

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00004/2017

Thursday, this the 22nd day of March, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

<p>1. R. Chellappan Achari, Aged 64 years, S/o. Raman Achari, Kaniamparambu, Purakkad P.O., Alappuzha District – 688 561.</p> <p>2. Anuraj C., Aged 26 years, S/o. Chellappan Achari, Kaniamparambu, Purakkad P.O., Alappuzha District – 688 561.</p>	<p>..... Applicants</p>
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(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

<p>1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town P.O., Chennai – 600 003.</p> <p>2. The Divisional Railway Manager, Southern Railway, Trivandrum Division, Trivandrum – 695 014.</p> <p>3. The Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum – 695 014.</p>	<p>..... Respondents</p>
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(By Advocate – Mrs. Girija K. Gopal)

This Original Application having been heard on 19.03.2018, the Tribunal on 22.03.2018 delivered the following:

O R D E R

Per Mr. U. Sarathchandran, Judicial Member

Applicants are the father and younger brother of late Shri.C.Anilkumar

who died in a tragic road accident on 9.3.2015 while working as Track Maintainer IV under the respondent Railways. They have approached this Tribunal on the denial of the respondents to consider applicant no.2 for appointment on compassionate grounds communicated. vide Annexure A-1.

Annexure A-1 communication reads :

“SOUTHERN RAILWAY

Divisional Office
Confidential Section
Trivandrum
Dated 4.11.2015

No.V/2735/18/15

Shri.R.Chellappan Achari
F/O (Late) C.Anilkumar
Kaniyamparambu, Purakkad P.O
Alappuzha 688 561

Sub: Appointment on compassionate grounds
in f/o C.Anuraj, B/O (late) C.Anilkumar,
T/maintainer/III, ALLP
(died on 09.03.2015)

Ref: Request dt.05.05.2015

Your request for appointment on compassionate grounds in f/o Shri.C.Anuraj, B/O (late) C.Anilkumar has not been recommended by the competent authority, DRM, for the following reason.

“Although it is an unfortunate case, a few months of work with the railways does not create a liability to consider dependant of all family member on the railway job.”

Please note.

(Siddarth.S.K.Raj)

Divisional Personnel Officer”

2. The applicants state that Annexure A-1 has been issued without application of mind, in an arbitrary and discriminatory manner and hence the decision therein is violative of the Constitutional guarantees under Article 14 & 16. According to the applicants similar cases of persons were considered for appointment on compassionate grounds in Trivandrum Division itself and also in the Salem Division. The applicants seek relief as under:

“(i) Call for the records leading to the issue of Annexure A1 and quash the same

(ii) Direct the respondents to consider the case of the second applicant for an appointment on compassionate grounds commensurate with his educational qualification, and direct further to grant all the consequential benefits emanating there from;

(iii) Award cost of and incidental to this application;

(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

3. In the reply statement, the Railway seems to have been focusing their contentions mainly on the premise that applicants were not the dependents of the deceased employee. Producing Annexure R-1 family composition document submitted by late Shri.C.Anil Kumar, it is contended by the respondents that the applicants were not included in the said family

composition and hence they cannot be treated as dependents of Late Mr.C.Anilkumar. According to the Railway only the dependents of the deceased employee can be considered for appointment on compassionate grounds. It is also contended by the Railways that the applicants have failed to produce the income certificate issued by the Tehsildar to establish that they did not have sufficient income to live independently and therefore they had not been dependent on the deceased employee for their livelihood. It is also stated by the respondents that the second applicant is not a dependent of the late Shri.C.Anilkumar and the late employee did not die in harness. The Railway affirms that in terms of Annexure R-2 instructions, the applicants are not entitled to appointment on compassionate grounds. The respondents further state that applicant no.2 is not included in the family composition as per the Pass Rules also.

