

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.47/2004

Dated Monday this the 12th day of April, 2004.

C O R A M

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

P.V.Santha
W/o Late P.V.Madhusoodanan
Residing at Kuniyil House
Post Naduvannur
Calicut 673 614.

Applicant

(By advocate Mr.V.V.Surendran)

Versus

1. The General Manager
Southern Railway
Chennai.
2. The Divisional Railway Manager
Southern Railway
Palakkad Division.
3. The Divisional Personnel Officer
Southern Railway
Palakkad.
4. Union of India represented by its Secretary
Ministry of Railways
Rail Bhavan, New Delhi. Respondents.

(By advocate Mr.P.Haridas)

The application having been heard on 12th April, 2004 the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant is the widow of Late P.V.Madhusoodanan who died in harness while working as Technician, Grade I, Mechanical Division, Mangalore after a prolonged treatment. It is averred in the OA that the applicant's husband died on 28.11.02 at Kasturba Medical College Hospital, Mangalore and the applicant was the sole dependent of the deceased Madhusoodanan. The applicant is a law graduate. The applicant's husband died in harness after a prolonged treatment for more than 3 years during which period he had to be hospitalized during regular intervals and had to be subjected to a number of surgeries. This made the

applicant penniless and indebted for lakhs of rupees towards repayment of loans taken for treatment of the deceased. The terminal benefits given covered a portion of the liabilities of the applicant. The family pension received by the applicant would not meet the expenses incurred towards repayment of loans and her day to day expenses. Therefore, the applicant made a representation dated 20.12.2002 to the 2nd respondent for grant of compassionate appointment. However, the 3rd respondent rejected the request vide order dated 5.8.2003. The reasons given in the impugned order A-3 are totally irrelevant and non-application of mind. She made an appeal to the first respondent requesting to reconsider the decision of the 3rd respondent, which was rejected by A-5 representation on the same ground and without due application of mind. Aggrieved by the nonfeasance on the part of the respondents, the applicant has filed this original application seeking the following reliefs:

- i) Call for the records relating to A-3 and A-5 and set aside the same.
- ii) To issue appropriate direction or order directing the 1st respondent to grant appointment to the applicant under the scheme for compassionate appointment without taking into account the age factor, dependent factor and the receipt of family pension.

2. The respondents filed a detailed reply statement contending that the applicant's husband P.V.Madhusoodhanan expired while in service on 28.11.02 due to natural cause and the applicant is 52 years of age and an advocate by profession, that she is not interested to claim her late husband's ancestral property for which she is the only surviving legal heir and she is living with her brother and not paying any rent, that the applicant received a sum of Rs.2,80,000 as settlement benefits which included Rs.2,50,800 towards Death Cum Retirement Gratuity,



that she would receive a family pension of Rs.2750 plus relief as admissible from time to time upto 28.11.09 and thereafter Rs. 1650 plus relief as admissible has been sanctioned to her. As regards the age for compassionate appointment, the lower age limit is 18 years and the upper age for general candidates is 30/33 years for Group C and D service as laid down for direct recruit and age for superannuation is 60 years and that the upper age limit can be relaxed on merits of each individual case. The applicant's case was analyzed with regard to the rules and instructions on the subject. The applicant was 52 years of age and was the only surviving dependent of the deceased employee and taking into consideration all relevant facts, it was felt that there was no merit in recommending for relaxation the upper age limit by over 20 years. It is further contended that if she was considered for appointment she would have less than 8 years of service left for superannuation and this would not qualify for retiral benefits. For the above reasons, it is contended that the respondents were justified in turning down the claim of the applicant.

