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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

O.A.NO. 66/2011

Reserved on: 19.7.2012

Date of decision: 11.9.2012

CORAM

***HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. B K SINHA, ADMINISTRATIVE MEMBER***

Gordhan Lal S/o of late Shri Mangala
R/o Village & Post Lamba Kotra,
Dist.Nagaur (Raj) ward of Ex-Mate Banwali
Railway Station under Senior Section Engineer,
NW Railway, Sriganganagar (Rajasthan).

...Applicant

(By Advocate Mr. S.K.Malik)

Vs.

1. Union of India through General Manager,
North Western Railway, Jaipur.
2. The Divisional Railway Manager,
N.W.Railway, Bikaner.
3. The Divisional Personnel Officer,
N.W.Railway, Bikaner.

....Respondents

(By Advocate Mr. Vinay Jain)

O R D E R

Per B K Sinha, Administrative Member

This is the second round of litigation by the applicant for compassionate appointment directed against the letter No.E-33/CGA/06/G.L/x dated 4.2.2011 of the Divisional Railway Manager, Bikaner rejecting the claim of the applicant for compassionate appointment.

Relief(s) sought:

- (a) *By an appropriate writ, order or direction impugned orders dated 4.2.2011 (Annexure.A1) be declared illegal and be quashed and set aside.*
- (b) *By an order or direction respondents may be directed to consider the case of applicant and give appointment on compassionate ground on any Group D post and appoint him with all consequential benefits.*
- (c) *Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal.*

Case of the applicant

2. Admittedly, the applicant's father, employed as Mate at Bhanwali Railway Station under North Western Railway, Sri Ganganagar, breathed his last on 11.6.1985 leaving behind the applicant who was 2 years old and the mother of the applicant, an illiterate residing in the rural areas. Following his death the Family Pension was sanctioned vide PPO dated 31.3.1986 [A2]. The mother of the applicant filed application dated 5.8.2006 [A3] for compassionate appointment in favour of her son referred hereafterto as the applicant. The applicant's mother, on not getting a suitable response, followed it up with another application on 18.10.2006 [A4] with all necessary documents requesting the respondents to consider the case of compassionate appointment in favour of her son. The Respondents informed the applicant's mother vide letter dated 6.11.2006 [A5] that some contradictions had been noted in her application regarding the date of birth of her husband and that of his death. They further asked her to explain as to why the application for compassionate appointment not been filed within two years of attaining majority on 10.7.2001. The mother of applicant answered these queries without evoking any response. Perturbed by this silence on part of the respondents the mother of the applicant filed an application under RTI Act, in response to which it was intimated vide letter dated 7.7.2008 her request for compassionate appointment has been rejected. The applicant challenged this rejection vide OA No. 244/2008. This OA was disposed of with a direction to the respondents to re-consider the case of applicant for compassionate appointment in the light of the provisions incorporated at Clause 4 of Railway Board's policy dated 6.10.1995 and pass detailed and speaking order within three months from the date of receipt of a copy of the order. However, it was observed that the respondents will be at liberty to pass any order on the application of the applicant. Clause (4) of letter dated 6.10.95 of the Railway Board letter is as under:

(4) Wherever in individual cases of merit, it is considered that justification exists for extending consideration to cases where death took place over 20 years ago or where the application for appointment is made after over two years after attaining

majority, or where the application has been made for other than first son or the first daughter, the prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma circulated vide Board's letter No.E(NG)II/97/RC-1/143 dated 19.1.4.1988."

3. In compliance of the above order in OA 244/2008, the General Manager, North Western Railway passed the impugned order dated 4.2.2011 [A1] stating as under:

"In the instant case ex-employee Sh.Mangla has expired on 12.6.1985 and the widow Smt.Chukhil Devi has requested for appointment on compassionate grounds on 18.10.2006 to the son Shri Goverdhan (ie., applicant in the court case). Almost 21 years have elapsed since the death of ex-employee has occurred when the application has been submitted. Further same application has been submitted after 5 years from attaining majority by candidate.

