

OA No. 291/588/2016

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/588/2016

Order reserved on 15.09.2021

DATE OF ORDER: 23.09.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Gunjan Nagar D/o Late Shri Sunil Kumar Nagar aged about 31 years (D.O.B. 03.09.1985) resident of H. No. 44, Kanak Vihar Colony, (Kanakpura), Jaipur (Rajasthan).

....Applicant

Shri Iliyas Khan, counsel for applicant.

VERSUS

Union of India through the Divisional Railway Manager (Est.), North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.

.... Respondents

Shri Y.K. Sharma, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

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"A. That the order no. 740/E/2015/30 dated 16.11.2015 (Annexure-A/1) and Railway Board's instruction No. E(NG)-II/2014/RC-1/SCR/5 dated 08.07.2014 (Annexure-A/2) by which compassionate appointment has been denied to the applicant on the ground that she is married daughter of deceased Railway Employee may kindly be quashed and set aside and the respondents may kindly be directed to give appointment to the applicant on compassionate ground with all consequential benefits.

B. Any other relief as this Hon'ble Tribunal deems fit and proper be also granted in favour of the applicant.

C. And cost be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the applicant, are that late Shri Sunil Kumar Nagar, father of the applicant was serving as Male Guard with respondents who expired on 11.03.2015 while in service. The ex-employee was having two issues namely, Gaurav Nagar (son) and Gunjan Nagar (daughter) i.e. the present applicant. The son of the ex-employee has already left home more than 10 years prior to the death of the ex-employee after his love marriage and his whereabouts not known to the family. The mother of the applicant is 55 years of age and is not in position to work. The applicant is B.A. from Vardhman Open University, Kota (Rajasthan). As the applicant is eligible for compassionate

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appointment, she has applied for the same. Respondents sent letter dated 16.11.2015 to the mother of the applicant by which the candidature of the applicant has been rejected for appointment on compassionate grounds stating that the applicant is a married daughter of the erstwhile Railway employee and she is not the bread winner of the family. Thus, being aggrieved by the impugned order dated 16.11.2015 and Railway Board instructions dated 08.07.2014 by which the candidature of the applicant has been rejected, the applicant has preferred the present Original Application for redressal of her grievance.

3. After issue of notices, the respondents have filed their reply and state that after the death of the ex-employee, his wife Smt. Kavita Nagar submitted an application for appointment on compassionate grounds for her son, namely, Shri Gaurav Nagar. Thereafter, Smt. Kavita Nagar made an application on 29.06.2015 and requested not to give compassionate appointment to her son, Gaurav Nagar but it may be given to her married daughter, namely, Smt. Gunjan Nagar i.e. the present applicant. The said application of mother of the applicant was examined in the light of RBE No.

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70/2014 dated 08.07.2014 on various issues including economic condition of the applicant, etc. and it was found that married daughter of the deceased railway employee is not the bread winner of the family, therefore, respondents vide letter dated 16.11.2015 (Annexure A/1) have informed the applicant that the application submitted by the wife of the deceased ex-employee was considered and rejected on the basis of the guidelines mentioned in Railway Board letter dated 08.07.2014 (RBE No.70/2014), therefore, the same has been rejected. Also compassionate appointment is not a vested right that appointment should be given as it is only given to the deserved candidates whose condition is indigent. Therefore, as the action of the respondents is just, fair, as per rules, the relief claimed by the applicant deserves no merit and the Original Application is liable to be dismissed.

4. The applicant has filed rejoinder denying the submissions of the respondents. She further stated that she was married on 28.11.2014 and her father died on 11.03.2015 i.e. within a span of 03 and half months and she was dependent on her father but the respondents have wrongly rejected her candidature stating that she is not the bread winner of the ex-

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government employee. The mother of the applicant did not have any issue except the applicant who can take care of her mother and to tide over the financial crisis which is caused due to the death of the erstwhile government employee. As per the law laid down by Hon'ble Allahabad High Court in the case of Vimla Srivastava vs. State of U.P. and Ors., [Writ Petition (C) No. 60881/2015], the applicant is eligible for compassionate appointment. Even the Full Bench of Hon'ble Uttrakhand High Court in the case of Santosh Kimothi has held that the married daughter is also member of the family of the erstwhile government employee and further directed the respondents to give compassionate appointment to married daughter. The same view has been taken by the Hon'ble Madras High Court in the case of Murugeswari vs. Executive Officer [Writ Petition (MD) No. 2084/2016, decided on 29h January, 2016] as well as in the case of R. Sushila vs. The Secretary to Government & Ors. (Writ Petition No. 21115/2015, decided on 15.07.2015). Thus, the respondents have committed a grave error in denying appointment to the applicant on compassionate grounds and the appointment is denied in illegal and arbitrary manner. Therefore, respondents be directed

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to offer appointment to the applicant on compassionate grounds and the present Original Application be allowed.

5. Heard learned counsels for the parties and perused the material available on record along with judgments relied by the parties.

6. The applicant has reiterated the facts as mentioned earlier and further stated that as the mother of the applicant is old and not in a position to work, the applicant is seeking compassionate appointment just to remove the financial crisis of the deceased employee's family otherwise the whole object of giving appointment on compassionate grounds will be frustrated as in the family there is no other male or female member to support the mother of the applicant and so the applicant may be given appointment on compassionate grounds to support her mother financially. Thus, respondents have failed to consider that a married daughter can also be dependent upon her parents after marriage and causing difference in sex is totally arbitrary, illegal and also in violation of Articles 14 and 16 of the Constitution of India.

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Therefore, the prayers of the applicant for grant of compassionate appointment may kindly be allowed.

