

OA No. 291/219/2018

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/219/2018

Order reserved on 26.07.2021

DATE OF ORDER: 30.07.2021

CORAM

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

Nikhil Lakhiwal Son of Late Smt. Nirmala Lakhiwal (Mother), aged about 22 years, r/o Vishnu Hill Town, Block B-66, Behind Saraswati School, Ajmer, Rajasthan-305007.

(Mother of the applicant Smt. Nirmla Lakhiwal was EX. AA- Dy. C.A.O. (T.A.), AII in Res. No. 3, (Group-C).

....Applicant

Shri M.S. Raghav, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through General Manager Western Railway (Headquarter), Churchgate, Mumbai-400020.
2. Sr. AFA/ADM, PFA's Office, Western Railway Churchgate, Mumbai-400020.
3. Dy. C.A.O. (T.A.), Western Railway, Ajmer, Rajasthan-305001.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conferencing).

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:-

“It is, therefore, prayed that:-

- A. That the impugned order dated 26/10/17 may kindly be quashed and set aside in favour of applicant and further, the respondents authority may be directed to grant compassionate appointment to the applicant on the post concern and to disburse the due arrear alongwith the interest.
- B. Any other direction and orders, which are deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.
- C. Cost of the O.A. may kindly be allowed to the applicant.”

2. The brief facts of the case, as stated by the applicant, are that late Smt. Nirmala Lakhiwal, Ex. A.A.-TAO-AII expired while in service on 25.07.1995 and after her sudden death as she was the only bread earner in the family, the family has become helpless and is in indigent condition. The father moved an application for compassionate appointment of the applicant alongwith relevant documents and as per letter dated 11.12.2002, respondents asked to submit an application for compassionate appointment after

OA No. 291/219/2018

attaining the age of majority. When father had applied for compassionate appointment at that time applicant's father had remarried on 07.05.2001 and had submitted the said details to respondents by an Affidavit. Applicant after attaining the age of majority submitted documents to respondents vide application dated 25.02.2015. When no action was taken by respondents, he personally met to the respondents and supplied the necessary documents, but the respondent No. 2 vide office order dated 26.10.2017, (Annexure A/1), rejected the application of the applicant for compassionate appointment on the premises that "widower has remarried". The reason for rejection of application is unjust and illegal as the applicant being totally dependent on his mother, after father's remarriage resides with his old aged grandmother and not with his father. Thus, being aggrieved by the inaction of the respondents in considering his genuine claim and as he is still in indigent condition and as he has a legitimate right to be considered for the said appointment, he is forced to file the present O.A. seeking compassionate appointment.

OA No. 291/219/2018

3. The respondents filed their reply stating that as per Railway Board letter dated 18.04.1985 (RBE No. 112/85), compassionate appointment is permissible subject to the condition that "the widow of deceased employee should not have remarried" and the same has been clarified vide Board's letter dated 01.07.2002, that the Board's instructions dated 18.04.1985 are applicable in the case of husbands of women employee. Thus, the action of the respondents is just and legal. It is further stated that as per rules, compassionate appointments can only be considered on attaining the age of 18 years. Admittedly, the father of the applicant remarried in 2001. It is further stated that compassionate appointment cannot be claimed as a matter of right. It is stated that after the death of the mother, father was the breadwinner of the family and the mark-sheet of Secondary School Examination clearly shows the name of step mother and that applicant was living with them. Hence, respondents deny the contention of the applicant that he resides with his age old grandmother. Thus, rejection of the candidature of the applicant as per the impugned order dated 26.10.2017 is just and fair and

OA No. 291/219/2018

the relief claimed by the applicant deserves no merit and the O.A. is liable to be dismissed.

4. The applicant has filed a rejoinder rebutting the claim of the respondents and stated that he is residing with his old age grandmother and he is fully dependent on his deceased mother. The remarks for rejection of claim for compassionate appointment is unsustainable as the father of the applicant has never applied for compassionate appointment but the father of the applicant has made an application for the son, who is the son of the deceased and he was fully dependent on his mother. The applicant at the time of death of his mother was minor and as soon as he became eligible, he applied for compassionate appointment and for which he is fully eligible. Merely remarriage of applicant's father does not curtail the rightful claim of the applicant as he was living separately and not with his father and has no concern with his matrimonial life. The condition of the applicant is very pathetic and he has no means to survive himself as well as his old age grandmother. Also mere name of step mother in Secondary School examination does not postulate that he is living along

OA No. 291/219/2018

with them. Due to the death of his mother, who was the only bread earner, it has left the family in penury and without any means of livelihood. As the widower has only made an application not for himself but for the son of the deceased, therefore, the impugned order is liable to be set aside. Thus, his genuine claim still exists and he prays for compassionate appointment.

5. Heard learned counsels for the parties and perused the material available on record.

6. The applicant besides reiterating the facts 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 death of the bread earner who has left the family in penury and without any means of livelihood. The applicant pointed out that he is fully dependent on his mother and has no other source of livelihood. The applicant relies on judgments according to which he is entitled for compassionate appointment. As the respondents have not rightly considered the claim of the applicant, he deserves appointment on compassionate grounds.

