

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

Dated the 15th day of July Two Thousand and Twenty
OA/310/00841/2019

CORAM : HON'BLE MR. T. JACOB, Member (A)

S.Manikandan, S/o. Late S. Subramani,
No. 2, Abdul Rahim Street,
Sarada Avenue, Chitlapakkam,
Chennai 600064.

....Applicant

By Advocate M/s. Ratio Legis

Vs

Union of India rep by,
The Principal Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600003.

....Respondent

By Advocate Mr. K. Vijayaragavan



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

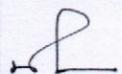
Heard. The applicant has filed this OA seeking the following reliefs :

"To call for the records related to the impugned order No. PB/CS/MAS/Misc/2018/Vol.IV dated 23.01.2019 by the respondent and to quash the same and further to direct the respondent to consider the request of the applicant for appointment on compassionate grounds and to make furhter order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

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

The applicant is the son of late S. Subramani, who died in harness on 01.01.2016. The applicant was sanctioned with the statutory family pension and represented for appointment on compassionate grounds. His request was turned down by an incompetent authority, as such, a representation dated 27.06.2018 was submitted to the competent authority and, in turn, the request for compassionate appointment was rejected vide impugned order No. PB/CS/MAS/Misc/2018/Vol.IV dated 23.01.2019 contrary to the mandatory provisions. Hence, the present Original Application is filed by the applicant seeking the above relief, inter alia, on the following grounds :-

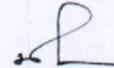
i. The action of the respondents in rejecting to adopt mandatory provision enshrined for the purposes of making appointment on compassionate grounds is arbitrary and an act coupled with colourable exercise of authority and against all cannons of law which is untenable.



ii. In as much as Master Circular No. 16 which is a compendium on appointment on compassionate grounds issued under Railway Boards' letter No. E (NG) II/90/RC-1/117 dated 12.12.1990 provides for compassionate ground appointments to the dependents 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 act of the respondents in not considering the request of the applicant for appointment on compassionate grounds is inconsistent with Railway Boards letter No. E (NG) II/90/RC-1/117 dated 12.12.1990 and, therefore, unsustainable in law.

iii. In as much as the scheme insinuate for '-----but in no case should there be more than one appointment against one death/medical incapacitation' which unequivocally pledges one appointment in the case of death in harness, the rejection of appointment on compassionate grounds to the applicant is antagonistic to the mandatory scheme made under Rule 123 of the Indian Railways Establishment Code that is made under Proviso to Art. 309 of the Indian Constitution.

iv. There is no justification in rejecting applicant's claim for appointment on compassionate grounds since neither marital status nor financial indigence appears to be a relevant factor in considering appointments under the compassionate appointment scheme of the Railway as per Master Circular No. 16 and hence any denial on the pretext of financial indigence is impermissible in law.



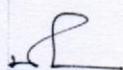
v. In as much as the dependency & financial indigence has to be restricted to the claim for compassionate appointment by persons other than widow, sons/daughters in terms of Railway Board's letter dated 03.02.1981, 28.07.2000 and 06.01.2009, the act of the respondents in rejecting the claim on non-availability of dependents & financial indigence vide impugned order dated 23.01.2019 is non est in law.

vi. In the wake of the facts that claims for compassionate appointment could be considered up to a period of 25 years after the death of the railway employee as per Railway Board letter dated 31.05.2011, any attempt to deny consideration of the claim on the pretext of delay is untenable in law.

vii. In as much as Railway Board's letter No. E (NG) III/79RC-1/47 dated 29.11.1979 provides for the upper age limit to be freely relaxed on merits of the cases as well as the minimum age up to one year with the personal approval of the General Manager; impugned order dated 23.01.2019 rejecting compassionate ground appointment is unsustainable in law.

viii. In the wake of the fact that Railway Board's letter no. E (NG) II/80/RC-1/4 (KW) dated 22.02.1989 prescribes for the relaxation of educational qualifications prescribed for the post on merits of an individual case, such cases may be referred to the Ministry of Railways; impugned rejection without reference to the Railway Board is non est in law.

ix. In as much as the scheme enshrined by the Railway Board

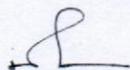


does not postulate for the presence of multiples of surviving family members to be looked after by the compassionate ground appointees, the impugned orders rejecting compassionate ground appointment for want of more family members is in gross violation of the legal principle and, therefore, non est in law.

x. In as much as Railway Board's instructions on compassionate appointment stipulate for compassionate appointment on the death of bachelor/spinster Railway employees the impugned rejection vide order dated 23.01.2019 for the reason of non-availability of other surviving members including minor members is unsustainable in law.

