

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

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**ORDERS OF THE BENCH**

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**Date of Order: 9.10.2014**

OA No. 271/2013

Mr. Sajid Ali, Counsel for the applicant.  
Mr. Dinesh Pathak, Counsel for the Respondent  
No. 1 & 4.  
Mr. Anupam Agarwal, Counsel for the  
Respondent No. 2 & 3.

Heard the learned counsel for parties.

Order Reserved.

*Anil Kumar*

(ANIL KUMAR)

ADMINISTRATIVE MEMBER

Adm/

17/10/14

order pronounced

today in the open

Court.

*[Signature]*  
17/10/14.  
C.O.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 271/2013**

**Order reserved on : 9.10.2014**

**Date of Order: 17.10.2014**

**CORAM**

**HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER**

Zahir Ahmed S/o Late Shri Alauddin Sheikh, aged 26 years, by cast Muslim, resident of 40, Schoolpura, Prem Nagar, Chota Khatiwara, Jhansi (MP) presently residing at 109/110, Rani Colony, Niwana Road, Jhotwara, Jaipur.

.....Applicant

(By Advocate Mr.Sajid Ali)

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur, Jagatpura, Jaipur.
2. The General Manager, Western Railway, Church Gate, Mumbai.
3. The Divisional Railway Manager, Ratlam Division, Western Railway, Ratlam.
4. The Divisional Railway Manager, Ajmer Division, NWR, Ajmer.

.....Respondents

(By Advocate Mr. Anupam Agarwal for  
Respondent No.2 & 3 and Advocate  
Mr.Dinesh Pathak for Respondent No.1&4)

*Anil Kumar*

## ORDER (ORAL)

The applicant has filed the present OA praying for the following reliefs:-

8. (i) This OA may kindly be allowed and order/communication dated 23.10.2012(Annexure-1) may kindly be declared illegal and the same may be quashed and set aside. Further, the respondents may be directed to give compassionate appointment to the applicant in Group- C post, as he is graduate and ITI holder with all consequential benefits.

(ii) That the applicants (deceased family) may be given the family pension from the date of death of the deceased employee i.e. 19.10.1987.

(iii) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

(iv) Cost of this Original Application may kindly be awarded in favour of the applicant.

2. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant submitted that the father of the applicant died on 19.10.1987 while in the service of the respondents. The applicant was minor at the time of death of his father. When he became major his mother filed an application on 16.12.2004 (Annexure A/5) with the prayer that the applicant has now attained 18 years of age, therefore, appointment on compassionate ground be given to the applicant. That the family of the deceased is at the stage of starvation. That the applicant received a communication from the respondents dated 14.5.2007 (Annexure A/11)

*Anil Kumar*

asking for certain information and some documents in regard to his appointment on compassionate ground. The applicant submitted all the details. Thereafter no communication was received from the respondents. The applicant filed an OA No.216/2012 before this Tribunal. The Tribunal vide its order dated 1.5.2012 directed the respondents to consider and decide the notice for demand of justice sent by the applicant. In compliance of these directions, the respondents rejected the claim of the applicant for appointment on compassionate ground vide their letter dated 23.10.2012. Being aggrieved by this order the applicant has filed the present OA.

3. The learned counsel for the applicant drew my attention to a circular issued by the Western Railway dated 17.2.2000 (Annexure A/17). He argued that as per the provisions of this circular the appointment on compassionate ground can be considered upto 20 years from the date of death of the employee if the application has been made within 2 years of ward attaining 18 years of age. The General Manager is empowered to consider and sanction such appointment. He also drew my attention to the provisions of the Circular which provide that compassionate appointment to widow/ward of casual labour/substitute who have attained temporary status are to be considered for appointment on compassionate ground. The learned counsel for the

*Anil Kumar*

applicant argued that the father of the applicant was casual labour with temporary status, therefore, applicant is entitled for consideration of appointment on compassionate ground.

