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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No.720 of 1987

Date of the order: 6-2-1990.

A. Sobha

... APPLICANT

Vs.

South Central Railway,
rep. by its General Manager,
Secunderabad.

... RESPONDENT

Appearance:

For the applicant : Mr.M.P.Chandramouli, Advocate

For the Respondent : Mr.N.R. Devaraj, SC for Rlys.

CORAM:

The Hon'ble Mr. D.Surya Rao, Member (Judicial)

and

The Hon'ble Mr. R.Balasubramanian, Member (Admn.)

(ORDER OF THE BENCH DELIVERED BY THE HON'BLE
MR. D.SURYA RAO, MEMBER (JUDICIAL)).

The applicant herein is the daughter of a deceased railway employee. Her father died in harness on 27-8-1976 leaving behind his widow, one son and three daughters. The applicant is the youngest daughter. She was below 18 years at that time, but married. The applicant's other two sisters and the brother were also married. It is alleged that her brother was not looking after the family as he had three children of his own. The applicant though was married in 1975^u during the life time of her father, was not living with her husband since the marriage

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was not a success. The applicant applied, on-
i.e. within five years of the death of her father, for
appointment on compassionate grounds, to a class-III post.
She was directed on 9-10-84 to attend an interview.
She states that she was found fit for appointment as a
typist. However, the Respondent by letter dated 12-2-85
intimated that she being a married daughter of the
deceased employee could not be considered for appointment.
It is stated that at that time an application was pending
for divorce. The marriage of the applicant was dissolved
by the court on 12-6-86. The applicant was advised to
send her application through a Member of Parliament.
Accordingly, Shri Bala Goud, M.P. made a representation
on her behalf. The grounds put forth therefor were that
the extension of the benefit of appointment on compassionate
grounds even to a near relative in case the widow is
not in a position to take up the employment was a ground
for her being given an appointment. It was also stated
that being the only daughter of the deceased employee,
she would act as a bread winner of the family and that
she being a divorced lady there should be no objection
in her being considered. The Respondent by letter dated
29-9-86 stated that as long as the son of the deceased
Railway employee is gainfully employed the married and
divorced daughter is ineligible to be termed as a bread-
winner. Thereupon, the said M.P. addressed a further
letter dated 3-11-1986. He cited therein item-9 of the
Railway Board's circular dated 29-8-83 which states
that when offering an appointment on compassionate grounds
to a widow/son/daughter, etc., it need not be checked up
whether another son/daughter is already working at the
the time of the death of the deceased. It is in this

context that the Member of Parliament stated that the widow was certifying that the daughter would act as a bread-winner. To this letter also the respondent replied on 5-12-86 denying the claim for appointment. The M.P. once again by letter dated 21-12-86 brought to the notice of the respondent that the decision of the respondent was harsh to the family. The respondent by letter dated 5-2-87 stated that the father of the applicant died in 1976 and she should have applied in 1977 itself. Since the Respondent was taking different stands for denying the applicant appointment, she got a representation made to the Hon'ble Minister for Railways. The Minister by letter dated 31-7-87 replied that except the widow nobody else was eligible for consideration for compassionate appointment. It is contended by the applicant that there is no limitation prescribed for compassionate appointment. Item-9 of the Circular dated 29-9-83 of the Railway Board does not prevent appointment of a widow/son/daughter if another son or daughter is working. Further it is contended that there is no bar for appointment of married daughters. The circular made it clear that even relatives are entitled to be appointed if they accept to act as a bread winner for the widow of the deceased. The applicant, therefore, seeks a direction for ^{her} appointment on compassionate grounds from the date when she was called for the interview i.e. 16-10-1984.

2. On behalf of the Respondents, a counter has been filed denying the claim of the applicant. It is stated that an enquiry was got made by the Welfare Inspector, that the report of the Inspector disclosed that the deceased had a son who was employed in the Railways since 1974, that the son is married and has two children, that he

