

18/9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 314/96

Date of Decision: 2/10/97

S.A.Shekikh

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Anr.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri. -

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 314 / 1996.

Presented, this the 3rd day of October 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

S.A.Sheikh,
C/o.Permanent Way Inspector,
Jasai,
Dist. Raigad.

... Applicant.

(By Advocate Shri D.V.Gangal)

V/s.

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.
3. The Executive Engineer (Constrn),
The Central Railway, Panvel,
Dist. Raigad.
4. The Permanent Way Inspector,
Central Railway, Jasai,
Dist. Raigad.

... Respondents.

(By Advocate Shri S.C.Dhawan)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

This O.A. has a previous history of litigation.

The Original Application No.83/93 between the same parties was disposed of by the Tribunal by directing the respondents to consider the case of the applicant for compassionate appointment according to law and rules within a period of 3 months. In terms of the above instructions, the respondents have issued the  order dt. 22.9.1995 which is impugned in this O.A.

...2.

As the same is material, it is reproduced in full :

" In response to your application to G.M. Central Railway for appointment as Casual Labour on compassionate grounds, G.M. has passed following orders :

"Now, as per the directions of the Hon'ble CAT dt. 14.8.95, the application of Shri Sardar Alim Shaikh for appointment on compassionate grounds, has been considered by me. The corner stone of compassionate appointments on the Railways is based upon the principle of restoring a breadwinner to the bereaved family. In the present situation, both the father and the mother of the applicant were railway employees. The demise of the mother has not totally deprived the family of the breadwinner. Further, I am given to understand that the elder brother of the applicant is also employed on the Railways. No extreme distress situation in the family appears to be discernible in this case.

In view of the aforesaid, it is deserved that ;

- a) The extent rules on the subject, as mentioned above, do not permit appointment on compassionate grounds in the present circumstances.
- b) The father of the applicant, who is the breadwinner of the family is working in the Railways and there is no distress situation to warrant exercise of my discretionary powers for compassionate appointment.

I am therefore unable to accede to the request for appointment on compassionate grounds to the applicant.

These orders are issued in compliance of the Hon'ble CAT directives dt.14.8.1995."

2. The contention of the applicant is that, it is arbitrary to deny the appointment on the ground that normally it is the father who is the bread winner, and since in the present case the compassionate appointment has been sought on the ground of death of the mother who is not the bread winner. The counsel for the

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applicant points out that the reference in the Master Circular does not fully reflect the original circular, the reference in the Master Circular is as below :

"(ix) Normally only the father is taken to be the bread-winner of the family. In the event of both wife and husband are Railway Employees, on account of death of the husband employment is permissible to a ward but not on account of death of the wife."

3. The counsel has produced before me the original reference of the Eastern Railway and the precise decision of the Railway Board :

"Sub: Appointment on compassionate ground in the event of death of husband and wife (Both Railway employees).

No.CPO/SC/SA/Comp/CL.IV/896 Calcutta,
dated 26.8.1986.

In terms of Railway Board's letter No.E(NG) III/78/RC1/1 dated 7.4.1983, while offering appointment on compassionate grounds, it need not be checked whether another son/daughter is already working, but there should not be more than one appointment against one death/medical incapacitation.

A case has cropped up in this Railway where both husband and wife were Railway employees. Their second son was appointed on compassionate ground consequent upon the death of the husband. Late Sangam Hela, ex Fitter Gr.II under C&WS/Howrah while in service. Thereafter the wife Smt. 'Sumitra', Female Safaiwala also died on 7.11.1982 while in service and the 3rd son has applied for appointment on compassionate grounds on account of his mother's death.

The Board are requested to kindly clarify if two compassionate appointments, i.e. one against father's death and one against mother's death are permissible.

It is, however, presumed that there will not be any violation of rule if the 3rd son is given appointment on compassionate his mother's death, who was also a Railway employee.

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An early decision is requested.

R.B.E. No.214/86

Sub: Appointment on compassionate ground in the event of death of husband and wife (both Railway employees)

Ref: Your Railway's confidential letter No.CPO/SC/SA/Comp/CI.IV/896 dt. 26.8.1986.

The issue raised in your letter quoted above viz., whether two compassionate appointments - one on account of death of the father and another on account of death of the mother when both were Railway employees - are permissible, or not; has been considered by the Department of Railways (Railway Board). Normally only the father is taken to be the breadwinner of the family. Therefore, in the case referred to by your Railway, only one compassionate appointment is admissible. Accordingly your presumption that another son can be appointed on compassionate grounds on account of demise of the mother, is not correct."

