

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.75/2013

Jodhpur this the 14th day of July, 2014

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)

Gordhan Lal s/o Shri Mangala aged about 28 years, r/o Village and Post Lamba Kotra, District Nagaur (Raj) Ward of Ex.Mate Banwali Railway Station under Senior Section Engineer, N.W. Railway, Srigananagar (Rajasthan).

.....Applicant

By Advocate: Shri S.K.Malik

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. Director Establishment (N) II, Railway Board, Government of India, Ministry of Railway, New Delhi.
3. Divisional Railway Manager, North Western Railway, Bikaner Division, Bikaner.

.....Respondents

By Advocate : Shri Vinay Jain

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 against the order dated 18.12.2012 passed by respondent No.2 which was conveyed vide letter dated 01.02.2013 whereby applicant has been denied

appointment on compassionate grounds and, therefore, he seeks the following reliefs:-

- (i) By an appropriate writ order or direction the impugned order dated 18.12.12 conveyed through letter dated 01.02.13 be quashed and set aside.
- (ii) By an order or direction respondents may be directed to consider and give appointment on compassionate ground on any group 'D' post and appoint him with all consequential benefits.
- (iii) By an order or direction respondents may be directed to produce the recommendations of the first and third respondent, also approval of Ministry of Railway for perusal before this Hon'ble Court.
- (iv) Any other relief which is found just and proper be passed in favour of the applicants in the interest of justice by the Hon'ble Tribunal.

2. Short facts of the case are that father of the applicant late Shri Mangala Ram while working as Mate at Banwali Railway Station under N.W. Railway, Srigananagar expired on 11.6.1985 leaving behind the applicant, who was 2 years, and his mother. Thereafter mother of the applicant filed application for appointment of his son on compassionate grounds on 5.8.2006. When there is a silence in the matter on the part of the respondents, mother of the applicant sought information under RTI and vide letter dated 7.7.2008 it was intimated that her request for compassionate appointment has been rejected. The applicant challenged the said rejection by filing OA no.244/2008 which was disposed of with direction to the respondents to reconsider the case of the applicant in the light of provisions incorporated at Clause-4 of the Railway Board policy dated 6.10.1995 and pass a detailed and speaking order. In compliance to the order of this Tribunal, the respondents passed order dated 4.2.2011 and rejected

the same. According to the applicant the order dated 4.2.2011 was without following the letter dated 6.10.1995 and financial status of the family as well as present indigence have not been considered by the General Manager while rejecting request for compassionate appointment. The applicant has further challenged rejection of his claim vide order dated 4.2.2011 by filing OA No.66/2011 which was allowed vide order dated 11.9.2012 and the impugned order was quashed by directing the General Manager to forward the case of the applicant with his remarks/recommendation to the Railway Board for consideration and the Railway Board was directed to dispose of the matter within a period of 3 months. It is averred by the applicant that without considering the order dated 11.9.2012 passed by this Tribunal, respondent No.2 vide impugned order dated 18.12.2012 rejected the same stating that case of the applicant has been considered but the same could not be agreed in the light of the facts that the family has been able to manage all these years which shows clearly that it has some dependable means of subsistence and the same was conveyed through letter dated 1.2.2013 passed by respondent No.3. Therefore, aggrieved with the action on the part of the respondents, the applicant has filed this OA praying for the reliefs as extracted above.

3. The respondents by way of filing reply have denied the right of the applicant and submitted that the case of the applicant has been considered by the respondents in compliance of the earlier orders passed by this Tribunal and the applicant is not entitled to get any relief.

4. Heard the counsel for both the parties. Counsel for the applicant contended that for the purpose of appointment on compassionate grounds the Railway Board has issued policy dated 6.10.1995 and Clause-4 of this policy clearly provides that 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 application for appointment is made after over 2 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 justification and personnel recommendation of the General Manager. So there is no question that the family has been able to manage all these years, which is contrary to the provisions of their own policy. Counsel for the applicant further contended that the matter regarding rejecting the case of the applicant on earlier two occasions has already been considered by the Tribunal and the same was found contrary to their own policy. Therefore, the impugned order deserves to be quashed.

5. Counsel for the respondents contended that in compliance of the order of this Tribunal the case of the applicant has been considered but the same was not found fit case for giving appointment on compassionate grounds.

6. Considered the rival contention of the parties and perused the relevant material placed on record. This Tribunal in OA no.66/2011 has already considered in detail all the grounds taken by the respondents in the present OA and observed that 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 major and within the prescribed time of two years from the date of attaining majority, the individual has to apply for such compassionate appointment and vide order dated 11.9.2012, the following directions were issued:-

- (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/recommendations 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.

In compliance of the above order, the General Manager has forwarded the matter to the Railway Board and the Railway Board vide order dated 18.12.2012 conveyed to the General Manager in the following terms:-

"In the circumstances explained in your Railway's letter quoted above, your Railway's proposal for considering the case of appointment of Shri Govershan Lal s/o Shri Magla Ram, Ex-Mate, Bandwali under SSE, Sri Ganganagar-BKN Division on compassionate ground has been considered by the Board in pursuance of Hon'ble

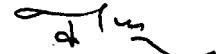
CAT/Jodhpur's order dated 11.09.2012 but the same could not be agreed to in light of the facts that the family has been able to manage all these years which shows clearly that it has some dependable means of subsistence. The very objective of such scheme of appointment does not hold good in the instant case."

7. Bare perusal of the Railway Board order as extracted above show that the claim of the applicant has been rejected only on the ground that the family has been able to manage all these years which shows clearly that it has some dependable means of subsistence, but not gone into merit of the case, which was not the intention of this Tribunal while deciding earlier OA vide order dated 11.9.2012. In para 11 of that OA the Tribunal observed that "It is further implied that the directives of this Tribunal was to consider the case of the applicant on merit 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." Now, the order of respondents does not show that it has considered the matter on merit. Therefore, the decision of the Railway Board cannot be said to be a justified order. The grounds taken by the respondents in the reply have already been taken into consideration by this Tribunal in the earlier OA and I find no specific other ground in the reply. Therefore, the impugned order dated 18.12.2012 deserves to be quashed and set-aside.

8. Accordingly, the impugned order dated 18.20.2012 (Ann.A/1) is quashed and set-aside. The respondent No.2 is directed to reconsider the matter on merit and decide the same by passing a

reasoned and speaking order within a period of six months from the date of receipt of a copy of this order.

9. The OA stands disposed of accordingly with no order as to costs.


(JUSTICE K.C.JOSHI)
Judicial Member

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