4. The learned counsel for the applicant also argued that the father of the applicant died on 19.10.1987, therefore, the application for appointment on compassionate ground could have been made upto the year 2007. The date of birth of the applicant is 2.2.1986. Thus he attained majority on 2.2.2004. That the mother of the applicant applied for appointment on compassionate ground for the applicant on 16.12.2004 (Annexure A/15), thus she applied for appointment on compassionate ground within 2 years of ward attaining 18 years of age as provided in the circular dated 17.2.2000 (Annexure A/17). That the family of the deceased is in indigent condition. The applicant is graduate and ITI diploma holder. Thus the applicant fulfilled the criteria for consideration of his appointment on compassionate ground.

5. The learned counsel for the applicant further argued that his candidature for appointment on compassionate ground has been rejected on the ground that his case is more than 25 years late and the employment on compassionate ground is not a vested right. That the appointment on compassionate ground is provided for immediate relief to the family of deceased. That neither the mother of applicant

*Anil Kumar*

applied for appointment on compassionate ground for herself nor she got the name of the applicant registered at the appropriate time for appointment on compassionate ground.

6. The learned counsel for the applicant argued that the letter dated 23.10.2012 (Annexure A/1) is against the policy guidelines of the Western Railway dated 17.2.2000 (Annexure A/17). The mother of the applicant applied to the respondents well within time in 2004. The respondents have not considered the present condition of the family of the deceased. The case of the applicant was pending with the respondents. The policy itself provides that in the death cases, appointment on compassionate ground can be considered upto 20 years old. Therefore, the respondents be directed to provide employment to the applicant on compassionate ground.

7. On the other hand, the learned counsel for the respondents No.2 & 3 submitted that the father of the applicant was a casual labour and, therefore, the applicant is not entitled for compassionate appointment. That the father of the applicant late Shri Alauddin Shiekh died on 19.10.1987. The family of the deceased was surviving since his death till the filing of the Original Application without such an appointment. In fact the very purpose of compassionate appointment is to provide immediate support

*Anil Kumar*

to the family at the time of distress. The applicant not only survived but also did his education from a private public school. It clearly goes to show that the financial condition of the family was sound enough. The hon'ble Apex Court has held that the compassionate appointment cannot be claimed as matter of right especially when the ward survived without it for a considerable period of time. Therefore, any challenge to the impugned order to seek compassionate appointment is without any substance and therefore, the OA needs to be dismissed.

8. The learned counsel for the respondents further argued that the first application for compassionate appointment was received in the office of the respondents on 26.3.2007 which was replied through office letter dated 14.5.2007 seeking certain documents/record from the applicant. At the time of death of his father his family was having two dependents i.e. widow and the applicant himself who was of the age of one year. They were not getting family pension or any other assistance yet they survived without such appointment. It clearly proves that they were not in need of compassionate appointment. As per Railway Board letter dated 30.11.1999 as circulated by the General Manager, Western Railway vide letter dated 17.2.2000 (Annexure R/1), compassionate appointment is for immediate relief to the family where an employee died in harness leaving his family in penury and

*Anil Kumar*

without any means of livelihood. Thus the whole object of granting compassionate appointment is to enable the family to tide over the sudden crises due to loss of the sole bread winner.

9. The learned counsel for the respondents denied the receiving of application of the mother of the applicant dated 16.12.2004 (Annexure A/5) by the respondents. However, he argued that even if it is admitted that such application was submitted by the mother of the applicant even then the case of the applicant for appointment on compassionate ground has no merit because the family of the deceased survived for long years since the death of his father.

10. The learned counsel for the respondents admitted that as per the policy dated 17.2.2000 (Annexure R/1), the General Manager of the concerned Railway is empowered to consider the case upto 20 years from the death of the employee but such case for grant of relaxation has to be considered judicially in the circumstances of each case and not arbitrarily. He argued that applicant survived without such appointment for 17 years prior to his application, thus he was not in need of compassionate appointment. Accordingly rejection of his application/legal notice vide order dated 23.10.2012 (Annexure A/1) is just and legal.