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was living with his mother, wife and children and not separately, that the eldest daughter and second daughter of the deceased are married, that the applicant's marriage took place on 16-10-75 i.e. less than an year before the demise of the late employee, and that as per the widow's statement, the marriage was a failure and the applicant was forced to live with the parents. It is stated that she was not legally separated till 12-6-86. It is admitted that the applicant's mother had applied on 25-2-81 requesting that on compassionate grounds the applicant should be given employment, that the applicant was called for screening on 16-10-84 and found fit for a group-C post but the offer of employment could not be made and the same was communicated on 12-2-85. The reasons given are that the basic objective in granting compassionate appointment is to render immediate succour to the bereaved family and not at their convenience. Since the applicant had applied five years after the death of the deceased employee, it cannot be said that they were under desperate circumstances. It is stated that the appointment should have been asked for in 1977 itself and not in 1981 till the applicant got herself qualified for a class-III post. Such an appointment should have been given only when she is treated as an unmarried person. If the applicant is treated as married daughter she can be given appointment as a bread winner only in the special circumstances laid down in the Railway Board's letter dated 7-4-83. These instructions stipulate that the employee or ex-employee should have no son or daughter who is employed. It is stated that the appointment of the applicant as near relative could not be considered since the son of the deceased is employed in the railways. It is further stated that the

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applicant's case could not be considered under the earlier Railway Board's letter dated 30-4-79 since under the said rules the case could be kept pending only till the first son or daughter becomes major and such cases could only be kept pending for five years. The relaxation beyond five years can be granted only when the employee dies in the course of duty. While this period was relaxed to 10 years subject to General Manager's power, it is stated that the applicant in this case was born in 1959 and the first application was made only on 25-2-1981 i.e. three years after the applicant, the daughter, attained majority. It is stated that she should have applied within 12 months from the date of death of the deceased employee. It is stated that while there is no ban according to the rules to consider the married daughter for appointment on compassionate grounds, the General Manager should satisfy ^{himself} that the married daughter is a real bread winner. It is stated that in the instant case three General Managers have found that the applicant cannot be a bread winner as her case is not covered by the rules since there is a son already working. The representations made on behalf of the applicant, by an M.P. are not denied, but it is contended that the applicant is not eligible under the rules and therefore she cannot be given employment on compassionate grounds.

3. We have heard the learned counsel for the applicant Shri M.P.Chandramouli and Shri N.R.Devaraj, the learned Standing Counsel for the Railways on behalf of the Respondent. Shri Devaraj also produced the records for our perusal.

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4. The first question is whether the denial of the appointment by letter dated 12-2-85 was valid and proper. It is to be noted that the applicant had made a representation/application as long ago as in 1981 for appointment through her mother. The rules in force then were the Railway Board's instructions contained in letter dated 30-4-1979. This letter was considered by the Chief Personnel Officer, S.C.Railway and on such consideration of this letter it is found that the office has noted that the DRM, Broad Gauge, Secunderabad had reported that the request for appointment has been rejected on the ground that the applicant was married. Thereupon, the applicant's mother has represented to the General Manager that her husband had deserted the applicant. The C.P.O., S.C.Rly., thereupon, directed that the Board's rules may be checked and it may be verified whether the rules prohibit offering of appointment on compassionate grounds to married daughters. He further ordered that if they do not specifically so prohibit, Secunderabad Division may be advised to process the case by screening the applicant and forward their recommendations. Thereupon it was noted that the Board's instructions namely para-II of their letter dated 7-4-83 render the son/daughter/widow/widower of the ex-employee as eligible for appointment on compassionate grounds and that the instructions do not specifically indicate or prohibit appointment on compassionate grounds, of married daughters. It was stated that only a son-in-law cannot be considered. This noting also indicated that the original application for appointment, on 25-2-81, had been made within the time limit prescribed under the rules. Thus, the original application by the applicant as examined by the respondent, clearly indicate that it is within

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the prescribed time, that a married daughter cannot be denied appointment and that the applicant was eligible to be appointed. Consequently, her case was screened and recommended for appointment. This was ^{based} ~~altered~~ on the investigation report received from the Welfare Inspector deputed by the Railways themselves. This report indicates that the applicant was abandoned by her husband and she was living with her parents even before the demise of the deceased employee. It is further reported that the first two daughters are living with their husbands and that the son was also married with two children but living in the same house as his mother and the applicant herein. Thereafter, however, the applicant was denied the appointment by the letter dated 12-2-85 stating that it is regretted that the request of the widow of the deceased employee for appointment of ^{married} her ~~daughter~~ cannot be considered as per extent rules. It is seen from the noting made that the application was mainly treated as time barred as there was five years time limit prescribed for giving employment to a married but separated daughter. While admitting that the widow had applied for employment before February 1981, before the expiry of the five years limit, it is stated that the widow was not really desperate and if she had been so desperate she would have immediately applied for appointment within one year of the death of the deceased employee. An objection was also raised that she was not legally separated from her husband. It is further stated that the relaxation for employment of married daughters came into existence only much later that too to help in deserving cases. It is stated that the earlier order of the C.P.O. to consider the case of the applicant had caused embarrassment. It is, therefore, proposed that this is not a fit case for compassionate appointment.

