

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

MA/20/378/2020 in OA/20/1161/2019 & OA/20/1161/2019

HYDERABAD, this the 8th day of December, 2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

1. Badavath Koteswari, W/o. B. Sambaiah,
Hindu, Aged about 45 years,
R/o. 28-132/2D-SF-1, Sri Sai Ganesh Residency,
Lakshmipathi Nagar, Yanamalakuduru,
Vijayawada Rural – 520 013,
Krishna District, Andhraparadesh.
2. Badavath Ravindra Nayak, S/o. B. Sambaiah,
Hindu, Aged about 27 years,
R/o. 28-132/2D-SF-1, Sri Sai Ganesh Residency,
Lakshmipathi Nagar, Yanamalakuduru,
Vijayawada Rural – 520 013,
Krishna District, Andhraparadesh.

...Applicants

(By Advocate : Sri J.M. Naidu)

Vs.

1. Union of India rep. by its
General Manager, South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
South Central Railway,
Vijayawada Division,
Vijayawada, Krishna District.
3. The Chief Work Shop Manager,
Wagon Work Shop South Central Railway,
Guntupalli, Krishna District.
4. The Work Shop Personal Officer,
Wagon Work Shop South Central Railway,
Guntupalli, Krishna District.

....Respondents

(By Advocate : Sri T. Sanjay Reddy for
Sri T. Hanumantha Reddy, SC for Rlys)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Administrative Member)

Through Video Conferencing:



2. The OA is filed in regard to grant of compassionate appointment to the second applicant.

3. Brief facts of the case are that the husband of the first applicant, while working for the respondents as Technician Grade-III was found missing from 25.1.2005 and therefore, a police complaint was lodged and a case of missing person was registered on 20.6.2005. Consequent to lodging of the Police complaint, the 1st applicant requested the respondents on 20.9.2005 not to take any disciplinary action against her missing husband. However, respondents went ahead and removed her husband from service on 24.7.2007. The 1st applicant represented for compassionate appointment to the 2nd applicant on 15.4.2009 as her husband was missing. Later, on 2.12.2014 police issued a non traceable certificate and based on the same, the competent authority on 26.3.2015 has cancelled the penalty of removal. The 1st applicant was granted family pension and terminal benefits due on 19.11.2015 and the 2nd applicant was subjected to a written test on 26.4.2017, which he passed to be considered for appointment on compassionate grounds. However, the competent authority refused to grant compassionate appointment till the matter is reinvestigated, since a complaint was received stating that the missing husband of the 1st applicant was, in fact, living in and around Vijayawada. The Inspector of Police of Arundalpet has submitted a report that the husband of the 1st applicant was

missing and that the complaint made by one Sri Anjeneyulu was false. Even then, compassionate appointment was not granted and hence the OA.

4. The contentions of the applicants are that they come from a poor family. The family pension granted is only Rs.2457 per month.



Respondents promised to provide compassionate appointment to the 2nd applicant and that based on a false complaint, as confirmed to be false by the Police authorities, it cannot be denied. Further, on the grounds that the applicant survived for many years without any support cannot be a reason to deny compassionate appointment.

5. Respondents in their reply statement state that the husband of the 1st applicant was on unauthorized absence for 373 days from 1.1.2002 to 30.6.2003 and for 184 days from 1.7.2003 to 31.12.2003. For the later part of the absence, disciplinary action was initiated and removed from service on 2.7.2007. After receiving the missing report of the 1st applicant's husband from the police, the competent authority cancelled the order of removal on 9.9.2015. Competent authority considered the case and when the post of Technician–III in Group C cadre was offered, applicant has sought a higher post of J.E vide his letter dated 3.5.2017. In the meanwhile, a complaint was received that the missing husband of the 1st applicant was alive and after the police reported that the complaint was false, the case was reconsidered by the competent authority and rejected on the ground that the 2nd applicant was not interested in Group 'C' post offered and for having no liabilities.

6. Heard both the counsel and perused the pleadings on record.



7. I. The dispute falls in a narrow compass of the 2nd applicant making a request for a higher post than the post for which he was considered on compassionate grounds. It is not in dispute that the husband of the 1st applicant has gone missing while in service and based on the missing certificate issued by the police authorities, the 1st applicant was granted family pension and other terminal benefits. The 2nd applicant, who was nominated for compassionate appointed, was offered Group C post of Technician Grade III on compassionate grounds. However, the 2nd applicant sought appointment to a higher post of JE, which was declined by the competent authority. It is seen from the records that the 1st applicant is getting a family pension of Rs.11,530/- per month and settlement benefits of Rs.68,972 were paid. There are no liabilities like education of minor children and marriage of daughters. To top it, when the 2nd applicant was approved for the post of Technician Grade III by the competent authority on 26.4.2017 (R-8), the 2nd respondent made a request on 3.5.2017 for the post of JE. The 2nd applicant has also given a declaration (R-7) wherein it is stated that he will accept any Group C or Group D post and that he will not seek any change of post/department/station and further any undue representation if received from him, the offer of appointment is liable for cancellation. When the 2nd applicant has given the declaration referred to, it was incorrect on his part to make an undue representation for a higher post of JE than the Technician Grade III post and for doing so, the offer of appointment is obviously liable for cancellation.