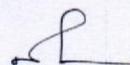
xi. In the wake of the mandatory provision postulating for suo-motto application by the Class I legal heirs seeking appointment on compassionate grounds and thus bestows them with imbibed privilege for appointment, rejection on the pretext of want of other surviving family members is against the principles of Good Conscience, Equity and justice and therefore untenable in law.

xii. In as much as Para 12(a) of the Master Circular 16 that enshrines the scheme for appointment on compassionate grounds specifically provides for '-----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---' the impugned rejection on the basis of receipt of settlement dues is illogical since the said



settlement amount was shared among the surviving legal heirs and about 80% of the settlement amount was spent on clearing heavy debts incurred by his parents and therefore the said impugned order dated 23.01.2019 is liable to be quashed.

3. The respondents have filed a detailed reply. The respondent submits that Shri. S. Subramani, Sr. Technician, SSE/Works/Egmore, Madras Division died on 01.01.2016 ie three months before his normal retirement while in service. The employee was due to retire on superannuation on 31.03.2016. The employee's wife pre-deceased on 18.04.2014. At the time of his death, he left behind one married daughter and the applicant. The family of the deceased has been arranged a sum of Rs. 12,82,417/- (Rupees Twelve Lakhs Eighty Two thousand and four hundred and seventeen only) on 29.03.2016 towards terminal benefits. The applicant was also sanctioned enhanced family pension of Rs.9650 + Relief with effect from 03.01.2016 to 02.01.2026 and, thereafter, Rs. 5790 + Relief. The applicant was in receipt of the above family pension up to the age of 25 years and his date of birth as recorded in Pension Payment Order No. 0602249924 is 25.10.1993. At present, the applicant has completed 26 years of age. It is submitted that the applicant has requested for appointment on compassionate ground to the competent authority on 31.03.2016 and the same was examined and considered. After examination, it was rejected by the competent authority for the reason that the daughter of the deceased Railway employee got married during the life time of the deceased and well settled.



There is no other dependant to be taken care by the applicant in the family and that the applicant was in receipt of 12.8 lakhs as settlement dues of his father. The rejection was also communicated to the applicant on 27.09.2016 by letter No. M/PB/CS/22/32/2016.

4. The respondent would further submit that the applicant has preferred an appeal dated 27.06.2018 against the rejection order dated 27.09.2016 to the General Manager, Southern Railway and the same was disposed by impugned order dated 23.01.2019 stating that a share of 6.4 lakhs towards settlement dues was received by him and he was in receipt of family pension of Rs. 9650/- + relief till attainment of 25 years of age or marriage whichever is earlier and that his only sister got married during the life time of the Railway servant and that she is well settled. Therefore, there is no one in the family left out to be taken care by him. The Senior Divisional Personnel Officer/Madras by letter No. M/PB/CS/22/32/2016 dated 18.07.2017 advised the applicant to submit the specific documentary evidence for expenditure incurred towards his mother and father's medical treatment, but the applicant could not answer satisfactorily and hence the request for compassionate appointment could not be considered by the competent authority. Challenging the rejection of the General Manager/Southern Railway by an impugned order dated 23.01.2019, the applicant has come out with the present OA. The respondents pray for dismissal of OA.

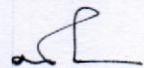
5. The respondents have relied on the following decisions in support of their submissions :-



- i. Decision of Hon'ble Supreme Court in Director of Education (Secondary) and another Vs. Pushpendra Kumar and others (1998 SCC (L&S) 1302).
- ii. Decision of Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana [(1994) 4 SCC 138].
- iii. Decision of Hon'ble Supreme Court in Union Bank of India & ors Vs. M. T. Latheesh [(2006) 7 SCC 350].
- iv. Decision of Hon'ble High Court of Kerala in OP (CAT) No. 35 of 2017 in K.K.Sushama Vs. General Manager/Southern Railway.

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

7. Admittedly, the Railway employee died in harness on 01.01.2016 while working as a Senior Technician in the Engineering Department in Chennai Division ie three months before his normal retirement He left behind the applicant and one married daughter. His mother predeceased on 18.04.2014. After the death of the Railway employee, the applicant had requested for compassionate appointment, but the same was rejected by letter dt. 27.09.2016. The applicant preferred an appeal against the rejection of the order dt. 27.09.2016 to the General Manager, Southern Railway and the same was disposed by order dt. 23.01.2019 stating that a share of 6.4 lakhs towards settlement dues was received by the applicant and he was in receipt of family pension till attainment of 25 years of age. Further, his only sister got married

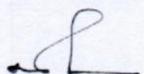


during the lifetime of the railway servant and that she is well settled. Therefore, there is no other dependant family member left to be taken care of.

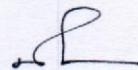
8. As per Railway Board Circular No.03/2009 dated 06.01.2009, the competent authority should satisfy himself on the basis of a balanced and objective assessment of the financial condition of the family that the ground for compassionate appointment in each case is justified having regard to the number of dependents, assets, liabilities, income of any earning member of the family. In the instant case, the applicant's sister got married while the Railway employee was in service and there are no other dependent factors to be considered. With regard to the financial condition of the family the applicant was in receipt of family pension till attainment of 25 years. Apart from this, the family received a sum of Rs.12.8 lakhs as settlements benefits. Further the applicant could not answer satisfactorily the expenditure towards his mother and father's treatment. The General Manager after considering the above aspects, rejected the claim of the applicant for compassionate appointment based on financial status as well as the dependency criteria.

