

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01008 /2019

Dated ~~TUESDAY~~ the ^{28th} day of July, 2020

PRESENT

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

K. Samuel,
Retd. Senior Trackman,
Doravarichatram Village,
SPSR Nellore Dist.
Andhra Pradesh - 524 123.

....Applicant

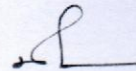
(By Advocate M/s Ratio Legis)

Vs

The Union of India rep by
The Principal Chief Personnel Officer,
Southern Railway,
Park Town,
Chennai - 600 003.

....Respondent

(By Advocate Dr. D.Simon)



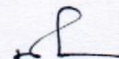
ORDER**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

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

"To call for the records related to the impugned order No. PB/CS/30/Representation/Vol.IX dated 22.01.2019 made by the respondents and to quash the same and further direct the respondents to appoint the applicant's son in terms of the scheme for appointment on compassionate grounds and other supplementary orders made by the Railway Board and to pass such further or other orders as this Hon'ble Tribunal may deem fit and thus render justice ."

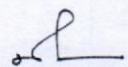
2. The brief facts of the case as submitted by the applicant are as follows:

The applicant while working as a Senior Trackman was medically examined and was declared unfit in all medical classifications and continued in supernumerary capacity. The applicant requested for voluntary retirement with consequential appointment to his son and thereby his request was acceded to vide letter dated 05.06.2014. When the applicant has represented against the inaction, the impugned order dated 22.01.2019 was made rejecting the claim of the applicant by the respondent.



Aggrieved by the above, the applicant has filed this OA seeking the above relief, inter-alia, on the following grounds:-

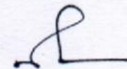
- i. The impugned order of rejection is inconsistent with the scheme and the approval already made, thus an outcome of an arbitrary act coupled with colourable exercise of authority which is impermissible in law.
- ii. In as much as applicant was declared unfit and as such continued in supernumerary capacity and a request was made for voluntary retirement with consequential appointment to his son, K.Madhu and applicant was permitted to go on voluntary retirement, the respondent is estopped from denying consequential appointment as per the scheme for appointment on compassionate grounds and hence any denial is untenable in law.
- iii. In the wake of the fact that the applicant, a totally incapacitated railway employee sought for voluntary retirement with consequential appointment to his son the respondent having decided not to extend appointment, ought not to have permitted the applicant to go on voluntary retirement since the same is contrary to the Disability Act, 1995 and the law settled in the case between Kunal Singh Vs Union of India by the Hon'ble Supreme Court.



iv. In the light of the mandatory instruction in Para V (a) of the scheme for appointment on compassionate grounds, an appointment is sought to be made within '5 years' from the date of occurrence of the event entitling the eligible person to be appointed on this ground which is relaxed upto 25 years at present, the claim for appointment on compassionate grounds made by the applicant immediately after his medical de-categorization with a reminder by the applicant within 2 years from the contingency, the non consideration of applicant's request for compassionate appointments is in gross violation of the scheme and hence unsustainable in law.

v. In so far as the Railway Board orders de-link the left over service while offering appointment on compassionate grounds and assuming but not accepting that '5 years' of left over for service shall be available, applicant did have the said service on the date of invalidation, the impugned non consideration is in gross violation of the mandatory provisions made by the Railway Board and therefore impermissible in law.

vi. 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 impugned order rejecting

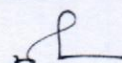


appointment on compassionate grounds to applicant's son is contrary to the mandatory scheme made under Rule 123 of the Indian Railways Establishment Code that is made under Proviso to ART 309 of the Indian Constitution and hence the impugned order dated 22.01.2019 is liable to be set at naught.

vii. The impugned order rejecting appointment on compassionate grounds to the applicant was on the pretext of receipt of bountiful settlement dues and family pension is at variance with the legal principle and therefore liable to be set aside.

