

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00 838/2019****Dated 29^{Monday}, the day of June, 2020****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

Smt. C.K.Kanmani,
D/d late S.Chinnakaruppan,
Thideer Nagar,
Oddenchathiram,
Dindugul – 624 619.

....Applicant

(By Advocate M/s Ratio Legis)

Vs

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

....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 related to impugned order No. PB/CS/MDU/2010/6 dated 19.02.2019 issued by the respondent and to quash the same and further to direct the respondents to consider the applicant for compassionate ground appointment in terms of the 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 divorced daughter of late S.Chinnakaruppan who died in harness while working as a Cabin Man in the year 2008 and thereafter applicant's brother was offered appointment to a Group 'D' post and the same was not accepted and thereby applicant's mother submitted a requisition for appointment to her divorced daughter, the applicant. Although the respondents advised for submission of no objection from applicant's brother initially, rejected her claim for appointment vide order dated 12.04.2011 and thereby OA No. 310/1489/2016 was preferred in which this Hon'ble Tribunal was pleased to direct to consider the claim on objective analysis in terms of Railway Board letters vide order dated 05.09.2018 whereas the request was rejected vide impugned order dated 19.02.2019. Aggrieved by the above, the applicant has filed this OA seeking the above relief, inter-alia, on the following grounds:-

i. The action of the respondents in denying to adopt mandatory provision enshrined

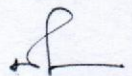


or the purpose of making compassionate ground appointments is arbitrary and an act coupled with colourable exercise of authority and against all canons of law which is untenable.

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 appointments to the wards of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/ decategorised; the impugned order no. PB/CS/MDU/2010/6 dated 19.02.2019 rejecting the requisition by the applicant for Compassionate ground appointment is inconsistent with Railway Board's letter no. II/90/RC-1/117 dated 12.12.1990 and therefore liable to be quashed.

iii. In the wake of Railway Board's letter no. E (NG)II/87 /RC-1/57 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 as also criteria, the cases could be considered by the Railway Administration for approaching the Railway Board for relaxation as a special case. Such a reference to the Railway Board should be made by the Railway Administration only with the personal approval of the General Manager; impugned order dated 19.02.2019 rejecting compassionate ground appointment is untenable in law.

iv. In as much as Railway Board's letter no.E(NG) III/79RC-I/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 upto one year with the personal approval of the General Manager; impugned order dated 19.02.2019 rejecting compassionate ground appointment is unsustainable in law.

v. The impugned order rejecting compassionate ground appointments is in gross violation of Railway Board's letter No. E(NG)/III/78/RC-1/1 dated 07.04.1983 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 liable to be set at naught.

vi. The disagreement by the respondents without adducing specific reason in offering compassionate appointment to the applicant despite the fact that Railway Board specifies that the General Manager may consider and decide the time barred cases of compassionate appointment which are upto twenty five years old from the date of death and such cases are to be decided by the General Manager at their personal level only and are not to be delegated further, is unfounded since it is in gross violation of the Railway Board order No. E (NG) 11/98/RC-1/64 dated 31-05-2011 and Art. 21 of the Indian Constitution and the impugned order is liable to be quashed.

vii. The respondents having advised applicant's mother to produce n.o objection from her son for offer of appointment on compassionate grounds to the applicant as well as included the applicant in the family composition for complimentary pass, the



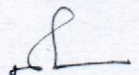
Impugned rejection by the respondents who are '**fait accompli**' are estopped from rejecting the claim for appointment on compassionate grounds to the applicant and hence the impugned order is unsustainable in law.

viii. In as much as the scheme enshrined by the Railway Board does not postulate for the presence 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 nonest in law.

ix. The disagreement by the respondents in offering compassionate appointment on the pretext that petitioner's family did not have any minor children is unfounded since one has to be taken care in the old age and any attempt to deny decent and dignified living to the petitioner's mother is in gross violation of Art. 21 of the Indian Constitution and the impugned order is liable to be quashed.

x. In the wake of RBE No.70/2014 dated 08.07.2014 postulates for consideration of the dependant divorced/widowed daughters for appointment as in the case of married daughters, it is unequivocally ensures that ignoring daughters on the pretext of marriage would tantamount to discrimination and hence the impugned order rejecting the claim for compassionate appointment for the reason of marriages taking place when the deceased employee was alive is contrary to the said Railway Board letter and hence is nonest in law.

xi. In as much as Railway Board's instructions on compassionate appointment



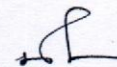
supulate for compassionate appointment on the death of bachelor/ spinster railway employees the rejection for the reason non-availability of other surviving members including minor members is unsustainable in law.

xii. In the wake of the mandatory provision postulating for suo-motto representations by the married daughters requesting compassionate ground appointments vide RBE No. 42/2018 dated 21.03.2018 and thus bestows transmissible 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.

xiii. In as much as ascertainment of financial indigence was introduced vide RBE No. 144/2000 and further extended in 2009 under specific circumstances, the impugned rejection on the basis of receipt of family pension and applicant's brother's employment is inconsistent with the statutory instructions and therefore the said impugned order No. PB/CS/MDU/2010/6 dated 19.02.2019 is liable to be quashed .

