

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00784/2014

Date of CAV : 25.09.2018
Date of Order : 05-10-2018

Between :

1. Smt.K.Sarojana aged 43 years,
W/o late K.Anandam, Ex.CMR Gangman,
SC Rlys, O/o SSE/P.Way/Central/KZJ,
Res.Yelgur-R.S,Sangam Mandal,
Warangal Dist.

2. K.Kavitha D/o Smt.K.Sarojana
Res.Yelgur-R.S,Sangam Mandal,
Warangal Dist.
(impleaded as per order dt.14.11.17
In MA 719/17 in OA 784/14)

....Applicant

AND

UOI rep by its,

1. The Secretary, Ministry of Railways,
Railway Board, New Delhi.

2. The General Manager,
S.C.Railway, 3rd Floor, Rail Nilayam,
Secunderabad.

3. The Divisional Railway Manager,
S.C.Railway (BG), Secunderabad.

...Respondents

Counsel for the Applicant: Mr.G.S.Rao

Counsel for the Respondents : Mrs.A.P.Lakshmi, SC for Rlys

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the A.T.Act, 1985, to quash and set aside the impugned order passed by Respondent No.3 in his letter No. CP/175/Con/119/88/AC, dated 26.03.2014 and further direct the Respondents 1 and 2 to consider the applicant request for appointment to K. Kavitha under compassionate grounds in terms of Railway board letter No.E(NG)II/96, dated 14.3.1997, circulated by Lr.No.E(NG)II/98/RC-1/64, dated 31.05.2011 circulated by CPO/SC Sl.Cir.No.77/2011, dated 15.06.2011 and pass such other order / orders as this Hon'ble Tribunal deems fit and proper in the interest of Principles of Natural Justice.

2. The brief facts of the case are that, the applicant is wife of late K.Anandam Ex-CMR Gangman in O/o SSE/S.C.Rly/Kazipet who was initially engaged as CL Gangman on 26.8.1982 and attained the status of CMR Gangman in scale of Rs.299-250 Rs in the office of Chief Inspector of Permanent way (Central) Kazipet of S.C. Railway of Secunderabad division. The deceased worked from 26.8.1982 to 16.9.1986 (ie) more than 4 years continuous service and enjoying all the privileges in Railway administration. The deceased died in harness on 18.9.1986.

3. The applicant further submits that, there is a scheme in Railways compassionate ground appointment to the wards of casual labour having temporary status, died in harness. When the deceased died on that date his daughter is minor. Therefore the widow of the deceased applied on

14.3.2005 for appointment of the 2nd applicant on compassionate grounds. Aggrieved by the inaction of the Respondents in not considering the applicant's representations, she filed OA No.290/2013 and the same was disposed of with the following direction to the 2nd Respondent :-

“ to consider the applicant's representation dated 28.7.2011 for compassionate appointment to Kum. K. Kavitha on merit subject to the conditions prescribed in the Railway Board's letters issued from time to time, within a period of three months from the date of receipt of a copy of the order.”

4. The applicant contends that, the Respondents failed to take any decision with regard to direction passed in OA No.290/2013 within three months the Respondents filed MA No.212/2014 seeking extension of time, to implement the orders passed in OA No.290/2013 and sought six months time in their affidavit dated 3.3.2014. MA No.212/2014 was disposed of vide order dated 25.3.2014 granting time to the respondents to implement the order passed in OA No.290/2014 till 30.05.2014.

5. The applicants further submit that, the 3rd Respondent vide order dated 26.3.2014 passed orders rejecting the request of the applicants for compassionate appointment to the 2nd applicant without application of mind and without going through the facts of the case and material papers placed on record. Hence this application.

6. Respondents have filed reply statement stating that the husband of the 1st applicant was initially engaged as Casual Labour and while working as such, he died on 18.9.1986. Consequent upon his death, Ms. K. Saroja, claiming herself as the widow of late Shri K. Anandam, vide her application dated 8.3.1988 sought appointment for herself on compassionate grounds.

She was advised vide letter dated 10.6.1988 that dependents / wards of the CMR Gangman dying in harness prior to 1.1.1987 are not entitled for appointment on compassionate grounds. Subsequently, after a lapse of more than 17 years, the applicant submitted another application dated 25.4.2005 seeking appointment in favour of her daughter. After examining the facts and circumstances of the case, DRM/SC had referred the case to Chief Personnel Officer/SC for considering the request of the applicant for appointment of Ms. K. Kavita in a Group 'D' post on compassionate grounds.

7. The Respondents further state that the competent authority ie Chief Personnel Officer at HQrs after taking into consideration all aspects of the case had regretted the request of the applicant for the appointment of her daughter, Ms. K. Kavitha on compassionate grounds on 1.7.2008. The contention of the applicant that rejection of her case by CPO without forwarding the file to the General Manager is baseless and untenable for the reason that as the Head of the Department concerning Personnel Policies, it is his bounden duty in guiding the Head of the Organization in decision making. It is thus his duty to forward those cases which deserves General Manager's consideration. Further, the purpose of providing compassionate ground appointment to the bereaved family is to provide immediate succor and not to stretch the limit for unduly longer period.

