

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00761/2019****Dated Thursday, the 5th day of March, 2020****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

M. Nagamani Devi,
M/o (late) J.Balamurugan,
Technician II,
No. 16, Royal Villa,
Sanjeev Nagar Extension,
Kullapatti Road, Airport,
Trichy – 620007.

....Applicant

(By Advocate M/S Ratio Legis)

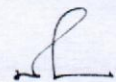
Vs

1. Union of India represented by
The General Manager,
Southern Railway,
Park Town, Chennai – 3.

2. The Principal Chief Personnel Officer,
Southern Railway,
Park Town, Chennai – 3.

....Respondents

(By Advocate M/s D.Hariprasad)



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 service records related to the deceased railway employee and impugned order No. P(S) 535/Court/OA 783/2018 dated 31.10.2018 made by the 2nd respondent and to quash the impugned order and further to direct the respondents to consider the applicant's son J.Muthukumar for appointment on compassionate grounds in accordance with the Master Circular No.16 issued by the Railway Board and other mandatory provisions and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper under 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 widowed mother of late J.Balamurugan, who died in harness as a Technician, Grade II (Diesel Fitter – Electrical) in Ponmalai Railway Workshop on 12.02.2017 and as such requested for appointment on compassionate grounds to her son J.Muthukumar. Since there was no response to her requisition dated 16.07.2017 the original application 310/00783/2018 was preferred and the same was disposed of at the admission stage. In pursuance thereof, the impugned order No. P(S) 535/Court/OA 783/2018 dated 31.10.2018 was made rejecting the claim for compassionate appointment contrary to the existing scheme. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

i. The action of the respondents in rejecting the claim for compassionate appointment is arbitrary and an act coupled with colourable exercise of authority and against all canons of law



which is untenable.

ii. In as much as Master Circular No.16 which is a compendium on appointment on compassionate grounds issued under Railway Board's letter No.E(NG)II/90/RC-1/117 dated 12.12.1990 provides for compassionate ground appointment to the dependants of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/de-categorised the impugned order No.P(S)535/Court/OA783/2018 dated 31.10.2018 rejecting the requisition of the applicant for compassionate ground appointment is inconsistent with Railway Board's letter No.E(NG) II/90/RC-1/117 dated 12.12.1990 and therefore impermissible in law.

iii. In the light of the fact that the mother of J.Balamurugan has now to depend on J.Muthukumar, the brother and dependant on late J.Balamurugan, should be considered for appointment on compassionate grounds on the death of J.Balamurugan and denial of the same is against the principles of Good Conscience, Equity, and fairness and therefore unsustainable in law.

iv. In the wake of Railway Board's letter no. E(NG) II/87/RC-I/57 dated 21.08.1987 which enunciates that in such cases, if compassionate appointment is otherwise admissible and if after careful examination of the case it is found that there are special features or circumstances justifying relaxation of time limit as also criteria, the cases could be considered by the Railway Board for relaxation as a special case, the act of the respondent in not considering applicant's request for compassionate ground is untenable in law.

v. The inaction by the respondents in not offering compassionate ground appointment to the applicant is in gross violation of Railway Board's letter no. E(NG)/III/78/RC-1/1 dated 07.04.1983 which postulates that when offering appointment on compassionate grounds to a widow, son, daughter, etc. it need not be checked whether another son, daughter is already working; but in no case should there be more than one appointment against one death/medical incapacitation and therefore the act of the respondents in not considering the request of the applicant for compassionate ground appointment is unsustainable in law.



vi. The non consideration of the request made by the applicant for compassionate appointment is in gross violation of the Railway Board order No. E(NG) II/98/RC-I/64 dated 31-05-2011 and ART 21 of the Indian Constitution.

vii. In as much as financial affluence was never sought till 28.07.2000 when RBE 144/2000 was made for while considering such requests for compassionate appointment, viz.;

i) Compassionate appointment of 1st son/1st daughter where request has been made after a period of 5 years from the date of medical invalidation.

ii) Compassionate appointment of other than 1st son/ 1st daughter where requests have been made after a period of 5 years from the date of death.

iii) Consideration of application submitted more than 2 years after the candidate became major.

The rejection on the pretext of financial indigence is untenable in law.

3. The respondents have filed a detailed reply statement. The applicant's husband late Shri. P.Jayaraman retired as Junior Engineer in Central Workshop, Southern Railway, Ponmalai. He expired on 26.07.2010. The applicant is the only member included in the legal heir of the ex-employee late Shri. Balamurugan. She is in receipt of dual family pension one on account of her husband and other on account of her deceased son namely late J. Balamurugan. Her request for compassionate ground appointment to her another son Muthukumar was rejected taking into consideration various factors such as financial condition, number of dependants in total to decide regarding the justification of appointment. As such, since the applicant is the only dependant of the deceased and she is also in receipt of family pension of Rs.12,330/- +DR due to the death of her husband and another pension of Rs.9000/-+ DR due to




the death of her son J.Balamurgan. Hence, the rejection of the claim of the applicant for compassionate ground appointment to her other son is in line with the extant provisions. The 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. Having regard to the above facts and circumstances of the case, the issue that arises for consideration in this OA is whether the applicant's son is entitled for compassionate ground appointment.