3. The applicant has also relied on the decision of the Hon'ble High Court of Uttarakhand in Special Appeal No. 187 of 2017 & batch dt. 25.03.2019 in the case of Udham Singh Nagar District Cooperative Bank Ltd & anr Vs. Anjula Singh and others.

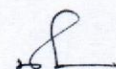
4. The respondents have filed detailed reply statement. It is submitted that the applicant is the married daughter of Shri.S.Chinnakaruppan, Ex.Cabinman, Oddanchatram Railway Station of Madurai Division,who expired on 05.05.2008.



After the death of the employee the applicant's mother Smt.C.Palaniammal, had requested for Compassionate ground appointment to her son C.K.Kannan, by submitting a representation dated 22.05.2008. After the receipt of the representation a discreet enquiry was ordered by the 2nd respondent herein vide his letter dated 22.05.2008. After the receipt of the genuineness report of the educational certificates of the son of the deceased employee and the discreet enquiry report of the Staff & Welfare Inspector the case was put up to the Divisional Railway Manager for approval to refer the case of Compassionate ground appointment in the category of Teacher to the Chief Personnel Officer and the same was approved on 03.10.2008.

However, since no vacancies were available readily in the Group 'C' category in the Division, the son of the deceased employee was advised vide letter dated 16.03.2009 to express his willingness for appointment in Group 'D' category provisionally and with an assurance to consider him for appointment in Group 'C' subject to passing the suitability test and prescribed medical examination.

5. It is submitted that Smt.C.Palaniammal, wife of the deceased employee vide her letter received on 26.03.2009 submitted that since her son is not willing to join in Railways and requested that her daughter C.Kanmani, the applicant herein may be given appointment on compassionate grounds. After getting approval of the Divisional Railway Manager the request of the applicant's mother was considered and it was processed to forward the proposal for the approval of the General Manager in as much he is the competent authority for appointment of married daughters in terms of the instructions of the Railway Board. For placing the papers for the GM's



approval it is mandatory to conduct a discreet enquiry by an Officer in the level of Assistant Personnel Officer and the enquiry report submitted by the Assistant Personnel Officer was on 13.11.2009.

6. As could be seen from the enquiry report of the Assistant Personnel Officer, the applicant's mother had delayed the submission of application in the prescribed format with her daughter's recent passport size photo and NOC from her elder son Shri.C.K.Kannan for the appointment of the daughter and the applicant herein. The applicant submitted the required documents along with her letter dated 'Nil' received in the office of the respondents on 22.12.2009. The Chief Personnel Officer, vide his letter No.PB/CS/30/MDU/2010/6 dated 1.7.2010 has advised the Division to provide the present position of the divorce case filed by the applicant herein for processing the claim further. Since there was no response from the applicant's mother as to the position of the divorce petition she was advised to produce the order copy in the Divorce petition if it was already disposed vide letter dated 19.08.2010. The applicant's mother produced a copy of the order in the Divorce petition on 29.09.2010 and the same was sent to the Chief Personnel Officer on 30.09.2010 for further action in the matter.

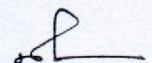
7. It is submitted that the claim for compassionate ground appointment to the applicant was rejected by the General Manager on the ground that the son of the deceased employee is already working as a Teacher and the widow is getting pension and the same was communicated to the applicant's mother on 12.04.2011 and challenging the same the applicant had filed the OA No. 1489/2016 after a lapse of



more than 5 years and the respondent have also filed a counter in the above application. The said application was disposed by the this Hon'ble Tribunal vide its order dated 05/09/2018, wherein this Hon'ble Tribunal set aside Communication dated 12.04.2011 and directed the competent authority to consider the request of the applicant for compassionate appointment objectively in terms of the relevant Railway Board circulars and pass a reasoned and speaking order within a period of two months from the date of receipt of copy the said order. It is submitted that in compliance of the above direction the General Manager, Southern Railway who has reconsidered the matter objectively and examined the issue and disposed the matter, vide order PB/CS/30/MDU/2010/6 dated 19.02.2019 which was communicated by the respondent to the applicant. Hence the respondents pray for dismissal of the OA

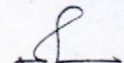
8. Heard the learned counsel for the respective parties and perused the pleadings and the documents on record.