As per Railway Board's letter No.E/NG/II/84/RC-1/26 dated 6.10.1995 on the individual merits of the case only those cases are considered wherein justification exists for extending consideration where death took place over 20 years ago, the prior approval of the Ministry of Railways should be obtained with personnel recommendation of General Manager.

The compassionate appointment need not be granted after a lapse of reasonable period. The consideration for such appointment is not a vested right which can be exercised at any time in future. The main object of CG appointment is to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner. The compassionate appointment cannot be claimed or offered after a considerable lapse of time and when the crisis is over.

In this case, there is no immediate urgency for the family to take care of a member. Since the application has been made after a lapse of a generation. The widow has to look after a major son and is getting family pension also.

In view of the above, there appears to be no special justification for consideration of your case for appointment on compassionate grounds, after a lapse of more than 20 years."

4. The applicant submits that the respondents rejected the application without following the letter dated 6.10.95 quoted above in which it is stated that a reference to the Ministry of Railways is necessary when delay of 20

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years or more is occurred. The financial status of the family, their present indigence etc. have not been considered by the General Manager while rejecting the request for compassionate appointment.

Stand of the respondents:

5. The respondents filed a counter-affidavit contesting the matter. They have stated that the first time the wife of the applicant submitted an application for appointment on compassionate for her son after lapse of period of 21 years from the death of her husband on 11.6.1985 and that too after 5 years of the applicant became major. On her request, a decision was taken vide head quarters letter dated 13.5.2008 was conveyed to Chukhli Devi (mother of applicant) by letter dated 28.5.2008 [R3]. The respondents submit that compassionate appointment cannot be claimed or offered after considerable lapse of time as the main object of the same is to enable the family to get over the financial crisis which faces a he time of death of sole bread winner. The respondents also allege that the applicant's mother has provided false information that the date of birth of applicant is 2.3.1985 whereas in the 8th class pass certificate the date of birth is shown as 10.7.1983. Applicant's mother is receiving family pension. In addition to that she has a house to live with one bigha of agricultural land. Had the family not been able to survive after the demise of the breadwinner the mother of the applicant would have applied for compassionate appointment which has not been the case indicating thereby the ability of the family to survive. The purpose of granting compassionate appointment has eroded with the efflux of time. Responding to the reference not been made to the Ministry the respondents state that such reference is only required where the application has been made within 2 years of the applicant attaining majority. The respondents further submit that the direction of the Tribunal have complied with in letter as well as in spirit in as much as the application has been considered and disposed of vide means of a reasoned and speaking

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order. The respondents have relied upon the judgment of the Hon'ble Supreme Court in **LIC of India Vs. M/s Asha Ram Chandra Ambedkar and others, 1994(1) SCALE 740** to state that the compassionate appointment cannot be claimed as a fundamental right. They have further relied on the decision of Hon'ble Supreme Court in **Umesh Kumar Nagpal's case 1994(3) SC 525** which states that compassionate appointment in fact is an exception to the equality in the matter of employment guaranteed under Article 14 and 16 of the Constitution of India because the object is to give immediate financial relief to the family in distress and the nexus between the action taken of granting compassionate appointment and object sought to be achieved of relieving financial distress with immediate effect which is a reasonable one. Respondent submit that there is no merit in the application and prayed for dismissal of the same.

Facts in issue:

6. After having gone through the pleadings of the rival parties, the files produced by the Railways and having heard the arguments of the learned counsels for the parties, the followings facts- in-issue arise for consideration:

- (i) *Whether the respondents have been correct in their interpretation of the order of this Tribunal in OA No.244/2008 dated 31.8.2010.*
- (ii) *What is the scope of Railway Board letter No.E/NG/2/84/RC-1/26 dated 6.10.95.*
- (iii) *Whether respondents are correctly invoked the Doctrine of Immediacy to reject the case of the applicant.*
- (iv) *What relief, if any, can be granted to the applicant.*

7. In so far as the first fact in issue is concerned, the question to be determined is that whether the respondents authority has been correct in assuming that the order of this Tribunal dated 31.8.2010 directs a reconsideration of the case of the applicant and its disposal by means of speaking order or whether it implies that the consideration has to be done within the ambit of the positive findings given in this order. In this regard it is apt to quote from order:

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"11. Under the circumstances, I am of the view that at this stage this OA can be disposed of without going into the merit of the case by issuing a direction to the respondents to reconsider the application of the applicant for compassionate appointment in the light of para 4 of the Railway Board's policy dated 6.10.95 (Annexure.A.14)."