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The further notings disclose that subsequent applications of the applicant for appointment were rejected on the ground that the son was working and treating the applicant herein as near relative for the purpose of appointment could not be made since the deceased had a son who is employed. The short question is whether the applicant could have been denied the employment. Admittedly, even according to the notes wherein the rule position was discussed, the applicant's request made through her mother in 1981 for appointment, was not time barred and was within the limitation prescribed under the rules. These notes also disclose that there is also no specific rule which prohibits a married daughter from being given appointment on compassionate ground. The 1979 rules which were the rules in force at that time do not specifically prohibit such an appointment to a married daughter. Despite the same, by a letter dated 12-2-85 the applicant's mother was informed that the appointment cannot be granted on the ground that she is married. On the basis of her eligibility in 1981, The applicant had been screened and was found fit for appointment. It is therefore, clear that the denial of appointment to the applicant subsequently in the year 1984 on the ground that appointment cannot be given to a married daughter was not warranted, nor was rejection in accordance with the rules. What was relevant to determine was whether under 1979 rules the applicant was eligible. If eligible she could have been considered and given appointment. That she was denied in 1985 as the 1983 rules have come into force cannot be a valid ground for denying her appointment. The Supreme Court has considered a similar case viz., AIR 1989 SC 1976 (Smt. Sushma Gosain and others Vs. Union of India and others). In that case the applicant was eligible for compassionate appointment under 1982 rules, in accordance with the relevant Government Memorandum. However, the matter was allowed to lie in wait

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till 1985 when a ban was imposed on appointment of ladies. It was held by the Supreme Court that the denial of the appointment is patently arbitrary and cannot be supported in any view of the matter. It was further held as follows:

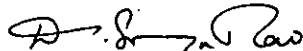
"It can be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment, should therefore, be provided immediately to redeem the family in distress."

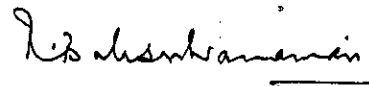
Applying the aforesaid decision, it is clear that if the applicant was eligible in 1981 in accordance with the 1979 rules and this is clear from the notings relating to her case as contained in earlier endorsement of the CPD which we have referred to supra, it would follow that she should have been given such an appointment. Denial of the same on the ground that she is not eligible under 1983 rules which came into force subsequently is improper. We accordingly direct that the applicant be given appointment within one month from the date of receipt of this order. In doing so we are following the observation laid down in Sushma Gosain's case by the supreme Court, which is binding upon us. The applicant's counsel has represented that she should be given appointment from 1984. It is further prayed that even if monetary benefit is not given at least seniority should be given from 1984. We are of the view that since the applicant has not been actually appointed and not performed any duty it would not be proper to direct retrospective appointment and payment of arrears of salary. We would also not direct retrospective appointment as the settled seniority position of various group-III employees would be disturbed. The interest of justice would be satisfied with a mere direction that the applicant should be given appointment within one

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month as indicated supra.

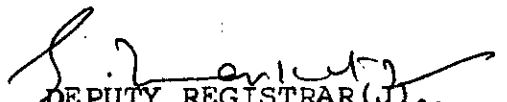
5. The Application is allowed with the above mentioned direction. In the circumstances of the case the parties are directed to bear their own costs.


(D. SURYA RAO)
Member (J)


(R. BALASUBRAMANIAN)
Member (A)

mhb/vcr.

6th February 1990.


DEPUTY REGISTRAR (J).
6-2-90

To

1. The General Manager, South Central Railway, Railnilayam, Secunderabad.
2. One copy to Mr. M. P. Chandra Mouli, Advocate, High Court Bldgs, Hyderabad.
3. One copy to Mr. N. R. Devaraj, SC for Rlys, CAT, Hyderabad.
4. One copy to Hon'ble Sri. R. Balasubramanian, member (Admin), CAT, Hyderabad.
5. One spare copy.