9. Admittedly this is the second round of litigation before this Tribunal. The OA No. 1489/2016 was filed before the CAT Chennai as claims of the applicant were not granted. The said application was disposed by the this Tribunal vide its order dated 05/09/2018, wherein this Tribunal set aside communication dated 12.04.2011 and directed the competent authority to consider the request of the applicant for compassionate appointment objectively in terms of the relevant Railway Board circulars and pass a reasoned and speaking order within a period of two months from the date of receipt of copy the said order. The respondents passed an order dated 19.02.2019 but did not consider the claims of the applicant.



Q. 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 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.

11. The applicant Smt. C.K.Kanmani who is the married daughter of the deceased employee Late Shri S. Chinnakaruppan, Ex. Cabin-man/Oddanchatram who died on 05.05.2008, had sought compassionate ground appointment citing the reason that she was separated from her husband. At the time of demise of her father, merely a case



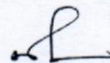
was filed before the Hon'ble Court and thereafter the Hon'ble Court has dissolved the marriage by its decree dt. 25.11.2009 ie after the death of the employee.

12. The Railway Board letter No. E (NG) II/2014/RC/-1/SCR/5 dated 08.07.2014, which stipulates that the married daughters are eligible to be considered under compassionate ground appointment subject to the condition that she should be wholly dependent on the deceased employee at the time of death. The relevant portion of which is extracted below :

"Sub : Appointment on compassionate grounds of family member of an ex-Railway servant.

As the field units are aware, dependant family members for the purpose of appointment on compassionate grounds means spouse or son (including adopted son) or daughter (including adopted daughter) or brother/sister in the case of unmarried Government servant, who is wholly dependent on the Government servant at the time of death in harness or retirement on medical grounds, as the case may be.

Further, in terms of para 2 of letter No. E (NG)III-78/RCC1/1 dated 3.2.81, General Managers can consider for employment of married daughters, if they satisfy themselves that the married daughter will be the bread-winner of the family of the Railway servant concerned. It has also been stipulated vide instructions issued under RBE No. 224/2001 dated 21.11.2001 that the cases of dependant divorced/widowed daughters should also be considered for such appointment as in the case of married

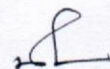


Daughters subject to the condition that former should have been wholly dependent on the ex-employee at the time of the death/medical invalidation of the latter.

Existence of a number of instructions as well as the issue of specific clause of 'dependency on the ex-Railway employee' have been engaging the attention of this office for sometime. Accordingly, the matter has been reviewed by the Board and it has been decided that it should be left to the discretion of the family concerned in case of death of ex-employee to request for a job to either spouse or any child {whether son or daughter (unmarried/married/divorced/widowed)} subject to the condition that the concerned child will be the bread winner of the family concerned. Further, for this purpose instructions issued by this Ministry vide letter issued under RBE No. 22/2014 dated 4.3.14 be read in the same spirit.

....."

13. In this case, the widow of deceased had initially requested appointment in favour of her son, Shri. C.K.Kannan and subsequently sought appointment under compassionate ground in favour of her married daughter since the son is employed as Teacher. The compassionate ground appointment cannot confer a right on all the dependants of the deceased till any one fits to get an appointment by virtue of any untoward happening in the family at a later stage. As life is uncertain, we cannot go on to extend the consideration one after other and there would be no end to this process. That is why, the clause of "Wholly dependent at the time of death of the employee" was included.

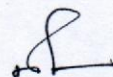


The stipulations as per Railway Board letter is that dependency and familial responsibility of the widow. I find that the widow of the deceased employee has been receiving pension for her livelihood and she has no responsibility to take care of any minor or incapacitated children. The divorced daughter also is not a breadwinner to the family. Moreover, the son of the deceased employee is working as a Teacher. 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 family is not in indigent condition and without any dependency factor, the applicant is not entitled for any relief from the respondents.

15. 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:

"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.

16. Taking into account of all facts into consideration, I am of the considered view that this case lacks merits and there is no justification to offer appointment under compassionate ground to Smt. C.K.Kanmani, married daughter of the deceased employee.

17. In the conspectus of the above facts and circumstances of the case, the judgements of the Hon'ble Supreme Court and the discussions here in above, I see no grounds to interfere with the impugned order of rejection of the claim of the applicant.

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