3. The applicant filed a statement contending that Sri P.V.Madhusoodhanan died while in service after a prolonged treatment. Due to the illness of the applicant's husband, she had to borrow money from serval persons. The retiral benefits received by her from the department were hardly sufficient to clear the debts of the applicant. The applicant had taken a loan of nearly 2 1/2 lakhs on different occasions from private parties for the treatment of her husband. Apart from this, the applicant had taken a housing loan of Rs.2 lakhs from the Canara Bank, Quilandy branch. She had also taken a long of Rs.10,000 from the



South Malabar Gramin Bank and therefore, the applicant/deceased husband had availed a loan of almost Rs.6,35,000 on various counts/various agencies. Even the medical reimbursement claim of the applicant to an extent of Rs.60,000 was not being honoured by the respondents. After settling the loan repayment, the balance is not sufficient so as to enable the applicant to lead a decent life. She was a lawyer when she married and gave up the profession since marriage. Therefore a job in the Railways is the only option available to the applicant.

4. We have heard Sri V.V.Surendran, the learned counsel of the applicant and Sri P.Haridas, the learned counsel for respondents 1 to 4. The counsels have taken me through various pleadings and material placed on record.

5. The learned counsel of the applicant has invited my attention to an extract of the circular with regard to appointment on compassionate grounds to the dependents of the railway servants and submitted that there is no upper age limit prescribed for such appointment and even if it is so, it can be relaxed on merits. The only condition prescribed in the Scheme is that the educational qualifications should not be relaxed. When a widow cannot take up an employment and the children of the deceased are minors, such appointment can be kept pending or postponed till they attain the age of 18 years. The contention that the applicant is not interested to claim her husband's ancestral property is for the reason that the house has been constructed after obtaining a large number of loans in the name of the ancestral property of the late husband and the house has



not been completed for want of money. In order to finish the house, she may require a large amount of money. Therefore she is constrained to stay with her brother at his mercy. It cannot be taken as a reason to deny the right of the applicant.

6. Learned counsel for the respondents, on the other hand, argued that a family pension of Rs.2750 had been granted to the applicant upto 28.11.09 and thereafter at the rate of Rs.1650. Even if she is granted the compassionate appointment, she will have only 8 years of service more and the applicant may not have the privilege of being qualified for her retiral benfits for the reason that she must put in at least 10 years for pension and other benefits. Therefore, the respondents have not considered her fit for such appointment.

7. I have heard the arguments advanced by the both the counsel and have gone through the material placed on record. On going though the impugned orders it is clear that the denial of such compassionate appointment to the applicant was on account of "the age factor, absence of any other dependent to be supported and grant of family pension (Annexure A-3). In Annexure A-5 it is stated that "it is seen that the stance taken by the division in the matter is as per extant rules and as such it is regretted that your request for compassionate appointment cannot be adhered to". One of the main grounds for rejection of the relief to the applicant is the age factor. The scheme that has bneen extracted by the applicant in the OA stipulates that even though a minimum age of 18 years has been fixed for such appointment, the upper age is not stipulated. The contention of the respondents that the upper age for general candidates is 33 years for Group D/C

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servants and the age of superannuation is 60 years, that yardstick should be applied in this case. It is true that such compassionate appointments are being considered for direct recruitment quota. But the scheme has been introduced by the Government of India which has been extended to railway servants also as a benevolent scheme and the object of the scheme is to relieve the family of the deceased from the financial crunch and help the family to tide over the emergency caused by the death of the sole bread winner. The Hon'ble Supreme Court has time and again has made it clear that one of the facts that has to be considered by evaluating the merits and demerits of the applicant is whether the applicant is in penury or not. Different yardsticks had been adopted by the department to evaluate the financial circumstances of the applicant. One such circumstances to be considered by the department is the liability of the applicant. The specific averment in the OA is that the applicant is under financial liability by taking loans from different institutions for the purpose of building house or otherwise. According to her, she had received Rs.2,50,800 as DCRG. On going through the averments of the applicant, I have no reason to disbelieve on the ground that some of the loans are from financial institutions like banks etc. If this is true, the amount that had been received as terminal benefits of the deceased would be hardly sufficient to set off the liability and then what is left out is only the pensionary benefits that she received. The Hon'ble Supreme Court in a celebrated decision reported in 2001 SC ATJ 386 in Sabita Mazumdar and others Vs. UOI and others has declared that the pensionary benefits being granted to an applicant who seeks compassionate appointment cannot be a substitute for appointment on compassionate grounds.



