

**CENTRAL ADMINISTRATIVE TRIBUNAL****MADRAS BENCH****OA/310/00563/2019****Dated Wednesday , the 11<sup>th</sup> day of March 2020****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

A.Salomi,  
W/o B.Ashok Kumar,  
No. 29/57, V.O.C. Street,  
Kamaraj Nagar,  
Perungalathur,  
Chennai – 600 063.

....Applicant

(By Advocate M/S V.K.Rajagopalan)

Vs

1. Union of India, Rep by  
The General Manager,  
Southern Railway,  
Chennai – 600 003.

2. The Divisional Railway manager's Office,  
Personnel Branch, Chennai Division,  
Southern Railway,  
Chennai – 600 003.

....Respondents

(By Advocate Mr. D.Hari Prasad)

**ORDER**

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

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

- "i) To call for the records of the 2<sup>nd</sup> respondent herein vide their Order No. M/P.353/CC/OA 1610/2018 dated 15.03.2019 and to quash the same and consequently direct the respondents herein to appoint the applicant on compassionate ground in Southern Railways for the death of her mother late G.Danamma, Lascar Sr. DEE/RS/AVD's office, retired on VRS on medical grounds;
- ii) To pay the cost of this application and
- iii) To pass such other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice."

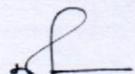
2. The brief facts of the case as submitted by the applicant are as follows:

The applicant is the daughter of Smt G.Danamma who retired on VRS on medical grounds w.e.f. 20.06.2016 while working as Lascar in Southern Railways. The applicant's mother opted for voluntary retirement with the hope that her request for appointment on compassionate ground to an eligible ward would be considered in terms of Railway Board Letter No.E(NG)II/95/RC-1/94 dated 18.01.2000. The applicant applied for employment on compassionate ground in Southern Railways on 29.9.2016 and the same was also duly received by the Railways. The applicant has studied up to 10<sup>th</sup> standard and is also having two children. She and her husband are not having any permanent employment. When she applied for appointment on compassionate ground, the Railways sent a letter No.M/PB/CS/22/97/2016 dated



22.12.2016 directing her to produce a copy of the PAN Card. She also produced the same xerox copy of her PAN card to the authorities but the respondents have not passed any order with regard to her appointment. The applicant's younger brother, G.Ananda Babu has not even passed 7<sup>th</sup> standard. Another younger brother G. Rajesh died on 23.04.2018. The applicant's younger sister G.Sakunthala is also having no objection for her employment in Railways. While so, the applicant's mother, G. Danamma died on 21.11.2017. Even after one year of death of her mother, the authorities have not provided any employment on compassionate ground to the applicant herein. Now, the applicant has completed her 10th standard and she is unemployed. The applicant sent another representation dated 09.10.2018 to the respondents herein through RPAD. The Respondents received the same on 11.10.2018 but have not passed any order on her application. Hence, the applicant filed O.A. No. 1610/2018 before this Tribunal to direct the respondents to appoint the applicant on compassionate ground in Southern Railways. This Tribunal directed the respondents herein vide order dated 07.12.2018 to pass order on her representation dated 09.10.2018. In pursuance thereof, the 2<sup>nd</sup> respondent vide order No. M/P.353/CC/OA 1610/2018 dated 15.03.2019 rejected the claim of the applicant for appointment on compassionate ground.. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

- i. The applicant borrowed money from various sources and had given medical treatment to her mother from 20.06.2016 to 21.11.2017 till her death and that is the reason



all other children agreed for applicant's employment under compassionate grounds in Southern Railways.

ii. The applicant is not having property in her name and also not in a good financial position. On the strength of getting employment in Railways she borrowed money from various sources to look after her mother. Due to non employment she is put to a financial crisis and the reason given by the 2<sup>nd</sup> respondent that the family is not in penurious condition is not correct.