II. Once the 2nd applicant gave a declaration that he would accept any Group D or Group C post he should not seek any change as per the

declaration submitted by him. By writing the letter dated 03.05.2017 seeking consideration for a higher post of JE, the 2nd applicant has lost the right to be considered. In other words, the letter does indicate that 2nd applicant is not interested in lower posts given his qualification. The action of the respondents will be over once they have approved the 2nd applicant for the post of Group C. The father of the 2nd applicant is missing since 2005 and yet the respondents were considerate enough to offer compassionate appointment in Technician Grade III in 2017 despite the fact that the applicants could pull along for 12 years. The long time gap is an indication that there were no compelling financial circumstances to seek compassionate appointment. While making the above remarks, we take support of the observations made by the Hon'ble High Court of Punjab and Haryana at Chandigarh, in **Ram Baksh v. State of Punjab and ors** in LPA No.937 of 2016 (O&M) 21.02.2019 where in it was held as under:



5. Learned Single Judge was right in observing that the purpose of compassionate appointment must be considered strictly as per the policy instructions issued by the Government. Needless to say the object of the compassionate appointment is to enable the family to tide over the sudden crisis, which befalls them on the death of the bread earner.

6. In the case in hand, the offer of compassionate appointment had been made to the widow of the deceased employee, who had died in harness. Once such offer had been made to the widow of the employee, the action on the part of the Department was complete. The father of the appellant died in the year 2010 and therefore, the compassionate appointment if not accepted by the mother of the appellant soon after the death goes a long way to establish that there was no such compelling financial circumstances for them. Moreover, the appellant cannot claim appointment in place of his mother as a hereditary right.

7. The Apex Court in Umesh Kumar Nagpal vs. State of Haryana, 1994(3) SCT 174 held that the compassionate appointment, which may be offered to a dependent of the deceased employee, is to see the family through the economic calamity and is not a vested right, which can be exercised at any time in future. Moreover, it goes without saying that a claim to transfer the compassionate benefit as prayed for by the appellant would not be maintainable because once the compassionate appointment has been offered, the action on the part of the Department would be complete and as rightly observed by the learned Single Judge would stand denuded once and for all.

Further, Supreme Court while relying on its decisions in the case of **I.G. (Karmik) and others vs. Prahalad Mani Tripathi and Steel Authority of India Limited v. Madhusudan Das**, held that compassionate appointment cannot be granted to a post for which the candidate is ineligible. It was further held in the said case that even though higher post was applied for on compassionate ground, when a lower post offered considering qualification and eligibility as per rules was accepted by the candidate, he cannot claim higher post.



By applying the above legal principles to the case of the applicant, the action of the 2nd applicant in representing for the higher post of JE, when he was approved for the lower post of Technician Gr. III, is incorrect. More so, when he has given a declaration that he will accept any Group C or Group D post.

III. The submission of the ld counsel for the applicants that the 2nd applicant has not received any offer of appointment is not sustainable in view of the fact that the 2nd applicant did represent on 3.5.17 subsequent to the date of approval of his case on 26.4.2017. When the applicant has applied for compassionate appointment, wherein the Welfare Officer is involved, who guides the applicant in seeking the appointment and when the applicant has passed the written exam, it would be difficult to believe the submission of the Ld. Counsel of the applicants. Even presuming for a moment that the Ld. Counsel for the applicants submission is correct, though not admitted, the competent authority can review the offer of appointment any time before actual appointment order is issued. Mere

approval of the compassionate appointment of the 2nd applicant would not entitle him to the right for appointment, as held by Hon'ble Supreme Court judgment in **Shankarsan Dash vs Union of India on 30 April, 1991:: 1991 AIR 1612, 1991 SCR (2) 567**. Besides, compassionate appointment cannot be sought as a matter of right. With no liabilities and reasonable family pension being received by the family, the decision of the respondents not to consider the 2nd applicant for compassionate appointment cannot be found fault with.



IV. It is true, that there was a complaint about the missing employee being alive, which was inquired by the police and found to be false. However, after receiving the police report, the competent authority decided not to grant compassionate appointment because of the 2nd applicant's request for a higher post, which implies his disinterest in a lower post and in view of there being no liabilities. Thus, in the circumstances stated, there is no error in the decision of the respondents in rejecting the request of compassionate appointment. Besides, legal principles laid down by the superior judicial fora cited supra, support the decision of the respondents.

V. Hence, in view of the above circumstances, we do not find any merit in the OA and hence is dismissed, with no order as to costs. MA 378/2020 stands closed.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/al/evr