A. No. 1154/2008, did not record any finding on the aforesaid order and rejected the O.A. only on the ground of delay and laches.

10. The submissions of Id. counsel for applicant is that the history of the case, as mentioned above in the earlier part of the judgment, clearly shows that immediately after the death of father of the applicant, his mother was making continuous efforts for terminal benefits and compassionate appointment. As at that time, the applicant was minor, as soon as he became major, he also through several rounds of litigations, tried for that. So there was no delay on the part of the applicant. However, this Tribunal, while reviewing the aforesaid order, rejected the review application on the two grounds that, firstly a married son is not entitled of getting compassionate appointment and secondly, because the applicant has been able to manage his livelihood for a period of 33 years, he is not entitled for compassionate appointment. On the aforesaid ground, the review application was dismissed by this Tribunal, which is again under consideration before this Tribunal by means of modification application.

11. Learned counsel for respondents has vehemently opposed the modification application by contending that in fact, it is not a modification application instead, it is review of a review application, which is not maintainable as per legal provision. In this regard my attention has been drawn to Rule 17(4) of CAT (Procedure) Rules,

1987, which creates a bar for reviewing of any judgment or order passed on a review application.

12. Having heard learned counsel for the parties and having perused the record, this Tribunal is of the view that the order passed on the Review Application cannot be modified by this Tribunal because it will amount to review of an order passed on a review application.

13. However, keeping in view the fact that the applicant, who despite his penurious conditions and huge burden of liabilities on his shoulders, is litigating since long and has also spent a considerable time and money in it, should not be compelled to once again approach to some higher forum, involving huge expenses, for redressal of his grievance.

14. In view of the above, this modification application is disposed off with a direction to the respondents to consider the claim of the applicant in the light of order dated 5.5.2006 passed by this Tribunal in Dy. No. 243/2003 and also in wake of the changed legal position that now the married son is also entitled for compassionate appointment.

15. In **OA No.1042/2012 (Ripu Daman Singh vs. Union of India and others)**, this Tribunal has decided the identical issue on 24.5.2016, with the following observations:-

"It is further pointed out that in the year 2015, again a clarification was issued to the frequently asked questions by the DOP&T clarifying that married son can be considered for appointment on compassionate ground if he fulfils all other requirements of the scheme.

16. In the **Writ Petition No.908/2015 (Nagendra Kumar Yadav vs. Food Corporation of India and others)** reported in 2016 Lab IC 1541, the Hon'ble High Court of Chhattisgarh at Bilaspur observed as follows:-

"19. It is well settled that marriage is an institution/sacred union not only legally

permissible but also basic civil right of a man and woman. One of the most important inevitable consequences of marriage is the reciprocal support and marriage is an institution has great legal significance. Right to marry is necessary concomitant of right to life guaranteed under Article 21 of the Constitution of India as right to life includes right to lead a healthy life. Marriage does not bring about a severance of the relationship between a father and mother and their son or between parents and their daughter. These relationships are not governed or defined by marital status.

20. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical Union). When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on, on this planet. (See Mr. 'X' v. Hospital 'Z' MANU/SC/0733/1998 : (1998) 8 SCC 296.)

The yardstick for extending the benefit of compassionate appointment should be dependency of the dependents on the deceased FCI servant. Marital status of the dependent should not be an impediment for his/her consideration on compassionate ground, as the object of such an appointment is to wipe-out his tears from the eyes of the suffering family on account of loss of sole breadwinner in the family, other consideration would defeat the object of the social welfare benefit which the Union of India has framed to see that deceased family survives after the death of FCI servant. Though the policy of the Central Government was accepted by the FCI, the policy does not contain any such prohibition that married son is not entitled for compassionate appointment, but frequently asked questions which are claimed to be the policy is not in accordance with law. It has been assumed that on account of marriage, son ceases to be dependent on the FCI servant which is an erroneous approach on the part of the respondents. It cannot be assumed without examining the facts and without taking into consideration the attendant circumstances that married son is not dependent on the Government servant. In a given situation, son even after marriage may not be earning and may be fully dependent upon the earnings of his father. Therefore, the assumption that once one is married, he becomes no longer dependent on his father is an incorrect proposition, and it cannot be accepted, as such, denial of compassionate appointment to the son of the deceased FCI employee on the

*ground of his marriage is violative of Articles 14
and 15 of the Constitution of India.”*

17. Accordingly, the respondents are directed to reconsider the claim of applicant for compassionate appointment in the wake of above cited judgments and circulars and to pass a reasoned and speaking order within a period of 2 months from the date of receipt of certified copy of this order. The order so passed, shall be communicated to the applicant without any delay.

18. There shall be no order as to costs.

**(Justice Vijay Lakshmi)
Member (J)**

HLS/-