3. The respondents have filed a detailed reply statement in which it is stated that in the year 2015 the employee was examined by the Medical Board on 27.08.2015 at the Railway Hospital/ Egmore and she was declared unfit for all category in to railway service and declared unfit vide certificate No.ABCE54/2015-16/038 dated 15.09.2015. Subsequently, the employee submitted her request for VRS and the same was accepted with effect from 20.06.2016. After three months of her voluntary retirement, the applicant's mother Smt. G. Dhanamma vide letter dated 29/9/2016 requested to consider the applicant. While processing the case for appointment on compassionate ground, it came to light that Smt. G.Dhanamma had not submitted any request for appointment to her married daughter at the time of voluntary retirement and there was no mention about it in the O.O dated 20.06.2016. Therefore since Smt. G. Dhanamma had not submitted any request for compassionate ground appointment to her elder daughter, the claim of the applicant was not processed. The applicant herein filed OA 1610/2018 before this Tribunal and the same was disposed of with a direction to the competent authority to take a decision on the pending



representation dated 09.10.2018 in accordance with law and rules and pass order thereon. In compliance thereof, the respondents examined the case of the applicant but however, rejected her claim for appointment on compassionate ground. The respondents further submit that in terms of the Railway Board's letter No.E(NG)II/95/R/94 dated 19/1/2000 the request of an eligible ward may be considered. Accordingly, her case was considered. It was seen that in the termination order dated 20.06.2016 issued by Sr. DEE/ RS/AVD there was no offer of Compassionate Ground Appointment. The S&WI Report stated that Smt.G.Danamma herself was appointed on compassionate grounds and after serving from the year 1993 to 2016 she had applied for voluntary retirement on medical grounds and the same was accepted. Subsequently, she submitted and forwarded on 29/9/2016 a request for appointment on compassionate grounds to her married daughter Smt.A.Salomi. She died on 21-11-2017 leaving behind two sons and two daughters all of whom were married and settled during her lifetime. At present, there was no other members of the family whom the applicant could take care. The family is also not in penurious condition and there is no financial crisis as on date. Therefore, the offer of appointment to the applicant was not justified and the same was rejected. Further, Smt.G.Danamma, Lascar, Sr.DEE/RS/AVD herself was appointed on compassionate grounds and the purpose of compassionate appointment has been fulfilled. Any further appointment will amount to endless compassion. Hence, respondents pray for dismissal of the OA.



4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

5. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.1610/2018 seeking the same relief and this Tribunal by order dated 07.12.2018 directed the respondents to examine the representation of the applicant and pass orders in accordance with law. Pursuant to the above, the respondents have considered the representation of the applicant but however, rejected her claim by order dated 15.03.2019 on the following grounds:

- (a) The applicant's mother herself was appointed on compassionate ground.
- (b) The applicant's mother died on 21.11.2017 leaving behind two sons and two daughters all of whom are married and settled during her life time.
- (c) There is no other member of the family whom the applicant could take care of.
- (d) The family is not in penurious condition and no financial crisis is available at this date.

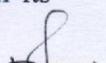
6. Of the above, the first ground has to be summarily rejected as the nature of appointment of applicant's mother is of no relevance. Nowhere it has been stated that if the deceased or medically invalidated employee has entered the service on compassionate grounds, in the event of demise or medical invalidation, his/her wards become disentitled to appointment on compassionate grounds. Thus it is only the rest of the three grounds i.e. (i) the wards of the mother are well settled; (ii) there is no other member to be taken care of by the applicant and (iii) the family is not in penury.

7. As per the Scheme, the family living in indigent condition and deserving



immediate assistance of financial destitution is eligible for compassionate ground appointment. Subject to fulfilment of certain conditions, wards/dependants of medically unfit staff of Railways who go on VRS on medical decapacitation are also eligible for compassionate ground appointment. But, it is in the form of concession and it cannot be claimed as a matter of right and mere death of a Government employee in harness or Government employee going on VRS due to medical incapacitation by itself does not entitle the family to claim compassionate appointment (MGB Gramin Bank Vs Chakrawati Singh (2014)13 SCC 583). The concept of compassionate appointment has been recognised 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 service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, and being an exception the normal rule of appointment, has to be strictly construed and confined only to the purpose it seeks to achieve. Thus, the entitlement for compassionate appointment springs up only when the family is in financial crisis to the extent that it cannot survive after the sole bread winner either dies or becomes medically incapacitated and many a social responsibility such as education of wards and marriage of daughters is to be addressed. The prescribed circumstances under which grant of compassionate appointment is permissible are, in view of the above three grounds, conspicuously absent in this case.