"12. In the result, this OA is disposed of with a direction to the respondents to reconsider the case of the applicant for compassionate appointment in the light of the provisions incorporated at clause 4 of Railway Board's policy dated 6.10.95 (Annexure.A14) and pass detailed and speaking order in this regard. The respondents are further directed to complete the exercise within three months from the date of receipt of a copy of this order. However, it is observed that the respondents will be at liberty to pass any order on the application of the applicant. In the circumstances of this case, there will be no order as to costs."

8. From the reading of the order it is clear that the Tribunal had not gone into the merits of the case. The Tribunal had observed in Para 10:

"10. Thus from a perusal of clause 4 of the Railway Board's Circular dated 6.10.95 (Annexure.A14) I am satisfied that application for appointment on compassionate grounds can be considered in individual cases even after lapse of more than 20 years period. It appears from the record that the authorities have not considered the application of the applicant for compassionate appointment in the light of clause (4) of the above mentioned Railway Board's Policy issued vide letter dated 6.10.95."

9. In other words, the Tribunal has already held that the impugned order of OA 244/2008 which was under assualt has not been found sustainable and has been struck down. In that very OA the applicant had sought striking down of the order dated 13.5.2008 conveyed vide their letter dated 7.7.2008 at Annexure.A1 as illegal. In OA 244/2008 the applicant's submission is recorded as under:

"At that time the applicant was hardly two years old. Mother of the applicant is an illiterate lady and residing in rural area. After the death of applicant's father family pension was sanctioned in favour of the mother of the applicant vide PPO dated 31.3.1986 (Annexure.A2). After attaining the age of majority by the applicant, applicant's mother vide application dated 5.8.2006 (Annexure.A3) applied for compassionate appointment in favour of the applicant. As no reply was received from the respondents she again filed another application date 18.10.2006 (Annexure.A4) enclosing all necessary documents and requested the

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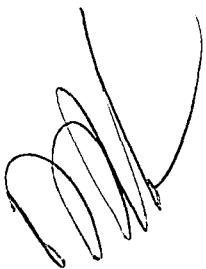
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respondents to consider the case of her son for appointment on compassionate grounds. Thereafter, vide letter dated 6.11.2006 (Annexure.A5) the respondents replied that after verifying the office record some contradictions were found in the application with regard to the date of death of her husband (applicant's father) and also with regard to the date of birth and name of the applicant and by the same letter the mother of the applicant was asked to explain the contradictions appearing in the documents. The respondents had also sought clarification as to why the application seeking compassionate appointment was not filed within two years of attaining the age of 18 years by the applicant, as he had attained the age of majority (ie. 18 years) on 10.7.2001, as per School certificate."

10. The defence of the respondents has also been recorded as under:

"As per their reply, the main contention is that the application for compassionate appointment was rejected mainly on the ground that certain contradictions regarding the date of death of applicant's father and date of birth of the applicant and name of the applicant were appearing in the application as well as in the documents attached with the application seeking compassionate appointment and that the application seeking compassionate appointment was time barred and devoid of any merit."

11. It is apt to mention that there has been an application of mind by the Tribunal which has considered the facts of letter E(NG)II/84/RC-1/26 dated 6.10.95 and has rejected the defence of the respondents. The Tribunal has clearly come to the conclusion that the applicant is entitled to a consideration of his case. We find that the same points have been agitated by the defendants in the impugned order dated 4.2.2011 in Annexure.A1 as quoted above in paragraph No. 3 of this order. Hence, it clearly emerges that these points have already considered and decided and do not sustain. It further implies that the directive of this Tribunal was to consider the case of the applicant on merits independent of the points which had been raised. We are of the opinion that the respondent authorities have grossly erred in the interpretation of the order of this Tribunal. It was not a carte blanche stage



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given but was subject to limitation that the case of the applicant could not be rejected on the points already considered.

