

4

O.A. No. 603 of 2006

ORDER DATED 19<sup>th</sup> SEPTEMBER, 2008

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Heard Mr. R.K. Samantsinghar, Ld. Counsel for the applicant and Mr. G. Singh, Ld. Counsel for Respondents.

2. This is a special case where attention of this Tribunal is invited by the 2<sup>nd</sup> applicant, a near relative of the deceased Railway employee, by approaching this Tribunal for direction to the Respondents to consider his application for compassionate appoint under Rehabilitation Assistance Scheme adopted by the Railway Board. As per the scheme for compassionate appointment, only the widow/widower/son/un-married daughter is entitled for such benefit. However, the Railway Board while adopting the said notification, issued by the Govt. of India extended the benefit to the near relatives of a deceased employee, who dies in course of duty or in harness. Besides while in service due to medically in-capacitated/de-categorized, this provision was further relaxed by the Railway Board, in its circular dated 12.02.1990 and 16.05.1991, by which it is ordered that appointment on compassionate grounds to near relatives of a Railway employee dying in harness should also be considered. In the light of the above circular the applicant filed this application claiming that he being the nephew of one S.K. Kadar who died in harness on 10.10.1992,



5  
-2-

leaving behind him the applicant No.1, the widow and the 2<sup>nd</sup> applicant, the nephew has a right to be considered for compassionate appointment. As per the averments, the deceased employee had no issue and hence the 2<sup>nd</sup> applicant was adopted and being a Muslim the 1<sup>st</sup> applicant i.e. the widow of the deceased did not want to take up the job as per their customs, and therefore, the 2<sup>nd</sup> applicant filed an application for employment assistance. The applicants (1 &2) jointly filed an application on 06.07.1993. Since, the application so filed has not been considered by the Respondents the applicant approached the local M.P by a representation, who in turn, forwarded the same as per Annexure-A/3 letter to the Ministry of Railways on 16.12.1999. In pursuance of the said communication it was replied by the Respondents that only blood relations of the deceased employees are entitled for compassionate appointment and as the 2<sup>nd</sup> applicant is not a blood relation of the deceased Rly. employee he is not entitled for any appointment under the compassionate appointment scheme. It is, however to be noted that this reply was given by the Respondents to the local M.P. and not to the applicant. However, as informed by the local M.P. the applicant No.2 having no blood relation with the deceased employee is not entitled for compassionate appointment. Thereafter, the applicant approached this Tribunal by filing the present O.A.



3. Mr. R.K. Samantsinghar, Ld. Counsel for the applicant, at the outset invited attention of this Tribunal to 2.(ii) of RBE No.102/91 dated 16.05.91 issued in partial modification of Rly. Boards letter dated 12.02.1990, wherein it has been stated to consider compassionate appointment of near relative in case an employee dies in harness leaving behind only the widow, i.e. without any children. The Ld. Counsel for the applicant also submitted that the stand taken by the Respondents against the reply given to the letter of the local M.P. is not in accordance with the circular and the Rules followed by the Railway Board. That apart, the first applicant and the second applicant jointly had filed the application for employment assistance during 1993 itself and only on the default on the part of the Respondents the second applicant has not given any appointment under the scheme for Compassionate Appointment. Hence, this Tribunal should consider the matter and issue a direction to the Respondents to give appointment to the applicant No.2.


4. The Ld. Counsel for the Respondents, relying on the counter affidavit, contended that since the applicant has no blood relation with the deceased employee, and as per the general scheme of employment assistance only the widow/widower/son/unmarried daughters of the deceased are entitled for compassionate appointment, the claim of the applicants is not justifiable. The Ld. Counsel for the Respondents had also contended that the uncle of the 2<sup>nd</sup>

applicant, i.e. the deceased Railway employee although died during 1992, but the applicant had not filed any application within that time. ~~However~~, The applicant only filed application in 1993. That apart the applicant though even after receiving the reply from the Respondents through the local M.P to the effect that only blood relations are entitled for compassionate appointment, he did not approached this Tribunal in time. Hence this matter is a belated one and on this ground this O.A should be dismissed. Accordingly, the Ld. Counsel for the Respondents drew attention of this Tribunal through a circular dated 02.04.1996 Estt. Sl. No.32/96, wherein it is stated that as per the instruction of the Department of Personnel and Training dated 09.12.1993, the earlier circular extending the benefit of compassionate appointment to near relatives has been cancelled as per the notification of the Railway Board. In view of the above the applicant also is not entitled for any relief claimed.

