

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00934/2015

Date of CAV: 31.07.2018

Date of Order: 03.08.2018

Between:

B. Satyanarayana, S/o. late Smt. Bangari Lakshmi, (Adopted Son)
(Ex. Safaiwali, PRS/SC Railway, Secunderabad Division),
Aged about 43 years, R/o. H. No. 2-1-1209,
Gangaputra Street, Naim Nagar, Hanumakonda – 506009,
District Warangal.

... Applicant.

And

1. Union of India, Rep. by the General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
S.C. Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
4. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

... Respondents

Counsel for the Applicant ... Mrs. Rachna Kumari, Advocate

Counsel for the Respondents ... Mrs. M. Venkateswari, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This OA is filed against the impugned order No. CP/175/CON/13/2006/ACG dated 16.11.2007 of the 3rd respondent rejecting the claim of the applicant for compassionate appointment.

2. The applicant has submitted in his OA that he has been adopted by Smt. B. Laxmi, who was initially appointed as casual labour/ water woman in South Central Railway. Later, she was absorbed as Safaiwali in S.C. Railway, Secunderabad. Smt. B. Laxmi died while in service on 10.10.2004. After the death of Smt. B. Laxmi, the applicant sought for release of terminal benefits from the respondents. In response thereto, the 3rd respondent advised the applicant to approach a court of law and get his title declared as legal heir of late Smt. B. Laxmi, vide letter No.C/P.500/DNR/05 dated 25.08.2005. Accordingly, the applicant approached the court of the Principal Junior Civil Judge, at Warangal by filing OS No. 1491/2005 and the Hon'ble Court vide its Order dated 25.11.2005 has decreed the suit declaring the applicant herein as legal heir of deceased Smt. B. Laxmi. Based on the decree of the court dated 25.11.2005, the terminal benefits of the deceased employee were released in favour of the applicant. The applicant represented to the 3rd respondent on 16.01.2006 seeking compassionate appointment, which was rejected by the 3rd respondent vide letter No. CP/175/Con/13/2006/AC, dated 20.06.2006 disputing the adoption of the applicant by late Smt. B. Laxmi. Against this rejection, the applicant filed OA No. 715 of 2006, wherein this Tribunal vide order dated 20.07.2007 set aside the impugned orders dated 20.06.2006 & 30.06.2006 by elaborately discussing the adoption deed and the order of the Hon'ble Principal Junior Civil Judge, at Warangal in OS No. 1491/2005. In the said OA, a direction was issued to the respondents to consider the applicant for compassionate appointment as per rules in vogue and pass appropriate orders within a period of two months from the date of receipt of the said order.

3. In pursuance of the order of this Tribunal referred to, the respondents considered and rejected the case of the applicant for compassionate appointment vide letter No. CP/175/Con/13/2006/ACG, dated 16.11.2007 stating as under:

“P. Satyanarayana is 38 yrs & 4 months having two daughters. He was not dependent economically on the deceased employee. The employee died in 2004. After considering all the facts I don't consider it as a fit case for CG appointment. The applicant cannot be given appointment on CG.”

Being aggrieved by the said rejection order, the present OA has been filed.

4. In the OA, the applicant mainly raised the following grounds:

- i) The Railway Board vide Serial Circular No. 20/97 in Circular Letter No. P(R)268, dated 5.2.1997 reiterated the earlier Circular No. RBE 121/1996 issued vide Board's letter No. E(NG)/RC-1/48 dated 4.12.1996, wherein it was mentioned that the General Managers are empowered to consider time barred cases which are upto 20 years old from the date of death of Railway employee, provided appointment is sought to the first child/ first son/ first daughter and that application for appointment is submitted within 2 years of attaining the age of majority by the candidate.
- ii) The applicant contends that, instead of considering his case at the level of the General Manager, it was considered and rejected at a lower level.
- iii) In Serial Circular No. 214/2000 circulated vide letter No.P/268, dated 31.10.2000, it has been mentioned that, in terms of the Board's letter, the General Manager is pleased to delegate the powers to consider cases of compassionate appointment to HODs/DRMs/CWMs, where request have been made for the first son/ first daughter provided the case is not more than 20 years old and the application has been made within 2 years from the date of attainment of majority of the candidate and the delegation is only with reference to relaxation in the time limit.
- iv) Upper age relaxation to any extent can be done by GM/ CPO based on the merits of each individual case vide Board's letter No. E(NG)II/94/RC-1/35 dated