12. In so far as the second issue is concerned, we have carefully gone through the letter of the Railway Board dated 6.10.1995: Para 3 and 4 reads as under:

3) The other conditions mentioned in Board's letter even number dated 22.12.94 remain unchanged.

4) Wherever in individual cases of merit, it is considered that justification exist for extending consideration to cases where death took place over 20 years ago or where the application for appointment is made after over two years after attaining majority, or where the application has been made for other than first son or the first daughter, the prior approval of the Ministry of Railways should be obtained by forwarding a detailed proposal with specific justification and personal recommendation of the General Manager in the prescribed proforma; circulated vide Board's letter No.E(NG)II/97/RC-I/143 dated 19.4.1988."

13. The general rule is that the application for compassionate appointment should be normally made within one year of the death of the employee. However, the question remains is that where the employee leaves behind minor children and the wife is not in a position to take up the service, then what would be the situation. Here, the Railway Board Circular under reference had made an exception to this and has provided where there is justification for consideration of cases in which death had taken place 20 years ago or where the applicant was a minor and had applied for compassionate appointment within two years of attaining majority, the case would be considered. This consideration has been restricted by the clause that (i) there should be justification and (ii) prior approval of the Ministry should be obtained by forwarding the detailed proposal with specific recommendation of General Manager in the prescribed form. In the instant case it is clear from the impugned order that the General Manager does not find justification in the case for the reason that it has been submitted not within a period of two years of the applicant attaining majority but within a

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period of 5 years. Admittedly the death of the father of the applicant had taken place on 11.6.1985 whereas the application for compassionate appointment has been filed on 5.8.2006 a period of almost 21 years. Here the clause "where the death took place for 20 years" or "where the application of appointment is made over two years after attaining majority comes. It is agreed that the application is made after 5 years but it has also made over 20 years on the death of the employee. This ground has already been covered in OA 244/2008. Hence, the door was still left open for consideration of the case of the applicant which is under a proceeding which has been specifically put in place for such cases.

14. In so far as the 3rd issue is concerned, there appears to be a contradiction between the Doctrine of Immediacy and that of relaxation given to the applicant to apply after a period of 20 years. The very rationale of compassionate appointment is to provide a mode of sustenance to a family where the income are dipped abysmally low to help the family to tide over the present financial distress. Obviously if the application is made after 20 years it demands that the Doctrine of Immediacy will not apply to this case. By issuing the Circular dated 6.10.1995 the Railway authorities have taken a conscious decision to waive the application of Doctrine of Immediacy from such cases as described in para 4 of the Circular. It is our considered opinion that it was, therefore, wrong on the part of the respondent authority to invoke the Doctrine of Immediacy in the impugned order.

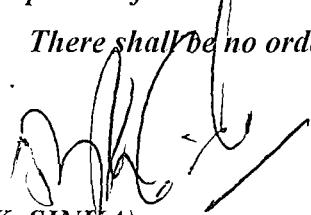
15. When provision exists for consideration for appointment on compassionate ground when the dependent attains majority, in such cases, there is no question of invoking the provisions of Doctrine of Immediacy. If at all, it has to be invoked, the same reckons not from the date of demise of the bread winner but the date the dependent attains majority and within the prescribed time of two years from the date of attaining majority, the individual has to apply for such compassionate appointment. In any event,

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all such cases, with the recommendations of the General Manager have to be referred to the Railway Board for their independent decision. What has been sought by the counsel for the applicant is that rejection at the level of the General Manager that too on an inapplicable ground is not tenable.

16. In consideration of the above facts, the OA is partially allowed with the following directives:

- (i). *The impugned order is quashed as bad in law.*
- (ii). *As per Para 4 of the Circular dated 6.10.1995 the case of the applicant be forwarded by the General Manager, with his remarks/recommendation to the Railway Board for consideration.*
- (iii). *The Railway Board shall dispose of the matter within a period of three months.*
- (iv). *There shall be no order as to costs.*


(B K SINHA)
ADMINISTRATIVE MEMBER


(Dr. K B S RAJAN)
JUDICIAL MEMBER

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