11. The learned counsel further submitted that the application of the applicant for appointment on

*Anil Kumar*

compassionate ground was submitted after more than two years from the date he attained the majority and, therefore, the provisions of circular dated 17.2.2000 (Annexure R/1) would not be applicable in the case of the applicant. Thus the applicant has failed to make out any case for consideration for providing appointment on compassionate ground to the applicant, hence OA deserves to be dismissed with costs.

12. The learned counsel for respondents No.1 & 4 submitted that the applicant submitted his application for appointment on compassionate ground before the Divisional Railway Manager, Ratlam Division Western Railway and it was for the Divisional Railway Manager, Ratlam Division to decide the case of the applicant as per rules. However, he adopted the arguments of the learned counsel for the respondents No.2 and 3.

13. Having heard the rival submissions of the parties and after perusal of record I am of the opinion that the applicant has not been able to make out any case for interference by this Tribunal in favour of the applicant. It is not disputed that the father of the applicant died on 19.10.1987 i.e. almost 27 years ago. I entirely agree with the arguments of the learned counsel for the respondents and also the written submissions of the respondents that the very object of the scheme for providing appointment on compassionate ground

*Anil Kumar*

on the death of an employee cannot be claimed as a matter of right. That the whole object of granting the compassionate appointment is to provide immediate relief to the family where an employee died in harness leaving his family in penury and without any means of livelihood. The scheme is to enable the family to tide over the sudden crises due to loss of the sole bread winner and in this case it is admitted that the father of the applicant expired on 19.10.1987, therefore, at this belated stage the applicant cannot claim appointment on compassionate ground.

14. However, the circular of the same respondents dated 17.2.2000 (Annexure R/1) which is based on Railway Board letter dated 30.11.1999 provides that in the death case upto 20 years old, appointment to the eldest son or eldest daughter of the deceased employee can be considered, if the application has been made within 2 years of ward attaining 18 years of age. General Manager is empowered to consider and sanction such appointment. Thus, there appears some contradiction in the provision of the circular dated 17.2.2000 and the object of the scheme as argued by the learned counsel for the respondents. If the respondent department can wait for 20 years to provide appointment on compassionate ground then certainly the family of the deceased would be surviving during this long 20 years, otherwise how would the dependents of the deceased would

*Anil Kumar*

become eligible to get employment after 20 years. I do not find any force in the arguments of the learned counsel for the respondents that since the applicant was educated at a private school, therefore, it cannot be said that the family of the applicant was not indigent. Every child has a right of education. If the minor child of the deceased employee is not educated then the respondents would take a plea that the dependent of the deceased does not possess the requisite qualification which is required for a particular job.

15. In the present OA the respondents have stated that the family of the deceased is not indigent because the family of the deceased survived for long years since the death of his father. But the respondents have not given the details of the income of the widow. The applicant admittedly was minor hence he could not be an earning member. The respondents have also not stated whether the deceased was having own house or any other immoveable property. It has been admitted by the respondents that the deceased was not entitled for pension and, therefore, the widow of the deceased was sanctioned any family pension. Thus the respondents should have made an objective assessment of the financial conditions of the widow or the applicant. But I am not issuing any direction in this regard to the respondents because the claim of the applicant for appointment on compassionate grounds has been rejected

*Anil Kumar*

due to inordinate delay. The law is well settled by the Hon'ble Apex Court that the object of the scheme for providing employment on compassionate ground is to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner and that the compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In the present case the father of the applicant died 27 years ago.

