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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00041/2018

Friday, this the 29th day of November, 2018

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Jayasree MR,
Aged 38 years,
W/o Sajikumar,
Residing at: Shobhanalayam,
Puliyoor P.O.,
Chengannoor, Alappuzha District.

....Applicant

(By Advocate Mr.Radhakrishnan for V.Philip Mathews)

V e r s u s

1. The Union of India,
Represented by its Secretary,
Ministry of Railways,
New Delhi – 110 001.
2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Personnel Branch, Park Town,
Chennai – 600 003.
3. The Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Thycaud,
Thiruvananthapuram – 14.
4. The Divisional Manager,
Divisional Managers Office,
Southern Railway,
Thycaud, Thiruvananthapuram-14.

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5. The Pay & Accounts Officer,
Railway Board,
New Delhi – 110 001.
6. The Divisional Personnel Officer,
Divisional Office, Confidential Section,
Thiruvananthapuram-14.
7. Sreekumari, M.R.,
W/o Omanakuttan Nair,
Puthuparampil House,
Thelliyoor P.O.,
Vennikulam,
Pathanamthitta District-689 544.
8. Jayakumari,
W/o G.K.Prasad,
Thundukaatil House,
Naranganam, Alunkal P.O.,
Pathanamthitta District-689 642.Respondents

(By Advocate Shri Girija K.Gopal for Respondents)

This application having been heard on 21st November 2018, the Tribunal
on 29th November, 2018 delivered the following :

ORDER

OA No.41/2017 is filed by Smt.Jayasree M.R. challenging the orders dated 13.12.2016 passed by the 6th respondent rejecting her application for compassionate appointment under dying in harness scheme. The impugned order is at Annexure A1. The applicant's uncle i.e., mother's brother Sri P.V Sankaran Pillai was working as a Pointsman at Southern Railway. He was unmarried and was residing along with the applicant and applicant's mother. Respondents-7&8 were other sisters of the applicant. It is claimed that the

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applicant's father had deserted the family long ago and the applicant, applicant's mother and her sisters were living under the care and protection of applicant's uncle i.e., Sri P.V.Sankaran Pillai. It is stated that the applicant's uncle while he was working at Alzapuzha Railway station went missing from 12.5.1998 onwards and there has been no further information of his whereabouts. Initially the applicant and her mother were under the impression that he might have been held up due to pressure of work, but Shri P.V.Sankaran Pillai has not been seen or heard of since.

2. When officers of the respondent organisation contacted the applicant's mother stating that Sri P.V.Sankaran Pillai has been missing since the date mentioned and was expected to retire shortly, the applicant filed a representation dated 2.7.2001 before the Circle Inspector of Police, Mallappally requesting for issuance of a certificate to the effect that Mr.Pillai is missing and has not been traced out. A copy of the said representation is produced at Annexure A2. A crime was registered as No.102/2001 under Perumpetty Police Station as a 'Man missing' case. A copy of the FIR registered is produced at Annexure A3. Finally the Sub-Inspector of Police, Perumpetty issued a certificate dated 9.8.2001 stating that Sri P.V.Sankara Pillai has been missing since 12.5.1998 and has not been traced out afterwards. A copy of said certificate is at Annexure A4.

3. On receipt of the said certificate the mother of the applicant produced

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the original certificate before the 2nd respondent claiming that she is the only legal heir of the said Pillai and requesting to disburse service benefits and pension due to the former employee. As per Annexure A5 the Perumpetty Police filed a UN report stating that the investigation to find out whereabouts of Mr.Pillai have been concluded unsuccessfully and he could not be traced out.

4. Applicant's mother expired on 12.5.2007, thereafter applicant has submitted several representations to the 2nd respondent to disburse the service benefits of her uncle. The applicant and the 6th respondent filed OS No.134/2010 before the Munsiff Court, Thiruvalla for declaring the civil death of the applicant's uncle, Shri P.V.Sanakara Pillai and the suit was decreed on 30.8.2010, a copy of order being at Annexure A9. On being informed that by the respondents that the applicant was expected to get a Succession Certificate from the concerned court for receiving the dues of Sri P.V.Sankara Pillai, the applicant filed OP (Succession) No.15/2010 before the Munsiff Court, Thiruvalla. Munsiff Court Thiruvalla issued Succession Certificate in favour of the applicant and the 6th respondent to collect 2/3rd of the settlement dues of Rs.1,05,036/- due to Sri P.V.Sankara Pillai. The copy of Succession Certificate dated 11.3.2013 issued by the Munsiff Court, Thiruvalla is at Annexure A12. Meanwhile, the Tahsildar, Mallapally had also issued a certificate on 18.3.2011 in favour of the applicant and respondents 6 and 7 stating that the three of them are the legal heirs of the said Sri P.V.Sankara Pillai. The said Certificate is

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at Annexure A13.

