

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00842/2016

Friday, this the 13th day of April, 2018

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

R. Thiruvazhimarban,
Aged 61 years, S/o. Ramasamy Kona,
Rest Giver Gate Keeper/ office of the Sr. Section Engineer/
Permanent Way/ Southern Railway/ Nagercoil Junction,
Residing Near Park, Thirupathisaram P.O.,
Kanyakumari District, Tamil Nadu. Applicant

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s

- 1 The Union of India,
Represented by its General Manager,
Southern Railway, Head Quarters Office,
Park Town P.O., Chennai – 600 003.
- 2 The Divisional Railway Manager,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 695 014.
- 3 The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Thiruvananthapuram – 695 014. Respondents

(By Advocate Mrs.Girija K Gopal)

This application having been heard on 12th April 2018 the Tribunal on 13th April 2018 delivered the following :

ORDER

Heard. The matter is on a very short compass. The applicant had earlier worked in the Railways as casual labourer. The learned counsel would say that he was entitled to Inder Pal Yadav's case as he had worked for more than one year as a casual labourer and thereafter after his reinstatement the

.2.

applicant suffered a paralytic stroke. Even though, in the interregnum, he had been reinstated back in service as a regular employee. He had filed OA No. 214/2014 at the age of 59 years. Following the judgment of the Tribunal, which is challenged in the High Court and which is dismissed and in compliance of paragraph 18 of the Tribunal's order to quash the Annexure R1 order and it was directed that the applicant shall be given the same pay and other service benefits from the date of his medical de-categorisation i.e., on 10.04.2012 till the date of his superannuation. The learned counsel for the respondents at this time submitted that the applicant was appointed as Track Man under SSE/Permanent Way/NCJ on 06.08.2008. But then at that point of time he was already 53 years old. But the benefit of the Hon'ble Supreme Court judgment held as applicable to him and he was appointed as Track Man. He would say that soon thereafter he was unwell and stuck by paralysis and he was medically de-categorised. However, his entire salary and other benefits were calculated till the date of his actual superannuation and it was paid.

2. But in the interregnum ID Act was amended and project and contract labourer lost out right to permanency. In 2006 the Constitution Bench in *Secretary, State of Karnataka and others V. Umadevi and others reported in 2006 SCC (L&S) 753* given protection to only those casual labourers who had worked more than ten years. But before that he was reinstated and became eligible on his medical de-categorization for the benefit of Section 47, which he received. Therefore, the applicant is a normally retired person who has no eligibility for compassionate appointment.

.3.

3. But the subsequent development could not be handled in the earlier order of the Tribunal as this had been done later on as the Hon'ble High Court had settled the matter.

4. Now, the applicant claims a compassionate appointment for his daughter who even in 2014 was a married woman on the ground that her husband is unemployed. On marriage, under Hindu Law the wife assumes the responsibilities and rights of her marital home. Therefore, she also is not eligible for compassionate appointment.

5. It is be noted in this connection that compassionate appointment is a rare occurrence wherein the breadwinner suddenly vanishes from the scene and to avoid vagrancy the state comes forward to take care of the family. This is not the case here. Applicant had normally superannuated getting all the benefits of superannuation. Learned counsel for the respondents places before me the judgment of the Hon'ble Apex Court in *State Bank of India and others V. Suryanarayan Thripathi reported in 2014 KHC 4112*. In this case, apparently the right of the employee is later to the death of the Government servant. But even in this case, the Hon'ble Apex Court held that the compassionate appointment cannot be considered. Even otherwise also when a man marries or a woman marries it is on the basis of an unspoken agreement that they are able to take care of themselves as otherwise the responsibilities of married state cannot be gone into. It is pointed out that there may be some exceptions but then such exceptions were not pointed out in this case. Apparently, the applicant retired on superannuation normally getting all his

.4.

benefits. Even though we had directed earlier that her compassionate appointment may be considered, it will then appear to be a back door entry not sanctioned by law and against tenets of Umadevi's Judgment. The right of employment in Government is normally and rightfully due to the competitively meritorious under Article 13 of the Constitution of India. There is nothing that will bar the applicant or his daughter from applying for the jobs in the Railways and competing along with others. But there is no special stipulation in favour of the applicant or his daughter who had perhaps worked for the Railways only for a limited period of a total time of 5 years. It will be highly inappropriate to burden the tax payer with this burden of supporting applicant and his family especially since all the other benefits of a regular employment has been made available to the applicant of equivalent service.

6. As held by the Hon'ble Apex Court, compassionate appointment is one back door entry which can only be sanctioned on certain grounds and none other. That being so, the applicant's daughter is not eligible for a compassionate appointment nor is the applicant eligible to seek it. Railways cannot be deemed as a charitable organization existing for the purpose of providing employment and benefits to the employees as above. There cannot be any question of a hereditary employment. It exists as the public service entity. Therefore, there is no merit in the OA. The OA is dismissed. No costs.

(Dated this the 13th day of April 2018)

(Dr.K.B.SURESH)
JUDICIAL MEMBER

yd

List of Annexures in O.A.No.180/00842/2016

- | | | | |
|------------|----------------------|---|---|
| 1. | Annexure A-1 | - | True copy of Order No. V/Z 735/32/2014 dated 22.07.2015 issued by the 3 rd respondent. |
| 2. | Annexure A-2 | - | True copy of the communication bearing No. V/MD/84/I/UF dated 10.04.2012 issued by the Chief Medical Superintendent, Southern Railway, Trivandrum Pettah. |
| 3. | Annexure A-3 | - | True copy of the request dated 27.04.2012, addressed to the 3 rd respondent. |
| 4. | Annexure A-4 | - | True copy of the representation dated 27.04.2012, submitted by the applicant's daughter addressed to the 3 rd respondent. |
| 5. | Annexure A-5 | - | True copy of the representation dated 08.07.2013 submitted by the applicant addressed to the 3 rd respondent. |
| 6. | Annexure A-6 | - | True copy of the representation dated 08.10.2013 submitted by the applicant addressed to the 3 rd respondent. |
| 7. | Annexure A-7 | - | A true copy of the office order No. 57/2014/WP dated 09.05.2014 issued by the 3 rd respondent. |
| 8. | Annexure A-8 | - | A true copy of the Railway board's Order bearing No. E(NG)II/95/RC-I/94 dated 18.01.2000 referred to in Annexure A7. |
| 9. | Annexure A-9 | - | A true copy of the order in O.A No. 214/2014 dated 02.03.2015. |
| 10. | Annexure A-10 | - | A true copy of Railway Board Order bearing No. E(NG)II/95/RC-1/95 dated 14.06.2006. |
| 11. | Annexure A-11 | - | A true copy of the judgment of the Hon'ble High Court of Kerala in OP (CAT) No. 182/2015 dated 19.01.2016. |
| 12. | Annexure R-1 | - | True copy of the Order in CP No. 180/00006/2016 in OA 180/00214/2014. |
| 13. | Annexure R-2 | - | True copy of the declaration given by Smt. Chithra. |
-