

Reserved on 16.09.2021
Pronounced on 21.09.2021

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 330/01339/2014

Hon'ble Ms. Pratima K Gupta, Member (J)

Smt. Saroja Devi, Daughter of Ram Dhyan, Resident of Village-Gobaria, Post Office-Mughalsarai, District-Chandauli.

. . . Applicant

By Adv : Shri M.K. Upadhyay

V E R S U S

1. Union of India, through General Manager, East Central Railway, Hazipur.
2. Divisional Railway Manager, East Central Railway, Mughalsarai.
3. Senior Divisional Personnel Officer, East Central Railway, Mughalsarai.

. . . Respondents

By Adv: Shri Sanjeev Kumar Pandey

O R D E R

By Hon'ble Ms. Pratima K Gupta, Member (Judicial)

The instant original application has been filed against the order dated 02.04.2012 passed by respondent no.2 denying the claim of the applicant for compassionate appointment.

2. The brief facts according to the applicant are that the applicant's father Late Shri Ram Dhyan was employed as Senior Porter under Station Manager, East Central Railway, Mughalsarai. He had executed a will in favour of his only child (daughter) on 13.08.1996 for payment of retiral dues and compassionate appointment.

2.1 The father of the applicant passed away on 12.01.2001.

On the basis of the will the respondents have released the retrial benefits to the applicant on 31.07.2001.

2.2 The applicant applied for compassionate appointment at the appropriate time but her claim for compassionate appointment was rejected on the ground that she had not passed class 8th examination.

2.3 Against this rejection order, the applicant approached this Tribunal by filing OA No.1594 of 2003 (Annexure A-3). Para 4 and 7 of the order reads as under:-

"4. What Shri M.K. Upadhyaya states is that during the pendency of the OA., the applicant has passed class 8th and this fact has been stated in the rejoinder affidavit and copies of the Marksheets and School Leaving Register have also been annexed. Sri M.K. Upadhyaya says that this O.A. may be finally disposed of with a provision that in case the applicant gives a representation with these changes in his academic qualification, the respondents will reconsider the request for compassionate appointment.

5.....

6.....

7. So, the O.A. is finally disposed of with a provision that in case the applicant gives any fresh representation/application together with the educational qualifications which he possess now, within a period of 15 days from today to respondent No.2, he shall consider the same in accordance with relevant guidelines/Rules and take necessary decision within a period of three months from the date such representation so given to him together with the certified copy of this order and in doing so, the impugned order dated 01.10.2002 will not come in his way."

3. In pursuance of this order the applicant once again approached the respondents for seeking compassionate appointment through the representation dated 17.04.2007. The said representation was rejected on 01.05.2008 on the ground

that as she was married daughter of the deceased employee was not eligible for compassionate appointment and did not come under the definition of family.

4. Against this rejection, the applicant once again approached this Tribunal in OA No.638/2008 (Annexure A-5). The original application was disposed of with the following directions. Relevant para 3 of the order reads as under:-

"3. In view of the aforementioned, impugned order dated 1.5.2008 is quashed. Respondents are directed to take fresh decision keeping in view definition of family mentioned in relevant guidelines issued by Railway Board regulating the right and procedure for compassionate appointment. It goes without saying that the decision so taken would be communicated to applicant. OA disposed of. No Costs."

5. The applicant filed an execution application No.10 of 2013 arising out of OA No.683 of 2008. In compliance of which, the impugned order dated 02.04.2012 came into being. The relevant portion of the letter reads as under:-

"In terms of instructions contained in para 2 of the Railway Board's letter no.E(NG)III/78/Re-1/1 dt.03.02.1981, a married daughter can also be considered for appointment on compassionate ground only when she is breadwinner of the bereaved family. Since there is no family members of late Sri Ram Dhyan alive at present, and as per definition of family in Pass Rules 1986, you being a married daughter are not covered under the definition of family, and since there was no family member alive at the time of death of late Sri Ram Dhyan, there is no question of your being the bread winner of the bereaved family. As such, your case as married daughter of the ex-employee of late Sri Ram Dhyan, ex. Porter does not come under the purview of compassionate appointment."

6. The counter reply has been filed in this case. It is submitted by the respondents that in compliance of the Tribunal order dated 21.11.2011 the case of the applicant was re-

examined and the orders were passed as per Pass Rule of Indian Railway family of deceased employee who can be wife, son, unmarried daughter, widow, widow daughter, widow sister and step son. There is no family member of the ex. Employee named Late Ram Dhyan, Ex. Porter alive at the time of his death, hence there is no question of becoming applicant bread winner of the family. Accordingly, the applicant was informed vide letter no.CS/CA/CI.IV/Optg/MGS/02 dated 02.04.2012. The applicant has filed an Execution Application bearing no.10 of 2013, which was dismissed by this Tribunal vide order dated 05.09.2014.

7. Heard Shri M.K. Upadhyay, learned counsel for the applicant and Shri Sanjeev Kumar Pandey, learned counsel for the respondents and perused the records.

8. From perusal of the order dated 21.11.2011 passed by this Tribunal in OA No.638/2008, the definition of 'family' as mentioned in Pass Rules reads as under:-

"Family

- (1) *Wife/Husband (whether earning or not)*
- (2) *Sons under 21 years of age provided they are wholly dependent. The age limit will apply to bona fide students of recognised educational institutions and invalid children on appropriate certification.*
- (3) *Unmarried daughters of any age (whether earning or not).*
- (4) *Married daughters of any age and widowed daughters provided they are wholly dependent on the employee.*
- (5) *Step sons unmarried step daughters and one adopted child, subject to age limit prescribed in terms 2 and 4 above provided they are wholly dependent on the employee."*

9. As this is the third round of litigation, and it is not disputed that the applicant is the only surviving beneficiary of the deceased and there are coordinate Benches decisions with respect to the same applicant in OA No.1594 of 2003 and OA No.638 of 2008, the case of the applicant has been incorrectly rejected by the respondents as the applicant is stated to be qualified and eligible for compassionate appointment as the married daughter of the deceased.

10. The Hon'ble Apex Court in the case of ***The Director of Treasuries in Karnataka & Another Vs. V. Somyashree on 13.09.2021 in Civil Appeal No.5122/2021*** held in para 7 which reads as under:-

7. While considering the submissions made on behalf of the rival parties a recent decision of this Court in the case of N.C. Santhosh (Supra) on the appointment on compassionate ground is required to be referred to. After considering catena of decisions of this Court on appointment on compassionate grounds it is observed and held that appointment to any public post in the service of the State has to be made on the basis of principles in accordance with Articles 14 and 16 of the Constitution of India and the compassionate appointment is an exception to the general rule. It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant

of appointment on compassionate ground can be summarized as under:

- (i) that the compassionate appointment is an exception to the general rule;*
- (ii) that no aspirant has a right to compassionate appointment;*
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;*
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;*
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."*

11. In view of the definition of 'Family' that "married daughters of any age and widowed daughters provided they are wholly dependent on the employee" in the Pass Rules of the respondents the applicant may file a fresh representation to the respondents to support her case that she was dependent to the deceased employee (father of the applicant at the time of the death of the employee). The respondents are directed to consider and decide the representation of the applicant, if filed, in the light of the supporting documents and in view of the Hon'ble Supreme Court judgment (Supra) by passing a reasoned and speaking order within a period of two months from the date of receipt of a certified copy of this order.

12. With the above directions, the original application stands disposed of with no order as to costs.

(Pratima K Gupta)
Member (Judicial)

/neelam/