12.05.1997 (RBE No. 69/97 (SCR SC. No. 109/97), which was not denied by the respondents in their reply statement.

v) The applicant contends that when the terminal benefits could be paid to him as legal heir of the deceased employee, why not he be considered for compassionate appointment.

vi) The deceased employee late Smt. B. Laxmi has represented on 18.03.1991 that she had adopted the applicant as her legal heir and requested to enter his name in the service records, duly enclosing the adoption deed.

5. The respondents have filed their reply statement on 05.01.2017, wherein the respondents, *inter alia*, pleaded that one Smt. B. Laxmi is not the adopted mother of the applicant as the applicant's school certificate dated 06.12.1988 bear the name of his natural father. Further, Sri Kanakaiah Sayanna, late husband of Smt. B. Laxmi was also an employee of South Central Railway. He died on 19.03.1971 while in service and consequently, Smt. B. Laxmi was appointed on compassionate grounds, pursuant to her application dated 11.08.1977. The respondents claim that during the investigation done by the respondents to offer compassionate appointment to Smt. B. Laxmi, she has not mentioned anything about adoption of the applicant. Besides, applicant's certificate of National Trade Electrician of July 1991 also bears the name of his natural father Sri P. Kondaiah. The respondents have also drawn reference to the provisions of the Hindu Adoption and Maintenance Act.

6. In the better affidavit filed by the respondents on the direction of this Tribunal vide order dated 27.04.2017, the respondents, *inter alia*, stated that based on the order of this Tribunal in OA 715/2006, dated 20.07.2007, the competent

authority has examined the case of the applicant and rejected the same on ground that the applicant was not dependent economically on the deceased employee and his age was 38 years 4 months with two daughters. The respondents have relied on the Board's letter No. E[NG]-II/94/RR-1/29 dated 11.05.2015 circulated vide Serial Circular No. 42/2015 dated 18.05.2015, which states that in terms of Board's letter dated 10.05.1999 (RBE No. 99/1999) the upper age relaxation of three years has been given in open market recruitment to all non-gazetted posts. However, this is applicable to the candidates appearing for Group C and Group B posts in open market.

7. It is further stated by the respondents that the applicant is working as Electrician in private sector and he is not having any liabilities nor any dependents.

8. Heard learned counsel for the applicant and the learned standing counsel for the respondents.

9. Learned counsel for the applicant submitted that the issue of adoption has been decided and a declaration holding the applicant as legal heir of late Smt. B. Laxmi has been issued by a competent court of law and it has attained finality and based on the said order, the respondents have released the terminal benefits of Smt. B. Laxmi to the applicant herein. She further submitted that, the Railway Board has decided vide letter No.E(NG)II/86/RC-1/1 dated 20.05.1988 that an adopted son/daughter will also be eligible to be considered for appointment on compassionate grounds. She further submitted that the compassionate appointment of the applicant should have been considered at the level of General Manager and not at the level of the Divisional Railway Manager. The General Manager has delegated the powers to consider the cases of compassionate appointments to HODs/ DRMs/

CWMs provided the cases are not more than 20 years and this delegation is only with reference to the relaxation in time limit. Learned counsel for the applicant has further argued that the General Managers are empowered to consider time barred cases of compassionate appointments which are up to 25 years old from the date of death/ medical unfitness of the ex-employee, at their personal level only, not to be delegated further, vide Board's letter No. E(NG)II/98/RC-1/64 dated 31.05.2011 (RBE No. 77/11, SCR SC No. 77/11). She further argued that upper age relaxation to any extent can be done by GM/CPO based on the merits of each individual case.