8. As on the date of rejecting the case of the applicant for appointment, the rejection was made as per the rules existing at that point of time. The rule was amended during the year 1997, but the applicant chose to remain

silent till 2005 without any valid reason. The purpose of providing compassionate ground appointment to the bereaved family being providing succor and not to stretch the limit for unduly longer period, considering compassionate ground appointment in favour of the applicant's daughter after 27 years of death of the employee is a matter to be at the discretion of the competent authority taking all facts into account to ensure that there is a genuine compassion to be shown.

9. The respondents further state that the applicant's representation dated 28.7.2011 has been examined by the 2nd Respondent ie General Manager and not by any lower authority. The orders of the Competent Authority ie the 2nd Respondent is communicated to the applicant by the 3rd Respondent vide letter dated 26.3.2014. The Respondents further state that the death of the employee had taken place more than 27 years ago and the deceased employee had not left behind any liability. The spirit behind the scheme of compassionate appointment is to extend immediate relief to the bereaved family which is in distress due to sudden death of bread winner.

10. The Respondents further state that it is a well-settled preposition of the law that compassionate appointment is a special type of appointment and the object of giving such appointment is always to support the family of the employee while in service, leaving his family without any means of livelihood but such appointments cannot be granted as a source of recruitment and appointments on compassionate grounds are required to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the

deceased at the time of death of the bread winner. It is also respectfully submitted that the Hon'ble Supreme court in various catena of judgments held that "the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over".

11. The respondents further state that the rejection of compassionate appointment is done on going through the entire records which was placed before and on merits the 2nd respondent has passed the orders which is just and proper as the basic objective or relevance of compassionate ground appointment is not justified as the family is not in distress which needs the financial help as the survival of the family is at stake. In view of the above discussions, the respondents pray for dismissal of the OA as devoid of merits since the death of the employee took place on 18.9.1986 ie 27 years ago and the basic objective or relevance of compassionate ground appointment is long gone.

12. This Tribunal had heard Mr. G. S. Rao, learned counsel for the applicant and Mrs. A. P. Lakshmi, learned Standing Counsel for Respondents and perused the materials on record.

13. The fact that the deceased husband of the applicant No.1 was a Casual Labour having temporary status is not disputed. The legal position that in case of death of such an employee, his family members are eligible for appointment on compassionate grounds has been clarified in Sl. Circular No.81/97, dated 13.5.1997 vide Annexure A-24. The fact that the case for

appointment of applicant No.2 who is the daughter of applicant No.1 and the deceased employee late K. Anandam was recommended by the Divisional Railway Manager cannot be overlooked. The finding given by this Tribunal in the earlier judgment dated 30.10.2013 in OA No.290/2013 wherein this Tribunal has categorically found that there is no delay in the circumstances of this case as elaborately narrated in the said judgment is not now open for reconsideration either by this Tribunal or by the Respondents. Therefore the said finding given by this Tribunal in the said judgment is fully binding on the Respondents. Hence the Respondents could not have rejected the application for appointment on compassionate appointment. Any attempt in this regard by the Respondents tantamounts to overreaching the judgment and the finding given by this Tribunal. The findings and directions passed by this Tribunal were not challenged by the Respondents before the appropriate forum for the reasons best known to them. The concerned authorities while considering such a case should apply their mind to the entire facts and circumstances in proper perspective, keeping in view findings of the Tribunal as well as the several Circulars issued by the authorities from time to time. But for the sake of repetition it is again emphasized that the Respondents cannot overlook or disregard the findings passed by this Tribunal in the earlier judgment. The fact remains that the discretion is left with the Respondents to consider the case for appointment on compassionate grounds. While exercising such discretion, the Respondents are not expected to act in a whimsical manner. No family members of the applicant could get appointment on compassionate grounds inspite of the fact that they have been driven from

pillar to post. It cannot be said that there was any delay on the part of the applicant in submitting the application. The said delay cannot also be taken into consideration to come to the conclusion that there is no distress in the family and they are not in immediate need of any succor for their maintenance for survival. It is a clear case in which the applicants have made out a case of distress and their inability to maintain themselves. The further fact that they have been able to survive for such a long period inspite of the poverty cannot also be used against them saying that compassionate appointment cannot be made after a long time after death of the employee. Therefore this Tribunal by its order dated 30.10.2013 in OA No.290/2013 held that the rejection order as passed by the Respondents is not in accordance with law and also against the purpose for which the scheme of compassionate appointment was introduced. Besides that it is also against the categorical direction passed by this Tribunal in the earlier OA. Therefore the impugned rejection order dated 26.3.2014 is set aside. The 1st Respondent is now directed to consider the representation of the applicants keeping in view all relevant factors as mentioned above as well as in the previous judgment passed by this Tribunal and to consider the appointment of the 2nd applicant on compassionate grounds in accordance with law within a period of three months from the date of receipt of a copy of this order.

14. In view of the forgoing discussions, the OA is ordered accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 5th October, 2018.

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