5. The applicant submitted a representation on 23.4.2013 to respondents-2&3 requesting that employment may be offered to the applicant under the dying in harness scheme. Copy of the representation is at Annexure A14. On getting no reply to the same the applicant filed OA No.904/2015 before this Tribunal seeking a direction to the respondents to disburse the settlement benefits of the applicant's uncle and to grant Compassionate Appointment to the applicant. The Hon'ble Tribunal directed the respondents to consider the request of the applicant for Compassionate Appointment if she files an application for the same. Copy of the order dated 12.8.2016 is at Annexure A15.

6. The respondents have disbursed the settlements dues of the applicant's uncle. However, despite submitted all relevant details required for the same, the respondents as per Annexure A1 order have rejected the claim put forth by the applicant for Compassionate Appointment.

7. The applicant submits that her uncle had been missing from 12.5.1998 onwards, there has been no information about him for the last 17 years. The efforts made by the police to trace out the employee have ended unsuccessfully. The applicant, as also her sisters, are the legal heirs of the said employee. They are now the recipients of the service benefits due to the

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said employee. It is only in the fitness of things that the applicant's claim for Compassionate Appointment is considered and allowed.

8. A reply statement has been filed on behalf of Respondents-1to2 strongly rebutting the claim made by the applicant in the OA. At the initial stage itself it is submitted that the OA is assailed for having been hit by *res judicata*. Also the reason for unexplained delay for the grant of Compassionate Ground Appointment had been left unexplained even in this OA. The Hon'ble Tribunal in OA No.904/2015 had disposed of the case of observing that it would be upto the official respondents to consider the case for Compassionate Appointment if a proper application is submitted by the applicant. It was in compliance with this that Annexure A1 disposal letter dated 13.12.2016 was issued. In the MA for condonation of delay filed by the applicant along with the OA, the applicant claims that there has been a delay of only 7 days in filing the OA. This is entirely untrue. The fact remains that since 12.5.1998 Sri P.V.Sanakara Pillai, Ex-Pointsman from Alapuzha, was absent from duty. As per rules, he was supposed to retire on 30.06.2000. The missing complaint had been filed as late as 20.07.2001, nearly 3 years from the date of Sri Pillai had absented himself from duty and went missing. It is significant to note that the complaint had been filed even after the date of normal date of superannuation of Sri Pillai. If the Shri Pillai was the breadwinner of the family, it is unnatural that the applicant or mother would have remained silent for so long. The OA, if the facts made

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out in the OA had been true, should have been filed almost immediately after the cause of action arose in 12.5.1998.

9. It is further submitted that the applicant is married and cannot be considered as a dependent of her uncle for her livelihood. It is also to be pointed out that in the OA No.904/2015 filed by her for Compassionate Ground Appointment she had mentioned her age as 38. There are two other successors of Sri Pillai, who are respondents-6 and 7 in the OA, it is not known why they have not entered the picture and their consent has also not been obtained. The FIR indicates disharmonious relationship between the applicant and her mother on one hand and the missing employee on the other. This further disproves the claim of the applicant that she along with her mother and sisters were the dependents of Sri.Pillai.

10. Shri Phillip Mathew V., appeared for the applicant and argued that the case requires maximum sympathy as the applicant along with her mother had been full dependents of the missing employee. They had approached the police after realising that it was not the exigencies of work which had kept the Uncle away and the Police investigation proved that there was no likelihood of Sri Pillai being found. Through the Offices of the Munsiff Court as well as the Tahsildar the necessary papers have been obtained indicating that the applicant and her sisters are the rightful successors to whatever claim Sri.Pillai will have on the respondent organisation. In so far as the

delay in the matter is concerned this had been because the applicant as well as her mother being females with little knowledge of procedures did not realise that the missing employee was going to retire.

11. Smt.Girija appearing on behalf of the respondents assailed the OA on the ground of inordinate delay. She drew our attention to the orders of this Tribunal in OA No.904/2015 wherein it was ordered as follows:

“There are matters to be considered by the officials respondents if proper application is submitted by the applicant. If any such application is submitted by the applicant, the official respondents will pass appropriate orders in accordance with law. With the aforesaid observations, the OA is disposed of. See also the direction in paragraph 3 of the order.”

12. It was in compliance with the same that order at Annexure A1 had been issued. Smt.Girija submitted that there are two factors which have to be considered while disposing of applications for Compassionate Appointment. They are dependency of the individual concerned on the erstwhile employee and the penurious circumstances in which the applicant is living. In this case the considerable delay in the applicant or her mother coming forward to report the complaint, casts doubts whether they were actually dependents on the applicant. However, with the succession settled in their favour Smt. Girija did not further pursue this point. However, in respect of penury she strongly argued that the applicant being a married woman there are no circumstances to indicate that the applicant is in penurious circumstances. So there was no reason to consider her case.