9. In a similar set of facts in K. K. Sushama Vs. General Manager/Southern Railway in OP (Central Administrative Tribunal) No. 35 of 2017, the High Court of Kerala in para 5 held that:

“5. At the very outset, it is to be noted that appointment on compassionate ground is not actually a right, but only a concession and it cannot be reduced into a method of appointment. It is being given to deserving family in destitute owing to the demise of the bread winner of the family to tide



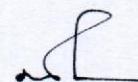
over the immediate financial crisis occurred. In this case, a mere scanning of the impugned order would reveal that the Tribunal virtually, appreciated all aspects and relevant considerations. In the decision in MMTC Ltd. v. Pramoda Devi ((1987) 11 SCC 390) the Hon'ble Apex Court held thus:- "the object of compassionate appointment is to enable penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment." The petitioner herself depicted her family condition in Ext.P1 - copy of the OA and also in the captioned original petition. Evidently, she is now aged 57 years and her unmarried sons were aged 28 years and 29 years at the time of the death of her husband. During his life time the daughter was given in marriage. True that, she had stated that in that regard the deceased had availed a loan of ₹ 3,00,000/- and it is her own version that utilizing the substantial portion of the settlement benefits, which is ₹ 6,33,199/- the said loan account and the personal loans of the deceased were cleared. The treatment expense of the petitioner for her accidental fall was below ₹ 90,000/-. Thus, it is evident that indebtedness was redeemed utilizing substantial portion of the settlement benefits. It is to be noted that the pleadings would not indicate the entire amount received towards settlement benefits, were utilized for that purpose. Evidently, the only daughter was already given in marriage and the loan availed to meet the expenses was also closed. The unmarried sons of the petitioner are hale and hearty as there is no contra case for the petitioner and both of them are now aged more than 30 years. As contended by the respondents, how can the said sons be treated to have been depending at the age of 28 years and 29 years, on their father ? The petitioner who is aged 57 years was certainly depending on the deceased employee. She now, lives in a tiled house constructed in a plot of 8 cents. She is getting ₹ 12,500/- as pension from the Railways. The employee would have reached the normal age of superannuation had he remained alive for 78 days more. Therefore, but for his death he would have received salary as an employee only for three months. True that, the petitioner had lost her husband. But, the family condition, as revealed from the very narration of the petitioner would indicate that the petitioner who is getting ₹ 12,500/- as pension got two sons who had already crossed 30 years to look after her. If the very purpose and object of the Compassionate Employment Scheme is imbibed how can it be said the petitioner is justified in



making a claim for appointment of her elder son. Its aim is not at all to provide employment to such a family ignoring the question whether they are actually deserving the benefit under the scheme. Since the scheme is not a method of employment the purpose and object of the scheme would constrain us to hold it should be extended only to the really deserving family of a deceased employee. The trend of developing it as a right and to give a go by to the ratio of the aforesaid decision, which was subsequently restated in many a decision of the Hon'ble Apex Court, would result in violation of the constitutional philosophy of equality and equal opportunity in the matter of public employment. The power available to this Court in matters like this, is the power to judicial review by invoking the power under Articles 226/227 of the Constitution of India going by the decision of the Hon'ble Apex Court in L.Chandra Kumar v. Union of India & others reported in AIR 1997 SC 1125. Taking into account all the aforesaid aspects and perusing the impugned order, we do not find any illegality, irregularity or perverseness warranting an interference with the impugned order in invocation of the power of review under Articles 226/227 of the Constitution of India. The upshot of the above discussion is that this original petition is liable to fail and accordingly, it is dismissed. ”

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10. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow vs. V. Prabhat Singh (C.A.8635/2012) has held that Courts and Tribunals should not fall pray to any sympathy syndrome so as to issue direction for compassionate appointment without reference to the 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 the court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion wherein direction 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.

11. The impugned order is in accordance with law laid down by the Hon'ble Supreme Court in the matter of compassionate ground appointment. There is absolutely neither any financial crisis nor any dependency factor. In this case, there is nobody in the family that the applicant should look after. The mandatory provision to offer compassionate ground appointment is that the family should be in indigent condition for their livelihood and it is to enable the family to tide over the sudden crisis. The applicant has not produced any documentary evidence in support of his claim that a large amount has been spent over his mother's treatment. The terminal benefits paid to the applicant is sizeable. In addition, he is paid family pension as well.

12. In the conspectus of the above facts and circumstances of the case and the Judgement of the Hon'ble Supreme Court and Hon'ble High Court, I do not see any justification to allow the OA in favour of the applicant. Resultantly, the OA is liable to be dismissed and is accordingly dismissed. No costs.