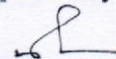
6. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA 783/2018 wherein this Tribunal by order dated 27.06.2018 directed the respondents to consider the representation of the applicant dated 16.07.2017 in accordance with rules and pass a reasoned order. In pursuance of the said directions, the respondents vide order dated 31.10.2018 considered and rejected the representation of the applicant.

7. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving the family in penury and without any means of livelihood and to get over the financial crisis and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a Government employee in harness does not entitle the family to claim compassionate appointment. 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, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

8. The Railway Board has formulated policy guidelines for the compassionate ground appointment by which the question of considering the brothers/sisters for compassionate ground appointment will arise only when the deceased employee died as bachelor/spinster. The applicant who is in receipt of two family pensions has no right to claim compassionate ground appointment for her another son who is in no way dependant of the deceased employee. Copy of the legal heir certificate dated 24.03.2017 and written statement made by the applicant at the time of disbursement of settlement dues would clearly show that the applicant is the only dependant of the deceased employee. The Railway Board in its letter No. E(NG)-II/2014/RC-I/SCR/5 dated 08.07.2014 (RBE No.70/2014) has dealt with the guidelines for assessing the dependency criteria for compassionate ground appointment in such relevant situation of the applicant. As such, the applicant has failed to project the onus of dependency



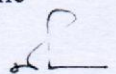
of her last son with the deceased son who is living in Chennai separately from the family and earning individually for his livelihood. The factual situation was ascertained during the discreet enquiry conducted by Staff & Welfare Inspector when deputed from the office of Central Workshop of Golden Rock. Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz., parents, spouse, son or daughter and not to all relatives. Hence, in the absence of the dependency established, the claim of the applicant for compassionate ground appointment to her another son is not maintainable in law. The Hon'ble Apex Court in catena of cases has held that compassionate ground appointment cannot be claimed as a matter of right.

9. The Railway Board has also issued a letter in E(NG)11/2015-RC-1/4 dated 15.04.2015 on the subject of appointment on compassionate ground, the relevant portion of which is extracted below :-

Sub" Appointment on compassionate grounds – Order of Hon'ble CAT Madras in OA. No.245/2013 – Smt..Chinnaponnu, w/o Late Shri G. Athimoolam, ex-Gangmate/SSE/PW/P/PLNI/Madurai.

Ref : SR's letter No. PB/CS30Court Case/Vol.I dated 04.12.2014.

In the circumstances explained in your Railway's letter quoted on the above subject, the matter has been examined and accordingly, it is advised that the instant case does not have merit to be considered for appointment on compassionate ground as appointment on compassionate ground is not a matter of right irrespective of the fact that instructions exists for considering married daughter for compassionate appointment, financial health of the family is the paramount component for facilitating the issue. 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 grounds 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.

Railway administration may deal with such cases with a balanced and objective view in terms of extant instructions on the subject at their end."

10. 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.

11. In yet another judgement of the Hon'ble Supreme Court in Life Insurance Corporation of India Vs. Asha Ramachandra Ambekar(Mrs.) and another (1994) 2 SCC 718, 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

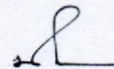


and contemplates such appointment.

12. In the instant case, admittedly the applicant is the widowed mother of late J. Balamurugan who joined the Railway Service on 30.06.2006 in the Electrical Department and while working as Technician II/Diesel Fitter in the Heavy Electrical Repair Shop died in a road accident on 12.02.2017 along with his wife and son leaving no dependents in the family. The applicant submitted a representation seeking compassionate appointment to her another son Muthukumar. Her claim was rejected by the respondents after considering various factors such as financial condition, number of dependents in total to decide regarding the justification of appointment and since the applicant is the only legal heir as per Legal Heir Certificate dated 24.03.2017 and is aged about 65 years as on date and she is also in receipt of dual family pension one on account of her husband and other on account of her deceased son of Rs.12,330/ + DR and Rs.9000/- + DR respectively. Further, Shri Muthukumar, brother of the deceased employee does not come within the purview of family to be considered for appointment on compassionate ground. The applicant is also not in penurious condition to seek appointment to another son on compassionate ground to look after her financial needs. Except the last son of the applicant who is employed outside the home town, all are married and settled with their family and they all are earning members.

13. The Hon'ble Supreme Court in the case of State Bank of India & Anr v. Raj Kumar reported in 2011 (1) SCC (L&S) 150 has held that :

“.....the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the



eligibility criteria and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

.....

Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable."

14. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow and ors V. Prabhat Singh in CA No. 8635 of 2012 decided on 30.11.2012 had held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed family requiring financial support, and thereby push into penury a truly indigent destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion."

15. In the conspectus of the above facts and circumstances of the case, the judgments of the Hon'ble Supreme Court and the discussions herein above, I see no reason to interfere with the impugned order of the respondents. The OA is liable to be dismissed and is accordingly dismissed with no order as to costs.