

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1434/2013
With
OA No.4339/2013

Order Reserved on: 23.05.2016

Pronounced on: 31.05.2016.

Hon'ble Mr. K.N. Shrivastava, Member (A)

Km. Divya Goswami,
D/o late Shri Bharam Parkash Giri,
R/o 17/66, Than Singh Nagar,
Anand Parvat, Karol Bagh,
Delhi.

-Applicant

(By Advocate Shri Shanker Davite)

-Versus-

1. Union of India through
General Manager,
H.Q. Office, Baroda House,
N. Rly, New Delhi.

2. Sr. Divisional Personnel Officer,
Divisional Railway Manager Office,
State Entry Road, Cannaught Circus,
N. Railway, New Delhi.

-Respondents

(By Advocate Shri S.M. Arif)

O R D E R

These two OAs have been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985. The

specific reliefs claimed by the applicant in the OAs read as under:

OA No.1434/2013

“(i) To quash and set-aside the Letter No.APP/CG/9585/S.Cell/P Dated 31.08.2012 by which the claim of the applicant for appointment in the service of the respondent on companionate grounds due to death of her father was declined.

(ii) To direct the respondent to consider the claim of applicant in accordance with law And appoint the applicant in the service of respondent due to the death of his father being the legally entitled for it.

(iii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the petitioners.”

OA No.4339/2013

“(i) To release all dues, i.e., P.F., Leave Encashment, DCRG etc. and family pension in favour of the applicant due to death of her father late Shri Bharam Parkash Giri working as Asst. Diesel Driver in the Loco Shed Ghaziabad, Delhi Division, N. Rly, on 29.10.2002 along with 12% interest per annum.

(ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the petitioners.”

2. The brief facts of this case are as under.

2.1 The applicant is a daughter of a deceased railway employee, Shri Bharam Parkash Giri, who was working as

Assistant Diesel Driver in loco shed, Ghaziabad, Delhi Division, Northern Railway. He was murdered on 29.10.2002. His wife Smt. Vimlesh (mother of the applicant) was suspected to be one of the accused persons in the murder. An FIR was lodged, Smt. Vimlesh was arrested, later released on bail and finally on 14.02.2008, she was acquitted of the murder charge by the Additional District and Sessions Judge, Ghaziabad in case no.313/2003. The deceased railway servant is survived by two children, i.e., a daughter (applicant) and a son Rajat Goswami. Both were minors when their father was murdered.

2.2 The widow Smt. Vimlesh had applied to respondent no.2 on 12.06.2003 (Annexure A-2 colly.) seeking appointment on compassionate grounds for the applicant and for release of the family pension to her. Her request was turned down by respondent no.2 vide Annexure A-4 letter dated 07.11.2005 stating therein “you are on bail in the case of death of your husband Bharam Parkash Giri, hence your claim for compassionate appointment cannot be considered and the claim of your son and daughter who are still minor also does not come under the Rules.”

2.3 Smt. Vimlesh again vide her Annexure A-7 representation dated 14.09.2009 informed respondent no.2

that she has been acquitted of the murder charge and that the financial condition of the family is bad and hence her request for compassionate appointment to her daughter (applicant) and release of family pension to her may be considered.

2.4 Father of the deceased employee, i.e., grandfather of the applicant, Shri Raghubir Giri had also written to respondent no.2 vide his letter dated 12.0.2003 (page 42 of the paper-book) requesting for compassionate appointment for the applicant. The respondent no.2 vide letter no.CG/Appointment/Class-III-IV/Welfare Project, New Delhi dated 29.09.2011 directed the applicant to submit the required papers to the office of Divisional Personnel Officer for compassionate appointment. The applicant accordingly submitted her papers on 23.11.2011. The respondents vide their impugned Annexure A-1 order dated 31.08.2012 has declined to consider the request of the applicant for compassionate appointment stating therein that since the mother of the applicant has got married with Shri Suresh, s/o Shri Ram Phal, R/o Jawala Puri in the Court and thus the request of the applicant for compassionate appointment is rejected.

2.5 Aggrieved by the Annexure A-1 order of the respondents the applicant has filed the instant OA.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant thereafter filed her rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 23.05.2016. Shri Shanker Divate, learned counsel for the applicant and Shri S.M. Arif, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant, besides reiterating the facts, stated that in terms of the relevant rules of the Railway department, the applicant is entitled for getting compassionate appointment. It was also submitted that on 29.10.2002, when the applicant's father was murdered she was minor and so also was her younger brother Rajat Goswami. As such, she could not apply for the compassionate appointment. The learned counsel stated that the applicant has since attained majority on 16.07.2008; her date of birth being 16.07.1990 and thus she has rightful claim for the compassionate appointment.

5. Per contra, learned counsel for the respondents submitted that the mother of the applicant has since got re-

married with Shri Suresh, the respondents were justified in denying the compassionate appointment to the applicant.

6. I have considered the rival contentions of the parties. The applicant was a minor when her father died. Even if it is assumed that her mother has re-married to someone, the fact remains that the applicant is daughter of the deceased Railway employee and hence her claim for compassionate appointment cannot be denied. The only person who could have contested her claim for the compassionate appointment is her brother Rajat Goswami by way of putting a counter-claim. The learned counsel for the applicant, during the course of the arguments, also submitted that the brother of the applicant has no objection if the applicant is given compassionate appointment and that he is ready to submit an affidavit to this effect to the respondents.

7. The main ground taken by the respondents that Smt. Vimlesh, mother of applicant and wife of deceased Railway employee has since got re-married and thus the claim of the applicant for compassionate appointment cannot be considered, is illogical and beyond comprehension. Needless to say, the children cannot be punished or denied of their legal right for any act of their mother. The grandfather of the

applicant, i.e., the father of the deceased Railway servant has also requested the respondents vide his letter dated 12.0.2003 for grant of compassionate appointment to the applicant.

8. Taking all the facts into consideration, and particularly bearing in mind that the interest of the children cannot be prejudiced due to any act of omission or commission of their mother, I am of the firm opinion that the applicant is entitled for the compassionate appointment. I, therefore, direct the respondents to consider the applicant for compassionate appointment in accordance with rules, subject to the condition that the applicant would submit an affidavit of her brother Rajat Goswami to the respondents to the effect that he has no objection to the grant of compassionate appointment to the applicant. The respondents are also directed to release other family benefits due to the applicant and her brother only, since her mother is stated to have got re-married.

9. With the above directions, both the OAs are disposed of.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

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