16. The Hon'ble Supreme Court in the case of Umesh Kumar Nagpal vs. State of Haryana [JT 1994(3) SC 525] has held that ;

".....the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

17. Further, the Hon'ble Supreme Court in the case Jagdish Prasad Vs. State of Bihar [JT 1995 (9) SC 131: 1996 (1) SCC 301] had observed that;

"The very object of appointment of a dependent of the deceased employee who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

*Anil Kumar*

18. In the case of MD,MMTC Ltd., New Delhi and another Vs. Pramoda Dei alias Nayak[1997 (11) SCC 390] it is observed by the Apex Court;

"As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crises and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

19. Further, the Hon'ble Supreme Court in the case of S.Mohan Vs. Government of T.N. [1998 (9) SCC 485 ] stated that;

"The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

20. The Hon'ble Supreme Court in the case of Haryana State Electricity Board Vs. Naresh Tanwar [JT 1996 (2) SC 542 : 1996 (8) SCC 23] has held that;

"It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of the compassionate appointment, as an exception to the general rule open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case it has been also indicated that the very object of the appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

*Anil Kumar*

21. The Hon'ble Supreme Court in the case of State of U.P. Vs. Paras Nath [1998 (2) SCC 412], has held that;

"The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

22. From the perusal of the above judgments of the Hon'ble Supreme Court it is very clear that the law on appointment on compassionate ground is well settled. In the present OA the application for appointment on compassionate ground according to the applicant was first moved in the year 2004 i.e. after 17 years of the death of the employee. Today we are in 2014. As stated earlier the father of the applicant expired on 19.10.1987 i.e. 27 years ago, therefore, at this belated stage the respondents cannot be directed to reconsider the claim of the applicant for providing employment on compassionate ground.

23. With regard to the prayer of the applicant regarding the grant of family pension to the applicant, the learned counsel for the respondents argued that the father of the applicant being casual labour was not entitled for pension and, therefore, his family is also not entitled for family pension.

*Anil Kumar*

In fact, as per rules casual labour is not entitled any service benefits, however, the applicant and his family by way of compensation have got the benefit of the order at Annexure A/4, therefore, the applicant cannot be sanctioned family pension. The learned counsel for the applicant neither in the pleadings nor in rejoinder filed by him nor during the arguments have mentioned any Rule or the Railway circular under which the applicant can be sanctioned family pension. Therefore, in view of the submissions made by the learned counsel for the respondents I am of the considered view that the applicant has failed to make out any case for relief for grant of family pension to the deceased family.

24. Therefore, I find no merit in the present OA. Consequently, the OA is dismissed with no order as to costs.

25. However, before parting with the case the Tribunal would like to observe that the respondents No.1 & 2 may re-examine the provisions of the circular issued by the Western Railway dated 17.2.2000 (Annexure R/1), particularly, with regard to the time limit given in this circular for considering the case of compassionate appointment on the death of an employee. The respondents may also like to lay down a fair and transparent guideline for determination of the indigent condition of a family of the deceased. All the judgments of the Hon'ble Supreme Court as referred in this order were passed prior to 17.2.2000 i.e. the date of the circular at

*Anil Kumar*

Annexure R/1 and even prior to the date of the Circular of the Railway Board dated 30.11.1999 which has been referred to in circular dated 17.2.2000. Perhaps the law settled by the Hon'ble Supreme Court in this regard was not brought to the notice of respondents No.1 & 2, or even before Railway Board, therefore, they may re-examine the issue in the light of judgments and the ratio decided by the Hon'ble Supreme Court in the case of appointment on compassionate ground. Since the circular dated 17.2.2000 is based on the Railway Board's letter dated 30.11.1999, therefore, if it is necessary for concerned General Manager i.e. respondent No.1 & 2 to take the guidance of the Railway Board in this matter then they are at liberty to do so. The letter of the Railway Board dated 30.11.1999 which has been referred in the circular dated 17.2.2000 is not before the Tribunal in the present OA nor the Railway Board is a party respondent in the present OA, therefore, this Tribunal is not in a position to issue any direction to the Railway Board. Respondents No.1 & 2 may issue fresh guidelines, if necessary, within a period of 4 months from the date of receipt of the copy of this order.

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

Adm/