

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

HYDERABAD

O.A.No.1109 of 1999.

DATE OF ORDER:16-2-2000.

Between:

Smt.K.Hanumakka.

...Applicant

a n d

1. General Manager,
(Representing UOI), S.C.Railway,
Rail Nilayam, Secunderabad-500 071.
2. Divisional Railway Manager,
South Central Railway,
Vijayawada Division, Vijayawada.

.....Respondents

COUNSEL FOR THE APPLICANT :: Mr.S.Ramakrishna Rao

COUNSEL FOR THE RESPONDENTS :: Mr.N.R.Devaraj

CORAM:

THE HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN



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: O R D E R :

(PER HON'BLE SRI JUSTICE D.H.NASIR, VICE CHAIRMAN)

1. The point arising for our consideration in this OA is whether the respondents are justified in refusing appointment on compassionate grounds to the applicant on the ground that he did not possess the prescribed qualification for the post in question, ^e Even when the date on which the applicant sought appointment on compassionate ground, the requirement of the minimum qualification did not exist.

2. The present applicant is the widow of the erstwhile employee of South Central Railway. He was medically invalidated and on such invalidation, compassionate appointment was granted to Mr.K.Nagendra, her second son, by a memo dated 26-8-1996 as Group-'D' Safaiwala. Prior to the said order, a communication dated 27-6-1996 was addressed to K.Nagendra that his request for appointment on compassionate grounds was considered by competent authority for Group-'D' post and his name was kept on waiting list for want of suitable vacancies. His waiting list No. was 18. It was also recorded in the said letter dated 27-6-1996, that he (K.Nagendra) was an illiterate person. He was further informed by the said letter that his case would be considered for the post of Safaiwala in Mechanical (C&W) Department shortly and therefore he was called upon to furnish his willingness or otherwise

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for being considered for appointment as Safaiwala in Mechanical (C&W) Department on or before 15-7-1996.

3. In the reply statement filed by the respondents, it is stated that during ~~the~~ investigations carried out by the Welfare Inspector, it came to light that the ex-employee died on 5-9-1993. A statement is also made in the counter affidavit that the School records submitted in proof of date of birth and educational qualification of K.Nagendra proved to be bogus. [Ⓢ] But ^{also Ⓢ} the widow had admitted the fact that her husband had submitted false record sheet. This statement is not contra^overted by the learned Counsel for the Respondents. [Ⓢ] Applicant.

4. Inspite of what is stated above, it is stated in the reply statement that the widow's explanation was considered and the case was approved for providing appointment in Group-'D' service treating the candidate as illiterate. Eventually, Sri Nagendra was considered for Group-'D' post of Safaiwala in Mechanical (C&W) Department and the same was communicated to him under letter dated 26-8-1996. The widow, however, submitted a representation dated 7-12-1996 stating that her son K.Nagendra met with an accident and died on 3-8-1996 and therefore her elder son K.H.Chandrasekhar be provided with appointment on compassionate grounds.

5. According to the learned Counsel for the Respondents Mr.N.R.Devaraj, the widow's request was more than 5 years old and did not fall within the powers of R-2 for consideration, ^{processed Ⓢ} The case was admitted and necessary enquiries

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were ^{made} ~~caused~~ by deputing Welfare Inspector. After examining the case, it was recommended by R-2 for obtaining sanction of ^{the} competent authority for relaxation of time limit. However, the competent authority, Railway Board, did not agree for relaxation of time limit for considering the appointment of K.H.Chandrasekhar, the first son of the applicant. The applicant was accordingly informed by letter dated 7-1-1999.

6. There is no dispute about the fact that the second son, who was offered appointment on compassionate ground passed away and it was in that circumstances that the applicant approached the respondents for granting compassionate appointment to her first son. It is also not disputed that the applicant's late husband Sri K.H.Hanumanthu joined service on 14-10-1961 and that he was incapacitated on medical grounds with effect from 22-6-1991 while working as Fireman-II and he was discharged from service. After his discharge, the ex-employee submitted an application dated 2-6-1993 for appointment of his son K.Nagendra on compassionate grounds. The case was registered and relevant records obtained by deputing Welfare Inspector. The documents given by the Supervisory Official of the ex-employee regarding his service and family composition were filed and have been produced along with the reply statement.

7. It is further stated in the reply statement that the ex-employee **submitted School records in proof of his date of birth and educational qualification, which were found to be**

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false, but

/his case was approved treating him as illiterate in the light of explanation dated 1-11-1993. He was provided with appointment as Safaiwala and advice was sent accordingly, vide Office letter dated 26-8-1996. The case was forwarded to Headquarters office, vide letter dated 10-11-1997 for obtaining sanction of the competent authority for relaxation of time limit. The case was examined by the Railway Board and the relaxation of time limit was not accepted. The applicant was therefore informed accordingly, vide letter dated 7-1-1999. Subsequently, the applicant's son K.H.Chandrasekhar submitted a representation on 6-7-1998 in person. He was apprised of the position on that date itself. No other representation was received from the widow.

