

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.411/08

Thursday this the 23rd day of April 2009

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

T.A.Prakasan,
S/o.T.K.Ayyappan,
Manalil House, Mavelloor P.O.,
Kottayam District.

...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 3.
3. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

...Respondents

(By Advocate Mr.P.Haridas)

This application having been heard on 23rd April 2009 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the refusal on the part of the respondents to consider him for compassionate ground appointment, consequent upon the demise of his father while in service.

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2. The brief facts of the case are that the applicant's father, Shri.T.K.Ayyappan, while working as a Trackman at Kottayam Railway Station died on 18.3.2001. Thereafter, the applicant's sister Smt.Preethi made a representation on 24.9.2001 to the respondents seeking compassionate appointment on the ground that she was a divorcee and she was dependent upon late Shri.T.K.Ayyappan. Thereafter, the applicant's mother also vide representation dated 3.3.2003, requested the respondents to consider her for compassionate appointment. Since she could not produce a decree of divorce, her request for appointment on compassionate ground was not granted by the respondents. However, the respondents vide letter No.V/Z 735/1048 dated 5.5.2003, considered the request of the applicant and directed him to apply for compassionate appointment in the prescribed proforma. Thereafter, the applicant's sister also vide representation dated 5.8.2003 withdrew her claim for employment assistance and requested the respondents to offer the appointment to the applicant. The respondents, however, rejected the request of the applicant vide letter No.V/Z 735/1048 dated 28.1.2004 and the applicant challenged the same before this Tribunal earlier by filing O.A.864/05. The said O.A was disposed of by this Tribunal, vide Annexure A-8 order dated 18.4.2006, permitting the applicant to make a comprehensive representation to the 2nd respondent, namely, the Chief Personnel Officer, Southern Railway, Chennai and directing the 2nd respondent to consider the same and dispose it of in the light of the extant rules/orders. Pursuant to the aforesaid direction of this Tribunal, the applicant made Annexure A-9 representation dated 2.5.2006 and the same was disposed of by the 2nd respondent, vide Annexure A-10 letter dated 20.6.2006 informing the



applicant that he was eligible to apply for appointment on compassionate grounds in the normal course but his request was not considered because the Government of Kerala has filed an appeal against the judgment of the Sessions Court, Kottayam acquitting him in a criminal case and the said appeal was still pending. Later, when the Hon'ble High Court of Kerala, vide judgment dated 11.12.2007 in Criminal Appeal No.8/04, finally held that there was no ground for interference with the order of acquittal of the applicant in the criminal case by the Trial Court, the applicant again approached the respondents, vide Annexure A-1.1 representation dated 4.3.2008, along with the said copy of the judgment. Since there was no response from the respondents, he approached this Tribunal by filing this O.A on 21.7.2008.

3. According to the counsel for the applicant the respondents has already conceded that the applicant was entitled to be considered for an appointment on compassionate grounds but the only impediment was the pendency of a criminal appeal against an order of acquittal. With his acquittal by the Trial Court which was finally upheld by the High Court the said impediment is removed and there is no other reason why the respondents should not consider him for compassionate ground appointment. He has also submitted that the family of the applicant is still in deep penury and unable to get over the crisis left behind by the demise of his father.



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4. Respondents in their reply has submitted that after the receipt of Annexure A-11 representation dated 4.3.2008 enclosing therewith judgment of the Hon'ble High Court dated 11.12.2007 in Criminal Appeal No.8/04 (supra), the 2nd respondent has considered the applicant's case once again and found his request for compassionate ground appointment was not acceptable for the following reasons :-

"(a) Even at the time of death of the ex-employee (Shri.T.K.Ayyappan) Shri.Prakasan was aged more than 30 years old. A person of such age cannot be said to be dependent on his father. In fact, as per Pass rules, only son below 21 years can be considered as a dependent.

(b) The widow is presumably 60 years old and is living in her own house. She is drawing family pension and she has no minor children to be educated or taken care of."

5. The applicant has filed a rejoinder. Counsel for the applicant has relied upon the judgment of the Apex Court in Govind Prakash Verma Vs. LIC of India & Ors. [2005 SCC (L&S) 590] wherein it has been held as under :-

" It was wholly irrelevant for single judge to take into consideration the amount which was paid as family pension to widow of the deceased and other amounts paid on account of terminal benefits under the rules. Hence respondents directed to consider claim of appellant for compassionate appointment within 3 months of the order."

6. Counsel for the applicant also relied upon Para 115 of the Railway Establishment Manual Vol.I, according to which, the competent authority can relax age limit to the extent warranted in the cases of compassionate appointments and recruitment of outstanding sportsmen. The said rules as under :-

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"Para 115 Relaxation of age limit :- The following may be added as Item (viii) to the existing para :

"(viii) The upper age limit may be relaxed to the extent warranted and justified while making appointment on compassionate grounds of sons, daughters, wives, wards etc. of Railway servants who die while in service or are medically incapacitated. The General Managers may also relax the age limit while making recruitment of outstanding sportsmen against the sports quota and against cultural/scouts/guides quota."

7. I have heard counsel for the parties. In this case the Government servant has passed away on 18.3.2001. Since then the family of the deceased has been trying to get compassionate ground appointment to one of the members. In the first instance, the applicant's married sister applied for appointment. It was rejected because she could not prove that she was dependent upon the family of the deceased Government employee. Thereafter, the applicant has applied for the compassionate ground appointment. His application could not be considered at the relevant time mainly for the reason that he was facing criminal trial. Finally, when he was acquitted by the Trial Court and the said judgment was upheld by the High Court of Kerala vide its judgment dated 11.12.2007, on the applicant's request, his case was once again considered by the respondents. The respondents have rejected his request on the ground that at the time of the death of deceased employee he was 30 years old and children below 21 years are only considered as dependent of the parents. They have also considered the fact that the applicant's mother is approximately 60 years old and she is having her own house and drawing family pension and there are no other minor children in the family.



8. In my considered view, respondents have not made any proper consideration of the applicant's request for compassionate ground appointment. It cannot be said that only sons below 21 years are dependent on the deceased Government employee for the purpose of appointment on compassionate grounds. As far as the minimum age limit for appointment is concerned, as pointed out by the learned counsel for the applicant, there are provisions in the rules for relaxation in genuine cases. Further, just because the wife of the deceased Government servant has been sanctioned family pension, the applicant's request for compassionate ground appointment cannot be rejected as in all cases of death where the family is entitled for pension, family pension is granted to eligible dependent members. I, therefore, direct the 2nd respondent to re-consider the case of the applicant for compassionate appointment ignoring the aforesaid grounds for the earlier rejection of his request. If the applicant is found eligible for such compassionate appointment the respondents shall relax the age limit for appointment in accordance with the rules. The 2nd respondent shall take a decision in this matter and communicate the same to the applicant within a period of two months from the date of receipt of a copy of this order. With the aforesaid directions, the O.A is disposed of. There shall be no order as to costs.

(Dated this the 23rd day of April 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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