8. Hon'ble High Court of Kerala in a decision reported in 2003 (2) KLR page No.46 in Sunil Kumar K.G. Vs. Union of India and others declared that "there cannot be a hard and fast rule in the matter of appointment on compassionate basis. Each case has to be decided on its own fact. The mere fact that a family has received terminal benefits, cannot, by itself, be a reason to delay appointment on compassionate basis. Even after the collection of terminal benefit, the family may be under difficulty".

9. Considering the fact that the scheme has been introduced with a laudable objective of assisting the family to survive the indigent circumstances caused on account of sudden death of the sole bread winner, I am of the considered view that the reasons given in the impugned orders in A-3 & A-5 are not in consonance with the rules and regulations and the scheme that is prevailing now. On the other hand in A-3, I find that the age factor has been taken as the main ground which cannot be considered a reason for rejection of the claim. In A-5 no application of mind seems to have been exercised. Hence A-3 and A-5 are not sustainable.

10. Learned counsel for the respondents invited my attention to Railway Board Circular No.E(NG)II/82/RR/1/32 dated 24.2.83 wherein it has been laid down that in case of compassionate appointment the competent authority can relax the age restriction in deserving cases.

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11. In the impugned orders, I do not find any attempt for such exercise of power by the concerned authority. It goes without saying that there is a clear provision for relaxation of age, which is not done in this case nor any proper application of mind exercised before passing the impugned orders. In my view, it is a fit case where the applicant could have been considered irrespective of the fact that she has attained the age of 52. Even if there is age restriction, the authorities could have relaxed it for the reason that she is the only surviving member. It is also averred that the upper age relaxation cannot be clubbed with that of the direct recruitment rules for the reasons that it is not always possible to be within that age of the surviving legal heirs of the deceased person in which case the age relaxation should have been exercised in a very prudent manner. The contention of the respondents that in that case the applicant will not be entitled to retirement benefits is not their concern but the concern of the applicant. In case she is appointed if she does not get retirement benefits/pension on superannuation, it is a loss to her but that will keep pace with the purpose of the scheme that minimum financial benefit is extended to the applicant till such time. Further I find that she is a law graduate but it does not mean that she is having a considerable income and she is not claiming employment to the turn of her qualifications because the scheme provides only employment at the entry level and she cannot claim more than what the scheme provides. Therefore, applicant's qualifications/profession can in no way come in the way of considering her for compassionate appointment. It is pertinent to note that the department has no case that it exceeds 5 percent ceiling limit as per the scheme. In the absence of such a condition the applicant's claim should not have been rejected.

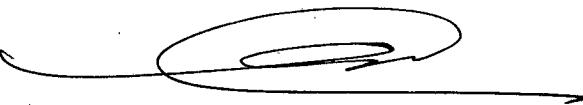
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12. Considering all the above aspects, I am of the considered view that A-3 A-5 are issued not in conformity with the rules prevailing and in terms of the rules on the subject. Therefore, I have no hesitation to set aside those orders and I do so.

13. In the interest of justice, I consider it necessary to direct the first respondent the General Manager by himself or being caused by any other competent authority to consider the case of the applicant afresh and pass appropriate orders granting the reliefs to the applicant if she is otherwise found fit, in relaxation of the age and on other counts that are mentioned above, within three weeks from the date of receipt of the copy of this order. The applicant is also directed to forward a copy of this order along with a copy of the OA and other documents if any to the first respondent forthwith to avoid further delay.

The OA is disposed of as above. No costs.

Dated 12th April, 1004.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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