8. It is further contended by the respondents in the reply affidavit that the applicant's contention that her case falls under the extant instructions of the Railway Board issued, vide letters dated 6-2-1982, 24-5-1982, and 27-12-1983, was not correct. Those instructions pertain to compassionate grounds appointment to the wards of missing Railway employees. The Railway Board instructions issued, vide letters dated 3-2-1981 and 12-2-1990, were also not applicable to the facts of the instant case as stated in the reply affidavit. It is further submitted in the reply affidavit that though instructions exist for consideration of compassionate grounds appointment, no rule was mandatory for consideration but should be applied judiciously in the individual cases of merit. The

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Administration had offered compassionate grounds appointment to her second son, vide letter dated 26-8-1996. It is further stated in the same paragraph in the reply affidavit that the applicant's son did not fulfill the requirement of minimum educational qualification of VIIIth Class pass for appointment in Group-'D' post as per instructions dated 4-12-1998 of the Railway Board. Hence, according to the respondents, he was not eligible for being considered.

9. The question before us therefore is whether appointment on compassionate grounds could be offered to the first son of the applicant in view of the fact that the applicant's second son expired in an accident soon after his case was favourably considered for compassionate appointment. ^{One} ~~The only~~ ground on which the first son's appointment was refused was to the effect that a period as long as 5 years had expired and the second ground was with regard to the minimum educational qualification being VIIIth Class pass. This latter ground of minimum educational qualification is not substantiated by the material papers, which have come on the record of this case. As far as delay is concerned, it appears from the copy of the Board's letter dated 4-12-1996 (Annexure.R-III, page 12 to the reply affidavit), that whenever a request for compassionate ground appointment is received within twenty years from the date of death of the employee for the first child/first son/first daughter within two years of his/her attaining majority, the same should be decided at the General Managers' level and should not be referred to the Railway Board. The requirement of

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minimum qualification is not stated in the above communication dated 4-12-1996. By letter dated 7-1-1999, the applicant was informed by the DPO/Corrdination/Divisional Railway Manager, Vijayawada, that her request for appointment of her son K.H.Chandra Sekhar on compassionate grounds had been examined by Competent Authority i.e., Railway Board, but the office regretted to inform her that her request could not be acceded to. This letter dated 7-1-1999 is totally silent about the reasons why the applicant's request for compassionate appointment for her first son could not be acceded to. However, in Board's letter No.E(NG)/II/98/RR-1/107, dated 4-12-1998, on the question of educational qualification for recruitment to Group-'D' posts in scale Rs.2550-3200(RSRP)/ Rs.2610-3540(RSRP), it is stated that the Board, after carefully considering the matter decided that in supersession of all previous instructions on the subject, the minimum educational qualification for recruitment to Group-'D' posts in scales Rs.2550-3200(RSRP)/Rs.2610-3540 (RSRP) on the Railways, irrespective of the category or trade or Department etc., will henceforth be Class Eight passed.

10. It is not in dispute that the applicant made representation to the 2nd respondent on 7-12-1996 requesting him to consider the case of her first son for appointment on compassionate ground in view of the death of the second son.

11. In my opinion the cause of action for compassionate appointment could be treated as having arisen on 3-8-1996, when the second son died in an accident. On that day i.e.,

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3-8-1996, the requirement of minimum educational qualification for recruitment to Group-'D' post had not been in force. Apart from the same it was clearly stated in the Board's letter dated 4-12-1998 as follows:-

"Board, after carefully considering the matter have decided that in supersession of all previous instructions on the subject, the minimum educational qualification for recruitment to Group-'D' posts in scales of Rs.2550-3200(RSRP)/Rs.2610-3540 (RSRP) on the Railways, irrespective of the category or trade or Department etc., will henceforth be Class Eight passed."(emphasis supplied)

12. Since the cause of action for the present OA arose much earlier than the date on which the requirement of educational qualification was introduced, it prima facie appears that the Board was not justified in refusing compassionate appointment to the applicant's first son on the ground that he did not possesses minimum educational qualification. This is apart from the fact that in case of appointments to be made for menial jobs like Safaikamdar etc., there is no imperative necessity of imposing educational qualification in view of the fact that presence or absence of such qualification would not cause any infirmity on the concerned incumbent to discharge his duties efficaciously.

However, I am not oblivious of the fact that the service Tribunal should as far as possible refrain from

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giving any mandatory direction to the Department either to appoint or to terminate the services of any incumbent, and therefore, I believe that the ends of justice would be served if a direction is given to Respondent No.1 to forward the necessary case papers relating to the compassionate appointment of the applicant's first son to the Railway Board for re-consideration in the light of the views expressed by this Bench in the present OA.

13. This OA is therefore disposed of with a direction to the first respondent to forward the case of the applicant's first son for appointment on compassionate ground within three months from the date of receipt of a copy of this Order.

14. The OA is disposed of accordingly. No costs.


(D.H.NASIR)
VICE CHAIRMAN

DATED: this the 16th day of February, 2000

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