

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.193/07

.Friday..... this the ..8th.. day of February 2008

**C O R A M :**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**

R.Selvam,  
Son and Guardian of M.Raman,  
Door No.1132, Municipal Chatram,  
Nethaji Road, Erode, Tamilnadu – 638 002.

...Applicant

(By Advocate Mr.S.M.Prasanth)

**Versus**

1. The Chief Personnel Officer,  
Southern Railways, Chennai.
2. The Senior Divisional Personnel Officer,  
Southern Railways, Divisional Office, Palakkad.
3. The Divisional Railway Manager,  
Southern Railways, Divisional Office, Palakkad. ...Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 15<sup>th</sup> January 2008 the  
Tribunal on ..8th February 2008 delivered the following :-

**ORDER**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**

This O.A is filed seeking compassionate appointment as the  
applicant's father had served as Safaiwala under the Southern Railways in  
Palghat Division at Erode. The applicant's father retired on 31.3.1995.  
According to the facts stated by the applicant his father had been mentally  
ill for almost 12 years and he claims that the Railway Authorities had called  
him for an enquiry on 5.11.1997 and assured him that a job would be given  
if he could obtain a Guardianship Certificate from a competent Court of  
Law. Accordingly he had obtained Guardianship Certificate from the Court

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of Principal District Judge at Erode and furnished to the respondents as Annexure A-6. Thereafter the applicant preferred a representation dated 27.4.2006 to the 3<sup>rd</sup> respondent requesting for compassionate appointment followed by several reminders. Not receiving any response he had filed O.A.749/06 before this Tribunal which was disposed of directing the 2<sup>nd</sup> respondent to consider the representation of the applicant. In compliance of the order of this Tribunal the 2<sup>nd</sup> respondent had considered the representation and passed the impugned order rejecting his request.

2. A reply statement has been filed by the respondents stating that there is no provision in the Railway Rules to grant appointment on compassionate grounds to a ward of an employee who retired on superannuation. As per the instructions contained in Railway Board's letter dated 12.12.1990, appointments on compassionate grounds relates to those appointments given to dependents of Railway servants (i) who lose their lives in course of duty or (ii) die in harness otherwise while in service or (iii) are medically incapacitated. The applicant's father retired from Railway service on superannuation after completing the age of 58 years. Hence the claim of the applicant is without any basis. The respondents have also denied that any assurance of compassionate employment was given to the applicant. In accordance with the practice being followed in Southern Railway, pension forms and other forms relating to settlement dues were sent to the applicant's father well in advance of the retirement but he had not submitted the same in time in spite of several reminders. Finally when the pension book was submitted in 1996 there were several omissions and so a letter was addressed by the 2<sup>nd</sup> respondent to the applicant's father to produce the required documents. Hence the

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applicant's contention that his father's retirement was known to him only when the Railway Authorities took steps for evicting the family from the Railway Quarters is totally false. As the settlement papers were still incomplete and quarter was not vacated, a Joint Inspection was ordered. The Inspection revealed that the applicant's mother was an employee of the Health Department of Erode Municipality. In pursuance of the Joint Inspection a letter was sent asking for production of Guardianship Certificate from a competent Court of Law. After receipt of Guardianship Certificate the settlement dues to the tune of Rs.1,94,453/- were disbursed to the applicant and he had received it also. Hence the claim of the applicant that the Guardianship Certificate was asked for making a compassionate appointment and that such an offer was given to him by the respondents are all imaginary and far from truth. Applicant's father though he was under treatment for mental ailment, was not medically invalidated during the time when he was in service. Unless an employee is medically invalidated for all classes of employment, he cannot be retired on medical invalidation. The Railway servants declared unfit even for the lowest medical category, may be absorbed in post/category identified as suitable for employment of physically handicapped persons etc. Hence the respondents are of the view that the claim of the applicant that his father should be deemed to have been medically invalidated is without any basis or merit.

3. Rejoinder has been filed by the applicant contending that the medical certificates produced along with OA show that the applicant's father was undergoing treatment for mental illness. He also enclosed representation stated to have been filed by his father seeking a favourable consideration

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of his case for discharge from service on the ground of mental illness. The applicant's father was not sent to a Medical Board for examination and he was allowed to retire from service. Had he been discharged on the ground of medical unfitness, the applicant would have become eligible for compassionate appointment, it is argued.

4. I have heard the counsel. The rule position is very clear. Counsel for the applicant made out a fervent plea that the authorities have meted out great injustice to the applicant's father while keeping him on the sick list and not declaring him as medically unfit thereby also depriving the applicant of compassionate appointment. This argument, though a plausible one, but made at this late stage, cannot provide any legal right to the applicant. The applicant's prayers are restricted to the following reliefs in this O.A :-

1. To call for the records leading up to Annexure A-8 and quash the same to the extent it denies the rightful claim of the applicant for appointment on compassionate grounds.
2. To direct the respondents to grant the applicant his rightful claim for appointment immediately, under the dying-in-harness scheme within a prescribed time limit.

5. According to the applicant, he has a rightful claim for appointment under the dying-in-harness scheme on the grounds that (i) he had signed the settlement papers on behalf of his father (ii) that he is qualified and eligible for a post in the Department (iii) there are a number of vacancies (iv) the respondents have failed to consider the valid medical documents. None of these grounds make him eligible for consideration of compassionate appointment. The rule position has already been stated above. The applicant's father had retired on superannuation and the fact

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that he had been ill and under treatment in the Railway Hospital at various spells and had been put in the sick list well before his date of retirement as evidenced by Annexure A-2 is not sufficient to hold that this case come under the category of dependent of medically incapacitated employee. Unless the employee had been declared so by following due procedure he cannot be considered as a medically incapacitated employee. To argue that it was a fit case for medical invalidation and had that been done, the situation would have been different after this passage of time i.e. more than 15 years is not legally tenable. The applicant or applicant's father should have approached the authorities immediately. Even though Annexure A-9 representation dated 29.11.1994 is filed along with the rejoinder it is unsigned and there is no record to show that it was received by the respondents. It was not pursued. The only representation stated to have been received by the respondents is dated 3.5.2002 from the mother of the applicant for payment of the settlement dues. Therefore none of the grounds urged by the applicant in the O.A supports his case. He is not entitled for compassionate appointment under the scheme as his father retired on superannuation. The facts are as simple as that. The respondents have acted within the provision of the rules and I do not find any justification to interfere with the impugned order at Annexure A-8 dated 15.1.2007. The O.A is, therefore, dismissed.

(Dated this the 8th day of February 2008)

*Sathi Nair*  
SATHI NAIR  
VICE CHAIRMAN

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