8. A word of caution has been administered by the Railway board through its



order a letter in E(NG)11/2015-RC-1/4 dated 15.04.2015 on the subject of appointment on compassionate ground, wherein it has been emphasized. "The competent authority has to satisfy himself/herself on the basis of a balanced and objective assessment of the financial condition of the family, that the ground for such appointment in a particular case is justified having regard to the number of dependants, assets and liabilities left by the Railway employee, income of any member of the family as also his/her liability, so that the facility of such appointment is not circumvented or misused."

9. The applicant's mother retired on VRS on medical grounds and also died subsequently. The applicant is the daughter married and has two children. There is no dependency factor in this case.

10. Now, the grounds on the strength of which compassionate appointment has been applied for by the applicant:

(a) Borrowal of money from outside sources in order to give treatment to the ailing mother during her life. This ground has not been proved with due documentary evidence and again, when medical facilities are available to a retired Railway employee through the medium of the Railway Hospitals situated at Gudur, or Perambur, the necessity for borrowal for treatment normally does not arise. The applicant is a resident of Perungalathur which is not far away from the Railway Hospital, Perambur.

(b) Not having property in own name and the financial conditions is not sound. This ground also is untenable in view of the fact that non possession of property cannot be



a ground for seeking compassionate appointment and that there being none of the dependents of the bread winner (mother) to be looked after by the applicant and the family of the applicant not having been found in financial crisis, the condition for compassionate appointment is not fulfilled.

11. The case of any compassionate appointment has to be viewed keeping in mind, apart from the rules on the subject, also the decisions of the Apex Court. The following judgments of the Apex Court are thus very relevant in deciding this case:

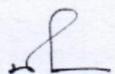
(a) In MGB Gramin Bank Vs Chakrawati Singh (2014)13 SCC 583). The

Hon'ble Supreme Court in Paragraph 5 of its judgement, held as under:

5. 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 of 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

(b) Life Insurance Corporation of India Vs. Asha Ramachandra

Ambekar(Mrs.) and another (1994) 2 SCC 718. In this case, it was



pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointment on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointment.

(c) V. Sivamoorthy Vs. State of Andhra Pradesh reported in 2009 (1) SCC L&S 335. It has been held that voluntary retirement from medically decategorised employees towards the fag end of the career should not be accepted and compassionate ground appointment should not be offered.

12. Further, the Railway Board's letter dated 18.01.2000 directs only consideration for compassionate ground appointment. The term 'consider' does not mean that the appointment has to be offered irrespective of the merits of the case. The case of the applicant has been rejected only because there is no dependency factor and the financial conditions of the entire family is not satisfied. Inasmuch as there is no essential need of the family like marriage of a daughter or education of any minor child and the family of the deceased employee is not in indigent condition and the applicant's mother has also died without any dependency factor, the applicant is not entitled for any relief from the respondents. Further, in terms of Railway Board's clarification vide No. E(NG)II/99RC-1/ICF/4 dated 30.07.1999/03.08.1999, if there are no other wards to be looked after then there would be no justification for considering the married daughter for compassionate appointment. No bread winner relationship as such exists in the instant case.



13. In the conspectus of the above facts and circumstances of the case, the Judgements of the Hon'ble Supreme Court and the discussions hereinabove, I see no grounds to interfere with the impugned order of rejection of the claim of the applicant for appointment on compassionate grounds.

14. In the circumstances, the OA is liable to be dismissed and is accordingly dismissed with no order as to costs.