13. We have examined the pleadings submitted by both sides. Annexure A1 order of the Divisional Personnel Officer of the respondent organisation runs as follows:

“Sub: Orders of Hon'ble Central Administrative Tribunal
Ernakulam Bench in OA 180/00904/2015
dated 12.08.16.

In compliance with the orders of Hon'ble Central Administrative Tribunal, Ernakulam Bench the Divisional Railway Manager, Trivandrum has considered your request for Compassionate Ground Appointment and the request for compassionate ground appointment is not to be agreed to by the Competent Authority i.e. Divisional Railway Manager/Trivandrum as the benefits of Compassionate Ground Appointment can be considered to the dependent family members in a case of missing employee, provided that an FIR has been lodged and missing person is not traceable. In this case FIR has been lodged only on 20.07.2001 i.e., after the date of normal superannuation of missing employee i.e. 30.6.2001 and 34 months after Shri P.V.Sankara Pillai went missing. Further Smt.M.R.Jayasree is the niece of the missing employee who is married and settled and was not dependent on Shri P.V.Sankara Pillai while he was in service.”

14. The main reason attributed for rejection of her claim is the long delay in having the FIR lodged, which was in fact lodged after the date of normal superannuation and 34 months after Sri Pillai went missing. Secondly, it is mentioned that the applicant is the niece of the missing employee and is married and settled and was not a dependent on the missing employee while he was in service. The applicant was unable to counter these points. Firstly it was unnatural that a true dependent would have waited more than three years i.e. after the date of normal superannuation to approach Police and get an FIR lodged. Secondly as was submitted by the learned Counsel the penurious circumstances of the employee and the fact that she was a

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dependent on Sri Pillai are not proven. The Compassionate Ground Appointments are offered to dependents and the slots available are limited. It is necessary for organisations including the respondents here to ensure that benefits under the scheme go to the most deserving. There are clearly defined parameters under which these applications are considered. The fact of a relative being married is a a major factor which would stand in the way of an applicant being considered as a dependent of an erstwhile employee. This case belongs to such category and the Tribunal is not able to come to the conclusion that the applicant deserves any consideration. OA is dismissed for want of merit. No costs.

(Dated this the 29th day of November 2018).

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00041/2018

1. **Annexure A1** – Order No.V/Z735/PVS/2016 dated 13.12.2016 passed by the 6th respondent.
2. **Annexure A2** – Copy of representation dated 02.07.2001 submitted by applicant's mother before the Circle Inspector of Police, Mallappally.
3. **Annexure A2(a)** – English translation of Annexure A2
4. **Annexure A3** – Copy of F.I.R. No.1-2/01 registered by Perumpetty Police Station Mallappally
5. **Annexure A3(a)** – English translation of Annexure A3.
6. **Annexure A4** – Copy of certificate dated 09.08.2001 issued by the Sub Inspector of Police Perumpetty
7. **Annexure A5** – Copy of UN report filed by the Sub-Inspector of Police, Perumpetty.
8. **Annexure A5(a)** - English translation of Annexure A5
9. **Annexure A6** – Copy of communication No.V/P626/Misc dated 08.-4.2009 issued by the 3rd respondent to the applicant.
10. **Annexure A7** – Copy of covering letter submitted by the applicant before the 3rd respondent.
11. **Annexure A8** – Copy of representation dated 29.03.2009 submitted by the applicant to the Divisional Railway Manager, Southern Railway, Thiruvananthapuram.
12. **Annexure A9** – Copy of the Judgment dated 30.08.2010 passed by the Munsiff Court, Thiruvalla in O.S.No.134/2010.
13. **Annexure A10** – Copy of Communication No.P(B)500/CA dated 05.02.2010 issued from the office of the 2nd respondent.
14. **Annexure A11** – Copy of Communication No.V/P.626/II/PVS dated 08.03.2010 issued from the office of the 3rd respondent.
15. **Annexure A12** – Copy of succession certificate dated 11.03.2013 issued by the Munsiff Court, Thiruvalla.

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16. **Annexure A13** – Copy of certificate dated 18.03.2011 issued by the Tahsildar, Taluk office, Mallapally.
 17. **Annexure A13(a)** – English translation of Annexure A13.
 18. **Annexure A14** – Copy of representation dated 23.04.2013 submitted by the applicant.
 19. **Annexure A15** – Copy of order dated 12.08.2016 passed by this Hon'ble Tribunal in OA /180/00904/2015
 20. **Annexure 16** – Copy of Postal cover in which the applicant received Annexure A1 order.
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