4. Heard the counsel appearing on both sides. Perused the record.

5. Appointment on compassionate grounds is on the basis of a special scheme formulated by Government of India which has been adopted by the Railways vide Annexure R-2. The scheme is meant for alleviating the economic and financial hardship suffered by the dependent family members of the employee who died while in service so as to enable the family to tide over the hardship which could drive them to penury. The contours of the scheme provide social security to the family so that the family members who were dependent on the salary income of the deceased employee who was the bread winner could be assisted by providing employment under the

compassionate appointment scheme to tide over their immediate financial crisis due to his/her sudden death.

6. In the instant case, obviously, the deceased Anilkumar was in the prime of his youth when he met with the fatal road accident. Annexure A-2 is the Postmortem certificate of Shri.C.Anilkumr wherein it is stated that he was aged about 28 years. It is undisputed that Shri.C.Anilkumar was unmarried. According to the respondents he joined the services of Railways only a few months before he died. The remarks of respondent no.2 in Annexure A-1 itself shows that the rejection of appointment on compassionate grounds was on account of the circumstance that the deceased had worked with the Railways only for a few months and hence it does not make the Railways responsible to consider the dependents or family members of such deceased person for employment in Railways.

7. This Tribunal is of the view that the remark of DRM extracted in Annexure A-1 is a callous observation without adverting to the purport of this scheme for compassionate appointment. The mind set of the DRM while making such remark is not in tune with the scheme for compassionate appointment. In Annexure A-1 there is no mention that the applicants had not been the dependents of the deceased Mr.C.Anilkumar. The only highlight of Annexure A-1 is that Shri.C.Anilkumar had employment in the Railways only for a few months and hence the applicants cannot be considered for appointment on compassionate grounds. It is only in the reply statement the Railways began to expand their contentions. It is settled law in *Mohinder*

Singh Gill's decision AIR 1978 SC 851 that reasons should be stated in the order itself, not by way of an explanatory letter. The Tribunal is of the view that Annexure A-1 falls into that category. No valid reasons have been stated by the Railways for rejection of the appointment on compassionate grounds except for the caustic remarks of the DRM quoted therein.

8. Learned counsel for the respondents pointed out that in the pleadings in the Original Application itself it is stated that the mother of the deceased employee was an employed person and that it would show that the family is not in a penurious condition consequent to the death of the employee. Shri.T.C.G Swamy, learned counsel for the applicants submitted that it was by way of a mistake he happened to write in the pleadings that the mother of the deceased is an employed women. He submitted that in fact she is not employed and was dependent on the earnings of the deceased employee.

9. Learned counsel for the respondent Railways argued that there is nothing to prove that the applicants were really dependents of the deceased employee. Referring to Annexure R-1 'family composition form' and Annexure R1(2) 'Record of free pass and PTOS' learned counsel for the respondents argued that late Mr.C.Anilkumar had never mentioned any of the applicants as his dependents.

10. In Annexure R1(2) it is shown that the deceased employee's date of birth is 27.5.1986 and that his date of appointment in the Railways was 21.6.2014. He passed away on 9.3.2015.

11. Shri.T.C.G Swamy, learned counsel for the applicant referred to the Railway Board instructions RBE No.70/14 dated 8.7.2014 regarding appointment on compassionate grounds for family members of a deceased unmarried Railway employee. In Annexure A-4 the term 'dependent' is explained as extracted below:

“ However, the dependent of an unmarried male/unmarried female Railway employee dying in harness/retiring on medical grounds, may be considered for compassionate appointment by the Railway at its own level, subject to the condition that the candidate proposed for appointment is shown as dependent on the ex-employee on the basis of documents such as inclusion/declaration of names in the pass or in Ration cards etc. The condition of inclusion in the pass declaration or Ration cards etc. is only a facilitating factor, and not intended to be a restrictive one. In the absence of any such documentary proof, the factual position regarding the extent of the dependency may be got verified by deputing a Welfare Inspector to inquire into the circumstances. The relaxation of time limit permissible in the case of minor children of those employees who die in harness would also apply in the case of dependents of those who die as bachelor/spinster. “

12. Shri.T.C.G Swamy submitted that there is nothing on record to show that the respondents have sent a Welfare Inspector to enquire into the circumstance of dependency of the applicants. He further submitted that the inclusion of names in the pass declaration etc is only a facilitating factor and is not intended to be a restrictive one. This Tribunal finds some force in the arguments of Shri.T.C.G Swamy in this regard.