10. Learned Standing Counsel for the respondents has argued before the Tribunal stating that the adoption is not tenable considering the name of the applicant written in the SSC certificate and ITI certificate. Her contention was that the name of the father mentioned in the certificates of the applicant was that of his natural father. She further argued that the provisions of the Hindu Adoption & Maintenance Act have not been strictly followed. She also fairly conceded that the respondents should have contested the suit OS No.1491/2005 filed by the applicant seeking declaration that he is legal heir of late Smt. B. Laxmi. She further contended that the compassionate appointment has to be considered based on the balanced consideration of facts. Learned counsel for the respondents emphasized that Smt. B. Laxmi did not reveal that she had adopted the applicant while her application for appointment on compassionate grounds was being processed.

11. Thus, as seen from the reply, the respondents have objected to the adoption of the applicant by the deceased employee Smt. B. Laxmi. However, as per the directive of the respondents, the applicant approached the court of the Principal Junior Civil Judge, at Warangal and the court gave a decree in OS No. 1491/2005 holding that the applicant is a legal heir of late Smt. B. Laxmi. This order was not

appealed against by the respondents. Based on the said order, terminal benefits were released to the applicant. But, they objected for considering the applicant's case for compassionate appointment on the ground that the adoption deed was not in order. In the earlier OA No. 715/2006, this Tribunal found that the said contention of the respondent was invalid. Therefore, raising the same ground again in the reply statement does not stand to reason, more so when a competent civil court has passed an order on the same. Hence, all averments made in respect of the adoption in the reply statements would be irrelevant in the present case.

12. The respondents rejected the claim of the applicant for compassionate appointment vide the impugned order dated 16.11.2007, not on the ground of validity of the adoption, but on the ground that the applicant is aged 38 years & 4 months and not dependent economically on the deceased employee. The respondents claim that the applicant is working as Electrician in a private sector. However, no documentary evidence has been filed by the respondents to this effect. Therefore, the Tribunal is of the view that any assertion made needs to be backed by evidence to accept the assertion. In the present case, since such evidence is not on record, it would be in the fitness of things that the authority superior to the one who issued the impugned order should verify the details and place it on record.

13. The respondents have also stated in their reply affidavit that the applicant has neither any liabilities nor having any dependents. But, the very impugned order dated 16.11.2007 says that the applicant is having two daughters. Therefore, the respondents are not justified in making such averments in their reply affidavit.

14. As already referred to above, this Tribunal vide order docket dated 27.04.2017 directed the respondents to file a better affidavit in this OA indicating

the material evidence for arriving at the conclusion that the applicant was not economically dependent on the Railway employee or whether the Circular instructions according to which a married person who has crossed the age of 38 years is not eligible for compassionate appointment. However, the respondents in their 'better affidavit' have not presented the material indicating that the applicant is not economically dependent on the railway employee nor have they produced the circular stating that a person who is married and crossed the age of 38 years cannot be considered for compassionate appointment. Therefore, the Tribunal has to necessarily come to the conclusion that the respondents have not followed the directions of this Tribunal and failed to substantiate the grounds taken in the impugned order dated 16.11.2007. Consequently, the case of the applicant needs to be re-examined at the level of the General Manager i.e. the 1st respondent herein.

15. The respondents have also claimed that the upper age relaxation can be given only for three years and it is being extended by the railway authorities on a time to time basis. However, as seen from the Serial Circular No. 42/2015 dated 18.05.2015, it is only applicable for recruitment from open market and not for compassionate appointments. On the contrary, the GMs/ CPOs have been empowered to relax the age to any extent based on the merits of the case of each individual, vide Board letter No. E(NG)II/94/RC-1/35 dated 12.05.1997 (RBE No. 69/97 (SCR SC No.109/97)).

16. Bearing in mind the facts discussed above and contentions made, it is felt necessary by this Tribunal that, in the interest of justice, while quashing the impugned order No.CP/175/CON/13/2006/ACG, dated 16.11.2017, the General Manager be directed to re-examine the case of the applicant on its merit reckoning the present circumstances in which the applicant is placed by invoking the power

invested in him in respect of age relaxation vide Board's letter No. E(NG)II/94/RC-1/35 dated 12.05.1997 (RBE No. 69/97 (SCR SC. No. 109/97) and pass appropriate orders within a period of 60 days from the date of receipt of copy of this order. The impugned order dated 16.11.2017 is set aside and the 1st respondent is directed accordingly.

17. OA is allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 3rd day of August, 2018

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