4. According to the counsel, the real ratio of the Railway Board Circular is that only one compassionate appointment is admissible against one death. In this connection, he refers to the Master Circular Para XII(a) which reads as below :

"When offering appointment on compassionate grounds to a widow, son, daughter, etc. it need not be checked whether another son, daughter is already working; but in no case should there be more than one appointment against one death/medical incapacitation. For example, it should not be permitted where the family wants another son or daughter to be employed in lieu or in addition to an appointment already made on compassionate grounds."

5. According to him in the reference made by the Eastern Railway both husband and wife were railway employees, second son was appointed on compassionate grounds against the death of husband and later on the wife also died and compassionate appointment was sought for the third son, therefore whatever is stated in the Railway Board Circular about the father being the

real bread winner etc. is not really relevant and even if it is relevant, it is required to be ~~read~~ down because it is patently gender discriminatory. In the particular case of Eastern Railway, if the mother had died earlier there would have been no bar to the grant of compassionate appointment in terms of para 12(a) of Circular mentioned by him above. The counsel would, therefore, ~~would~~ argue that the applicant is entitled to compassionate appointment in the context of his mother's death irrespective of whatever is stated by General Manager regarding the father being the bread-winner.

6. It is seen, however, that apart from the reference to father being the bread-winner, the General Manager has arrived at a finding that no extreme distress existed situation in the family because the father is working and so also the elder brother of the applicant is also employed.

7. The counsel for the applicant would argue that considering the ratio of para 12(a) the fact that another brother is working is irrelevant and therefore, a direction for grant of compassionate appointment ought to be issued.

8. The counsel for the respondents has invited my attention to the Supreme Court Judgment in Umesh Kumar Nagpal V/s. State of Haryana and Ors. (1994) 27 ATC 537. In para 2 of the Judgment, the Hon'ble Supreme Court

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has observed as below :

" The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest post in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the

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public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

9. The counsel further invited my attention to my Judgment in O.A. No.95/95 Smt.Sellamal Thangaraj Muthan v/s. Union of India & Anr. decided on 13.10.1995. In that case the Tribunal observed that the applicant had not come with clean hands. According to the counsel/in the present case also, the applicant had not come with clean hands because in the ~~original~~ / the fact that the father is working in the Railways was suppressed by the applicant. The counsel for the applicant points out that a copy of the ~~original~~ / is not It cannot be a case of misrepresentation. produced by the Respondents. / The counsel for the however respondents ~~also~~ invites my attention to the Railway Board's Circular dt. 31.12.1996 which provides for appointment on compassionate grounds in cases of wards of casual labour with temporary status who die in harness. This envisages that the General Manager should exercise his personal discretionary power keeping in view the need to contain the total casual labour force as enjoined in the extant instructions.

10. The counsel for the applicant would contend that there is no material to show that the General Manager had tried to probe as to whether the case was that of extreme hardship or not.

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11. On the other hand, the counsel for the Respondents invites my attention to the following para of my Judgment O.A. 95/95 :

"Although the learned counsel for the applicant has tried to make out that every survivor of a deceased railway employee has a right to be considered for compassionate appointment, this contention is difficult to accept. It is well settled that compassionate appointment is an exception to the guarantee of equality in public employment under Article 16. In this connection we refer to Supreme Court judgment in Auditor General of India & Ors. Vs. G.Ananta Rajeswara Rao, Civil Appeal No.9998 of 1983 delivered on 8.4.1993 where the apex court was considering the appeal against the judgment of the Andhra Pradesh High Court which held the memorandum regarding compassionate appointment to be invalid under Article 16 of the Constitution. Hon'ble Supreme Court allowed the appeal partly and held that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Govt. employee is valid. In other aspects Article 16(2) is clearly attracted. It is thus clear that the Master Circular which has been annexed by the applicant has to be read in the context of law laid down by the Supreme Court."

12. Taking into account, the above discussion, I am of the view that the reference by the General Manager to the father being the bread-winner is required to be read down. At the same time, it is noted that the General Manager has turned down the request not only on the ground that the mother was not a bread-winner, but on the ground that considering the circumstances the distress test is not satisfied. I am also of the view that just as a reference to father being bread-winner is required to be read down. Similarly, the Rule of one death, one compassionate appointment is also required to be read down in the context of law laid down by the Supreme Court

in Umesh Kumar Nagpal's case and other cases.

13. I am therefore, of the view, that the communication by the General Manager rejecting the application for compassionate appointment cannot be said to be arbitrary nor can it be said to be against the rules. The O.A. is therefore dismissed with no orders as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

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