13. There is nothing to show that the Railway has made any serious enquiries by deputing a Welfare Inspector to the house of the deceased to

enquire about the financial circumstance of the family and about the impact of the employee's death on the economic condition of the family. Therefore it goes without saying that Annexure A-1 communication denying the claim of the applicants is based a non-speaking decision of the DRM made on irrelevant considerations and hence requires to be quashed and set aside.

14. It has to be noted that the applicants are stated to be the dependents of the deceased employee. It is the case of the applicants that the family of the deceased consists of his father, mother and younger brother. The deceased was the eldest among two children of applicant no.1. Nothing was proved by the respondents to show that the applicant's mother was employed. Merely because of the fact that Shri.C.Anilkumar died unmarried without including the applicants in the records of the family composition, it cannot be said that they are not entitled to claim appointment on compassionate grounds. It is quite likely that being the eldest son in the family, parents and the younger brother was looking forward for financial support from Shri.C.Anilkumar. In the social circumstances prevailing in Kerala the unmarried employed eldest son in a lower middle class family is looked upon as the bread winner and economic support for the family as the parents grow old and the younger siblings have not started earning. This situation cannot be ignored while the economic condition of the family of the deceased is evaluated.

15. In the above circumstance, while quashing Annexure A-1 order, this Tribunal directs the respondents to reconsider the request of the applicants

for considering applicant no.2 for appointment on compassionate grounds in terms and as per the true spirit of Annexure A-4 administrative instructions and Annexure R-2 scheme on compassionate appointment and also in the light of the observations in the above paragraphs of this order. Necessary enquiries shall be conducted by the respondent Railway regarding the financial condition of the family of the applicants for the purpose of considering applicant no.2 for such appointment. The above exercise shall be completed within two months from the date of receipt of a copy of this order.

16. The Original Application is allowed as above. Party shall suffer their own costs.

**(U.SARATHCHANDRAN)
JUDICIAL MEMBER**

List of Annexures of the applicants

Annexure A-1	-	A true copy of Letter bearing No. V/Z735/18/15 dated 04.11.2015, issued by the third respondent.
Annexure A-2	-	A true copy of the Post-Mortem Certificate bearing PM No. 166/15 dated 09.03.2015, issued by the Department of Forensic Medicine and Office of the Police Surgeon, Government T.D Medical College, Alappuzha.
Annexure A-3	-	A true copy of office order bearing No. 45/2015/WP dated 19.03.2015 issued by the 3 rd respondent.
Annexure A-4	-	A true copy of the Railway Board order bearing No. No. E(NG)-II/2014/RC-1/SCR/5 dated 08.07.2014.

Annexure A-5 - A true copy of the reference to RBE No. 22/2014 dated 04.03.2014.

Annexure A-6 - A true copy of representation dated 05.05.2015.

Annexure A-7 - A true copy of representation submitted by the second applicant dated 05.05.2015.

Annexure A-8 - A true copy of letter seeking information under RTI Act dated 14.10.2016.

Annexure A-9 - A true copy of letter bearing No. V/P.50/RTI/4639/2016/PB dated 28.11.2016 issued by the Public Information Officer.

Annexure A-10 - A true copy of communication bearing No. 1130/L/2015/M(Power) dated 30.11.2015, sent by the said Hon'ble Minister.

List of Annexures of the Respondents

Annexure R1 - True copy of the Pass Declaration submitted by C. Anil Kumar.

Annexure R2 - True copy of the Railway Board's letter No. E(NG)II/88/RC-1/Policy, dated 4.9.1996 [RBE 79/1996].