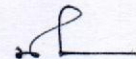
viii. In as much as the scheme enshrined by the Railway Board does not postulate for the surviving family members to be looked after by the compassionate ground appointees, the impugned order rejecting compassionate ground appointment for want of more family members is in gross violation of the legal principle and therefore non est in law.

ix. In as much as the Hon'ble Apex Court has held that death cum retirement benefits should not constitute a yardstick to adjudge financial indigence in catena of cases, the latest being in Civil Appeal No. 260 of 2008, the impugned order if made on setting off the condition of financial indigence with reference to the receipt of retirement benefits with negation is against



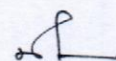
the spirit of Art 142 of the Constitution of India and therefore untenable in law.

3. The respondents have filed reply statement. Shri. Samuel (the applicant herein) was kept in a supernumerary post vide memorandum dated 25-04-2013. On opting for voluntary retirement with a request for appointment of his ward on compassionate ground, Shri Samuel was allowed to retire from Railway service voluntarily with effect from 06-06-2014. One Shri Kayyuru Madhu, claiming to be a son of Shri Samuel (voluntarily retired employee) has requested for compassionate ground appointment. The respondent would submit that Shri Kayyuru Madhu claims to be a son of Shri K Samuel. However, from the School Transfer Certificate issued on 04.06.2008 submitted by Shri K.Madhu, it is noticed that the father's name is mentioned as Kayyuru Samaiah. Even in the community, nativity and DOB certificate dated 11-09-2008 the father's name is mentioned as Samaiah. It is submitted that to get over this problem, a notification was inserted in Andhra Pradesh Gazette on 27-07-2015 to the following effect that Shri Kayyuru Madhu, S/o Kayyuru Samiah qualification B.Sc shall henceforth be known as Kayyuru Madhu, S/o Kayyuru Samuel. Further, an affidavit dated Nil has



been submitted by Shri K Samuel to the effect that he was also called as Samiah. On careful scrutiny of the above, it was noted that the Gazette notification had been inserted only on 27-07-2015 i.e., much after the voluntary retirement of Shri Samuel. The affidavit was a self- serving statement only.

4. It is further submitted that extract copies of the Family composition details show that the retired employee Shri. Samuel has not included the name of the claimant, Shri K.Madhu as his son. The reason for not including the legitimate son in the FCC is best known only to applicant. The Staff & Welfare Inspector in his report dated 08-09-2016 concludes that Shri. K.Madhu is not the son of the retired employee and hence, the claim is not genuine. Therefore, the claim was rejected by a letter No.M/P.CS/22/22/2016 dated 07.06.2018. The applicant made an appeal dated 03.10.2018 to the General Manager/Southern Railway against the rejection order and the same was considered by GM/Southern Railway after condoning the delay and directed the Divisional Railway Manager to process the case as per extant rules. Therefore, a fresh joint enquiry was ordered and the Joint Enquiry Committee by its report dated 08-12-2017 concluded that "Shri K Madhu is the biological son of the ex-employee (K Samuel)". It is



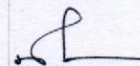
submitted that a letter dated 22-09-2017 has also been sent to Thasildar, Doravarisatram Mandal seeking clarification on the issue of Family Member Certificate issued by letter No.L.375/2012 dated 03/2015 & Ration Card and, therefore, verify the records and certify the genuineness of these records adduced by the applicant. Till date there is no response from Thasildar, Doravarisatram Mandal. Taking into consideration the gamut of the case including the considerable lapse of time since the date of voluntary retirement of the applicant, the Principal Chief Personnel Officer vide disposal dated 22.01.2019 upheld the decision of the competent authority and the reasons for the rejection. The respondent prays for dismissal of OA.

5. The respondents have relied on the decision of the Hon'ble High Court of Delhi dt. 08.12.2014 in WP (C) No. 7417/2013 in the case of Resham Devi Vs. Vijaya Bank and Anr. in support of their submissions.