OA No. 291/219/2018

7. The respondents, on the other hand, pointed out that the submission of the applicant is totally incorrect. The respondents have considered his case in accordance with the rules and policy in vogue and case of the applicant cannot be considered for the reasons stated in the impugned order which is justified. The applicant cannot claim that he has an indefinite claim and right for compassionate appointment as otherwise the very purpose for grant of compassionate appointment will be frustrated. There are several judgments on the said issue which are very clear that the said appointment cannot be claimed as a matter of right. Respondents further clarified that the family is able to maintain themselves since 1995 till date goes to show that the condition of the family is not indigent. It was also pointed out that the family is able to maintain themselves from 1995 till date i.e. after the death of Late Smt. Nirmala Lakhiwal i.e. from 25.07.1995, which shows that the family is not in penury condition and cannot be said to be dying in harness. Therefore, the present O.A. has no merit and the same deserves to be dismissed.

OA No. 291/219/2018

8. The factual matrix of the case is that the mother of the applicant, late Smt. Nirmala Lakhiwal, expired on 25.07.1995 while working as A.A.-TAO-AII with the respondents and left behind her husband and son i.e the present applicant. The applicant was dependent on the deceased employee as she was the only bread earner for the family. His family is in indigent condition and he has no source of income and he resides with his old age grandmother, yet respondents have failed to consider his case. The reason for rejection of his case for compassionate appointment is unjustified as the father who is widower is not claiming compassionate appointment for himself but he is claiming compassionate appointment for his son i.e the present applicant. On the other hand, respondents state that as per RBE No. 112/85 dated 18.04.1985, the compassionate appointment is permissible subject to the condition that "the widow of deceased employee should not have remarried." The same is clarified vide Board's letter dated 01.07.2002 that the Board's instruction dated 18.04.1985 is applicable in the case of husbands of women employees. The grounds of challenge raised by the applicant are that after death of his mother, he is all

OA No. 291/219/2018

alone and has no means of livelihood and he was wholly dependent on his mother. As the object of the scheme for grant of compassionate appointment is to enable the family of the deceased to tide over the crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood and as the applicant is unable to make his both ends meet, as he is one of the dependents of the deceased and as he is eligible for such appointment, his claim for compassionate appointment is rightful. Also he was fully dependent on his mother and has no other source of livelihood, the rejection of his claim by respondents is unjustified. Therefore, as per definition of dependent, as applicant is fully dependent on his mother, respondents despite knowing these facts have rejected his claim for compassionate appointment on illegal and in a hyper technical manner which is unconstitutional and unjust as the case of the applicant was not considered in true spirit. There is no bread earner in the family and that the deceased has expired in harshness and so the family has come in indigent condition.

9. As observed by us, at the time of death of the deceased govt. employee, the applicant was a minor.

OA No. 291/219/2018

He has become major in 2013 yet the present O.A. has been filed by the applicant only in 2018 challenging the order dated 26.10.2017 whereby his claim for compassionate appointment has been rejected. It has been further observed by us that whatever reasons have been provided by respondents for rejection of claim of the applicant is immaterial on the very fact that the applicant is able to maintain himself from 1995 till date which goes to show that the family cannot be said to be in indigent condition or dying in harness. The very object and purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. Moreover, appointment on compassionate grounds cannot be claimed as a matter of right. If seen from the record, mother of the applicant expired on 25.07.1995 and the family is maintaining themselves for more than 24 years since filing of the present O.A. as the applicant has approached this Tribunal only in 2018. In these conditions, it is also clear that the family cannot be said to be either in penury nor can be said to be dying in harness as the applicant is able to maintain himself.

OA No. 291/219/2018

10. The grounds raised by the applicant pertaining to the definition of dependents are not disputed that the applicant can raise a claim for compassionate appointment as it is clear that he is one of the dependent of the late government servant. But the other grounds of the applicant raised by the applicant are not sustainable pertaining to claim of compassionate appointment as a matter of right.

11. The Hon'ble Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana & Ors., reported in (1994) 4 SCC 138 : 1994 SCC (L&S) 930, has categorically held that 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. Also, as per the latest judgment of the Hon'ble Apex Court in the case of Indian Bank & Ors. vs. Promila & Anr. reported in

OA No. 291/219/2018

(2020) 1 SCC (L&S) 312 : (2020) 2 SCC 729, the Hon'ble Apex Court has held that though Court has sympathy with the respondents about the predicament they faced on the death of deceased but then sympathy alone cannot give remedy to the respondents. Courts cannot substitute a scheme or add or subtract from terms thereof in exercise of judicial review.

12. In view of the observations made herein above, the impugned order dated 26.10.2017 does not deserve any interference and as the present Original Application suffers from merit, the same is, accordingly, dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat