

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00327/2020

Wednesday, this the 6th day of October 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Nishana A M,
D/o Late Shri A.B Mohammed
Residing at IX/43,
Island Villa, Kadamanthuruthil,
Near Passport Office, Thiruvankulam P.O,
Pin – 682305.

- Applicant

(By Advocate: Mr. Reena Sharon Suresh & Mr. K. P. S. Suresh)

v e r s u s

1. Union of India, represented by the
General Manager, Southern Railways,
HQ Office, Park Town, Chennai – 600003.
2. The Principal Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Personnel Branch, Chennai – 600003.
3. The Divisional Railway Manager – TVC,
Divisional Office, Southern Railway,
Thycaud, Thiruvananthapuram – 695 014. - Respondents

(By Advocate: Mr. Sunil Jacob Jose)

This application having been heard on 30th September 2021, the
Tribunal on 6th October 2021 delivered the following :

ORDER

Per : Mr.K.VEAPEN, ADMINISTRATIVE MEMBER

The applicant in this O.A. is the daughter of a deceased Railway employee and is claiming for appointment on compassionate ground. The applicant's father late Shri.Mohammed A.B., while working as Enquiry Cum Reservation Clerk in Southern Railway, Ernakulam, expired on 15.07.1996 (more than 25 years ago), leaving behind his wife Smt.Sahida M and two children Ms.Nishana A M (Date of Birth 25.05.1984) and Shri.Nadeem A M, (Date of Birth 14.04.1986). Ms.Nishana A.M is the applicant in this OA. Since the wife of the deceased employee was employed with State Bank of Mysore and both the children were studying(minor), she submits that she had registered the son's name (Nadeem AM) for an appointment on compassionate ground. After attaining majority, Shri.Nadeem A M staked claim for appointment on compassionate ground on 29.11.2004. He also requested that since he was studying for a B.Tech Engineering (Electrical & Electronics) degree, he may be permitted to complete the same. He was then offered temporary appointment on 14.02.2005 as Helper II/Elec/TRD section in the pay scale of Rs.2550-3200 plus the usual allowances admissible vide Annexure A3. On 21.02.2005 he requested for permission to complete his ongoing B.Tech degree and also requested for an appointment commensurate with his educational qualifications.

2. After this, there was a long unexplained gap and there does not appear to have been any further movement in the case. It is not clear as to how the request for extension of time made by Shri.Nadeem A.M. was responded to. After a gap of about 6-7 years, the wife of the deceased employee, Smt.Sahida M, visited the office of the second respondent on 10.01.2012. She asked that the compassionate appointment be given to the brother of the deceased employee Shri.Sabir A.B., due to the ill health of the son of the deceased employee, Shri. Nadeem.A.M. A similar request was apparently also made by Shri.Nadeem A M. In the letter submitted by Smt.Sahida M, it was mentioned that her son (Nadeem A M) had been suffering from Juvenile Diabetics since the age of 13 and that he was insulin dependent. Whatever be the reasons, the Railways did not respond to this request positively. As per the extant orders, it is submitted that there is no provision to consider such requests if a son or daughter or wife herself is already working and is earning. This is in terms of the Railway Board letter No.E(NG)III/78/RC-1/1 dated 03.02.1981 and No. E(NG) II/88/RC-1/1/Policy dated: 12.02.1990 as incorporated in Master Circular number 16 regarding Compassionate Ground Appointments at item No.III(a)(vi) (letter of 03.02.1981 is produced at Annexure R1). In this case it is clarified by the Railways that when the request for appointment of brother-in-law in 2012 was made, both the widow as well as the applicant in this OA were gainfully employed.

3. After that again there was a gap and it was only on 15.05.2015 that the applicant Ms.Nishana A M, then employed with M/s TCS as an IT Analyst at Bangalore, staked a claim for appointment on compassionate ground in place of her brother since he had not been able to take the job on compassionate appointment due to ill health. The respondents point out that this was done after a period of more than 18 years from the date of death of the ex-employee and after a period of 13 years from the date of her attaining majority. The representation submitted by the applicant Ms.Nishana A M is produced at Annexure A5. This was followed by some reminders. The respondents submit that a detailed inquiry was then conducted by the Chief Staff & Welfare Inspector, Ernakulam on 22.03.2018 regarding the claim of the applicant. The inquiry found that the applicant had requested for appointment on compassionate ground after a long gap and that she had been gainfully employed all these years with the TCS. Further, Smt.Sahida.M, the wife of the ex-employee, had been working with the State Bank of Mysore and she had two houses, one in Kozhikode and one in Ernakulam. Since she was then working with the State Bank of Mysore and was also in receipt of family pension granted by the Railways and since the applicant Ms.Nishana A M had got married, the Chief Staff & Welfare Inspector reported that she had no liabilities. The request for appointment on compassionate ground made by the wife on behalf of the daughter was thus not recommended. The Annexure A7 letter was issued to the applicant

rejecting her claim on grounds of excessive delay and financial condition not justifying the same. The applicant then preferred an appeal. Her case was reconsidered by the Principal Chief Personnel Officer, Southern Railway, Chennai. This representation was rejected by Annexure A9 letter which upheld the earlier letter at Annexure A7. In this connection, it is submitted by the respondents that on 03.05.2019 the matter was inquired into by the Assistant Personnel Officer and it was found that the financial status of the widow Smt.Sahida M and daughter Smt.Nishana A. M. were not bad, since, the husband of the daughter Shri.Surush Amir Afshal was employed in the pharmaceutical field and was a working partner at Bangalore earning about Rs. 60,000/- per month. Further, the widow had no liability other than taking care of her son Shri.Nadeem A.M.

4. It is thus the submission of the respondents that the case has been evaluated by two Authorities, Chief Staff & Welfare Inspector Ernakulam and later by the Assistant Personnel Officer. Both these officials have not recommended the case going by financial condition of the family as well as due to excessive delay in staking the claim of the applicant. The Competent Authority has issued the letters at Annexure A7 and Annexure A9 rejecting the claim, after considering all these aspects and reports. The respondents therefore submit that no discrimination has been done against the applicant as the case had undergone detailed inquiry at two different levels and was

then rejected after due consideration. It is reiterated that the applicant preferred to claim her appointment only in the year 2015, though she had become a major in the year 2002 and also almost 10 years after the refusal by the son of the deceased employee, Shri.Nadheem A.M. The chain of events thus reveals that the family is well settled and is in no pressing need for the employment in the Railways.

5. The applicant has referred to a decision of the Hon'ble High Court of Madhya Pradesh in case WP No.3796/2017 (**Smt. Meenakshi Vs. State of Madhya Pradesh and others**) in which the Hon'ble High Court had directed that if a male married dependent child can be considered for grant of compassionate appointment, there is no justification in not considering a female married child who is also totally dependent on the deceased. The Court had held that the Constitution of India does not provide for such discrimination. On this basis it is submitted by the applicant that the reason given in para 2 of the impugned order at Annexure A7 (that the daughter was married) was an illegal ground for her rejection for compassionate appointment. The Railways however submit that this decision of the Hon'ble High Court of Madhya Pradesh is not applicable in the case as there was no lapse on the part of the Railways. The Railway administration has rejected her claim only after thorough inquiry which covered all aspects.

6. The respondents further submit that there are decisions of the Hon'ble Supreme Court in a catena of cases that the Scheme of Compassionate Appointment should be taken as an exception to the provisions under Article 16 of the Constitution of India providing for equality of opportunity in matters of public employment. The basis of the Scheme lies in the need of providing immediate assistance to the family of the deceased employee. The sense of immediacy is clearly lost by any delay on the part of the dependent in seeking compassionate appointment. The respondents submit that this dictum has been reiterated by the Hon'ble Supreme Court in Civil Appeal No.988/2019 arising out of SLP(C) No.7079/2016 filed by the **State of Himachal Pradesh & Anr. Vs. Shashi Kumar (2019 3 SCC 653)**. This dictum of excessive delay in making a claim for appointment on compassionate ground is squarely applicable, it is contended, in the case of the applicant and, thus, on the basis of the same the O.A is liable to be dismissed. Similarly, in **Jagdish Prasad Vs. State of Bihar 1996 (32) ATC 238** the Hon'ble Court observed that the ground for compassionate appointment is to give immediate succor to a family of a deceased employee who dies in harness. A ward who was 4 years old at the time of the death of the Government employee cannot demand compassionate appointment after he becomes a major. If it is accepted, it is a mode of recruitment

dehors recruitment rules. In **LIC of India Vs. Mrs. Asha Ramachandra Ambedkar and another 1994 SCC (L&S) 500**, it has been observed that compassionate appointment cannot be given by sympathetic consideration without being supported by law when one of the family members is gainfully employed. Very recently, on 09.04.2021, in the case of **Central Coalfields Limited through its Chairman and Managing Director & Ors. Vs. Smt. Parden Oraon** in **CA No. 897/2021** the Hon'ble Court observed that :

“We are convinced that the Respondent’s son cannot be given compassionate appointment at this point of time. The application for compassionate appointment of the son was filed by the respondent in the year 2013 which is more than 10 years after the Respondent’s husband had gone missing. As the object of compassionate appointment is for providing immediate succor to the family of a deceased employee, the Respondent’s son is not entitled for compassionate appointment after the passage of a long period of time since his father has gone missing.”

7. It is submitted that the applicant has come up with submissions/contentions contrary to the facts as disclosed by the records maintained by the respondents. Due inquiries have been conducted and the claim has not been accepted. Apart from that, the applicant herself is highly

educated with a B.Tech (IT) degree and, when she first staked claim in the year 2015, she was gainfully employed with M/s TCS as IT Analyst at Bangalore. The applicant left the job only in the year 2017 much before Covid-19 pandemic. Hence, there is no justifiable reason to consider her case for appointment, after a period of more than 25 years of the death of the ex-employee, when the two inquiries clearly establish the financial status of the applicant as well as the widow of ex-employee. The applicant is not dependent on her widowed mother, nor is the mother dependent on her, as she has her own pension (Rs.25,000/- per month) and is also receiving the family pension, which at present is Rs. 10,950/- plus Dearness Relief. The applicant did not apply for appointment on commassionate ground immediately on knowing that her brother could not take up the job offered to him in 2005. Delay defeats the purpose of the scheme, which is not one to provide the right of hereditary employment. Thus, there is no illegality in rejecting her claim for compassionate appointment made 13 years after she become a major.

8. We have gone through the documents provided by the applicant as well as the respondents. We have heard the learned counsels, Shri.Varghese John for the applicant and Shri.Sunil Jacob Jose for respondents. We find that the applicant has not made an effective case for consideration, at this point of time more than 25 years after the death of the deceased employee,

for grant of compassionate appointment. The Apex Court has held that the paramount need is for immediate succor to be provided to the dependents after the death of the deceased employee. The Hon'ble Court has observed that the entire scheme is linked with a sense of immediacy, which is lost once it is delayed for an inordinate length of time. Besides that, the respondents have more than adequately brought out that neither the applicant nor her immediate family members appear to be in a pressing or dire financial situation for assistance by the scheme of compassionate appointment, having sufficient material and financial resources. A proper inquiry has been conducted at two different levels, both of which have come to similar conclusions before the case was rejected. Further, it is also seen that there have been long unexplained gaps in the application process showing a lack of genuine interest taken by the applicant or her family members in the matter. It is not as if a public job can be shuttled between one family member or the other at different points of time.

9. In this case we thus do not find that there is any ground for reconsideration of the decisions already taken by the respondents. We uphold the validity of the decision to reject the requests for compassionate appointment made by the applicant.

10. The O.A. is not allowed and relief is not granted. No orders as to costs.

(Dated this the 6th day of October 2021)

K.VEAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

bp

List of Annexures

Annexure A1: Death Certificate dated 07-08-96

Annexure A1 (a): True copy of Pension Payment Order 01-01-1997

Annexure A2: True copy of representations for compassionate appointment from Mr. Nadheem dated 25.05.2004, 29.11.2004.

Annexure A2(a): True copy of representations for compassionate appointment from Mr. Nadheem dated 29.11.2004.

Annexure A3: Order No.V/P/268/VIII/TRD dated 14.02.2005 offering temporary appointment to Mr. Nadheem A.M (1 page)

Annexure A4: Application requesting to keep the above offer in abeyance dated 21.02.2005 (1 page)

Annexure A5: Representation from this Applicant for compassionate appointment dated 15.05.2015 (20 pages)

Annexure A6: Subsequent representations dated 23.05.2016, 10.06.2017, 21.06.2019 & 19.09.2019 – (5 pages)

Annexure A7: Letter No. V/Z.735/42/2017 dated 27.11.2019 of Divisional Personnel Officer.

Annexure A8: Representation from Mrs. Nishana, Applicant dated 17.01.2020. (4 pages)

Annexure A9: Letter No. PB/CS/30 representation/Vol-XXVII dated 27.02.2020 of Principal Chief Personnel Officer, Southern Railway – HQ, Chennai.

Annexure A10: True copy of judgment of Hon'ble High Court of MP in WP No. 3769/2017 dated 09.10.2018 (downloaded from official website – 9 pages).

Annexure R1: True copy of Railway Board's letter No.E(NG)III/78/RC-1/1 dated: 03.02.1981.

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