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on records. The following general aspects are to be kept in mind while deciding the issue:-

(a) Telescoping rule position on the facts of this case

(b) Limitation

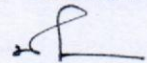


(c) Genuineness of the claim

(d) Precedents

7. Facts are not in dispute. The applicant while working as Senior Trackman found medically unfit in all cases and opted for voluntary retirement on 05.06.2014. His request for compassionate appointment for his son was made on 14-03-2016 i.e. nearly 2 years after his voluntary retirement. Delay coupled with discrepancy in documents resulted in rejection of his case by the competent authority, against which he had preferred an appeal before the General Manager on 03-10-2018, who, after due consideration expressed his disinclination to vary from the decision of the competent authority. The Principal Chief Personnel Officer vide communication dt. 22.01.2019 also upheld the decision of the competent authority and reasons for the rejection.

8. The primary and principal purpose of grant of compassionate appointment in the event of either demise while in service or medical incapacitation is to mitigate the hardship by affording the family immediate financial support by grant of compassionate appointment. i.e. an immediate succour to the dependents of the ex-employee. The fact that nearly for two years when the applicant could manage the family, one can presume that the economic

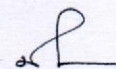


condition of the family was better and does not warrant immediate assistance by way of compassionate appointment. Secondly, grant of compassionate appointment is not exactly an integral part of medical invalidation and the same is only an ancillary aspect, subject to the financial position and kindred factors. There is no automatic process of grant of compassionate appointment on medical invalidation, much less on voluntary retirement, albeit it was based on medical unfitness to hold the post any longer. Thus, telescoping the rule upon the facts, it is found that the applicant does not fulfil the requirement for grant of compassionate appointment.

9. Limitation is yet another legal aspect to be kept in view. Obviously, the delay in applying for compassionate appointment disentitles the applicant from claiming the relief sought for. It appears that the applicant's delayed attempt in securing appointment on compassionate ground for his son lacks bonafide as is explained in the succeeding paragraph.

10. According to the respondent, the "Clean Hands Doctrine" squarely applies to the case on hand on the following grounds :

- a) In the documents produced by the applicant's son like School Transfer Certificate, Community Certificate, Nativity

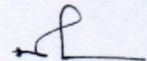


Certificate & Date of Birth Certificate, father's name shown as "SAMAIAH".

- b) The applicant took efforts to change his name only after his voluntary retirement on 06.06.2014 in order to get appointment for Sri. K. Madhu.
- c) The applicant not included the name of Sri. K. Madhu even when he was a minor son and explanation made by him for non inclusion is not convincing.
- d) By not including Sri. K. Madhu in his family composition the applicant has paved the way for the conclusion that he is not dependent.
- e) The inquiry made by Welfare Inspector and by other officials resulted in conflicting reports on the same issue.
- f) To clear the doubts about the issue the communication sent to Tasildar seeking clarification also remains unanswered even after two years.

11. The applicant was only eligible to claim compassionate appointment to his ward subject to fulfilling the terms and conditions of the scheme. By the order dated 06.06.2014 only the Voluntary retirement was granted and the same does not mean that compassionate appointment was approved without scrutiny of the claim. Hence the question of estoppel does not arise.

12. Further, voluntary retirement on medical grounds will always precede the consideration of compassionate appointment. When the applicant chose to retire due to his physical inability, Railways



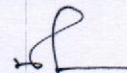
cannot refuse it anticipating subsequent development. In Kunal Singh's case only Sec 47 of Persons With Disability Act was dealt with and compassionate appointment was not dealt.

13. 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



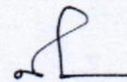
should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years."

(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.

(c) 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."

14. In the conspectus of the above facts and circumstances of the



case and judgments of the Hon'ble Supreme Court, I find no reason to interfere with the impugned order of the respondent dt. 22.01.2019. The OA is liable to be dismissed and is accordingly dismissed. No costs

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