5. As a reply to this contention raised by the Ld. Counsel appearing for the Respondents, the applicant placed reliance on the rejoinder. To the last contention of the Respondents, the Ld. Counsel for the applicant submits that as the uncle of the 2<sup>nd</sup> applicant died in 1992 and the application of the applicant No.2 along with the 1<sup>st</sup> applicant had been forwarded to the Respondents in 1993 as evidenced from the District Office. The stand taken by the Respondents is not tenable as the present circular which is relied on by the Ld. Counsel for the Respondents come to be issued in 1996 alone.

8

6. In the light of the contentions raised and the provisions relied on by the Ld. Counsel on either side and in the light of the provisions for compassionate appointment, the question to be decided in this O.A is that whether the applicants are entitled for the relief claimed ~~that~~ The uncle of the applicant died in harness and the applicant No.1 along with the 2<sup>nd</sup> applicant filed application in 1993 seeking compassionate appointment have not been disputed. In this context before considering the further contention of the applicant, it has to be borne in mind that the 1<sup>st</sup> applicant, the wife of the deceased employee, belonging to a particular community viz. Muslim community, has no freedom to apply for any public employment as per their customs and hence the application filed by the 2<sup>nd</sup> applicant deserved consideration on that score alone. It is also to be kept in mind that the deceased Railway employee was survived only by his wife and the 2<sup>nd</sup> applicant his nephew and if so, the circular issued by the Railway Board on which the Counsel for the applicant relied should have been considered properly, and therefore the 2<sup>nd</sup> applicant is entitled for the consideration of his application for employment assistance under the scheme. Admittedly, though the general scheme for employment assistance does not permit the employment assistance to any near relatives other than widow/didower/Son/un-married daughters, as the Railway Board had adopted the general scheme and extended the benefit to other near relatives as per the circular dated 12.02.90 and 16.05.1991, the benefit of that circular, ought to have been



given to the 2<sup>nd</sup> applicant in the matter of employment assistance as he is the nephew of the deceased Railway Employee. To prove these applicants had already filed necessary documents before the 2<sup>nd</sup> Respondents along with affidavit regarding the relation of 2<sup>nd</sup> applicant with 1<sup>st</sup> applicant.

7. Then the question of delay as contended by the Respondents also to be considered. In this context, Ld. Counsel for the applicant invited attention of this Tribunal to the Railway Board's letter No.E(NG)II/84/C-I/26 dated 6.10.95, by which the General Managers were empowered to consider time-barred cases upto 20 years old from the date of death of a Railway employee, provided appointment is sought for the first son/first daughter and that application for appointment is submitted within 2 years of attaining the age of majority of the candidate. These powers have since been relegated to DRMs/CWMs/HODs under Railway Board's letter dated 30.11.99. However, applicability of the above letter further speaks that the GMs are not divested with the powers to consider the requests for compassionate appointment in respect of cases up to 20 years, as per the provision (ii) laid down in the Railway Board's letter dated 30.11.1999.

8. In the above circumstance, the contention of the Ld. Counsel for the Respondents is not a reason that the O.A suffers from delay is not a reason to reject the claim of this applicant by this Tribunal.

3



11

fixed for taking up compassionate appointment in the Railways, such age limit is also not there. This also shall be considered by the Respondents while considering the application. In the above circumstances this O.A is allowed to the extent indicated above. No order as to costs.

L. K. P. G. 7

MEMBER (JUDICIAL)