7. The respondents besides reiterating their facts further stated that as per the Railway Board letter dated 08.07.2014 which specifically provides that in the case of married daughter subject to the condition that former should have been wholly dependent on the ex-employee at the time of his death then only compassionate appointment can be given. As seen, the applicant was not wholly dependent on the ex-employee at the time of his death, therefore, she is not entitled for compassionate appointment and also it was found that the applicant was not the bread winner for the family, therefore, she was denied compassionate appointment which is just and legal. It is made clear that appointment on compassionate grounds cannot be claimed as a matter of right. The case of the applicant was duly considered by the respondents as per rules and guidelines for appointment on compassionate grounds. It was stated that the object of compassionate appointment is to enable the family of the deceased employee to tide over the crisis resulting due to the sudden death of the bread-earner who has left the family in penury and

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without any means of livelihood. The respondents have considered the case of the applicant in accordance with the rules and policy and the applicant was not found fit as per the rules specified for issuance of appointment on compassionate grounds. The respondents have relied upon several judgments of the Hon'ble Apex Court wherein it has been held that object of granting compassionate appointment is to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

8. The short question which is required to be considered is whether compassionate appointment can be claimed as a matter of right by a married daughter who was not wholly dependent when ex-employee expired.

9. The factual matrix of the case is that late Shri Sunil Kumar Nagar, the father of the applicant, expired on 11.03.2015 while in service. He was survived by his wife, Smt. Kavita Nagar, her son, Shri Gaurav Nagar and his daughter, Gunjan Nagar i.e. the applicant. The mother of the applicant had first made an application for compassionate appointment of her son, Gaurav

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Nagar. But thereafter she made an application on 29.06.2015 for appointment on compassionate grounds for her married daughter, i.e. the applicant. The applicant was married prior to the death of the ex-employee. It is the claim of the applicant that she is only taking care of her mother and expects her mother to be financially secure and only to remove her from financial distress, she is claiming compassionate appointment.

10. On the other hand, the respondents state that they have examined the case of the applicant on various grounds including the economic condition of the family as well as in the light of RBE No. 70/2014 dated 08.07.2014 and have found that the applicant is not the bread winner of the deceased railway employee and also that she is not wholly dependent on the ex-employee at the time of his death and, therefore, she is not entitled for compassionate appointment.

11. We have observed that at the time of death of the ex-employee, the applicant was already married and has completed only about three and a half months of her marriage as she was married on 28.11.2014 and the ex-employee expired on 11.03.2015. This

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clearly shows that the applicant was not wholly dependent on the ex-employee and it also cannot be said that she was the bread winner for the family. As per Railway Board letter dated 08.07.2014 (RBE No. 70/2014), it is clear that the applicant does not fulfil the criteria as laid down in the letter dated 08.07.2014. The said letter specifically provides that in case of married daughter, the compassionate appointment can be provided subject to the condition that former should have been wholly dependent on the ex-employee at the time of his death, therefore, she is not entitled for compassionate appointment. Also she was not found to be the bread winner for the family on examination of her case.

12. We would like to observe that providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. The applicant has only a right to be considered for appointment against a specified quota even if she fulfils all the eligibility criteria and the selection is made of the most deserving amongst the several competing applicants to the limited quota of posts available. Moreover, appointment on compassionate grounds cannot be claimed as a matter of right. As

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seen, in the family, there are no dependent as the applicant herself has stated that her elder brother has already left the house after his love marriage and the applicant is already married. The wife of the ex-employee has no liabilities and no marriage to be performed as daughter was married prior to the death of the ex-employee. Therefore, merely compassionate appointment is sought by the applicant as a matter of right by mere averment to state that she is only to take care of her mother cannot suffice. The case of ex-employee was examined to find out whether they are in financial distress and not able to maintain but it is found that such is not the case and, therefore, rightly as per RBE No. 70/2014, the case of the applicant was rejected and she was informed vide letter dated 16.11.2015, (Annexure A/1), that she cannot be given compassionate appointment. Therefore, we are not inclined to consider the case of the applicant for providing appointment on compassionate grounds in view of the legal principles settled by the Constitutional courts across the country. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. This category of appointment cannot be claimed as a

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matter of right, when there is no crisis and the indigent circumstances are not found in the family. Coming to the grounds raised in challenge by the applicant as the same are not found convincing, the same cannot be considered.

13. We are not in agreement with the judgments relied by the applicant as each case depends on the facts and circumstances. In the case of R. Pitchaiammal & Anr. vs. The General Manager & Ors., (W.P. No. 29298/2016), before the Hon'ble Madras High Court, as relied by the applicant, the case for compassionate appointment was not rejected on the basis of Railway Board's instructions dated 08.07.2014 (RBE No. 70/2014) and the same was the position as far as the case of Smt. Vimla Srivastava, (supra), is concerned. Neither cases relied by the applicant are decided with reference to RBE Circular No. 70/2014 and as such the Railway Board has taken care of the main fact as to whether the married daughter is the bread winner for the family and that she was wholly dependent at the time of the ex-employee. Therefore, none of the cases, as relied by the applicant, cover the present case.

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14. In the case of Umesh Kumar Nagpal vs. State of Haryana & Ors., reported in (1994) 4 SCC 138 : 1994 SCC (L&S) 930, the Hon'ble Apex Court, in para 6 of the judgment, has held as under:-

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

15. In view of the observations made herein-above, we are of the opinion that there deserves no interference in the impugned order dated 16.11.2015, (Annexure A/1), and Railway Board's instructions dated 08.07.2014, (Annexure A/2), therefore, the request of the applicant for compassionate appointment cannot be entertained for the reasons mentioned above. As the present Original Application suffers from merits, the same is accordingly dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER