

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

O.A/20/00747/2017

Date of CAV: 03.10.2018

Date of order: 05.10.2018

Between:

Mr. KATARI YEKALAVYA,
S/o Mr. K.Ramanand, alias Ramana Murthy,
Aged about 42 years,
Occupation: Unemployee,
R/o Ramanagar Village,
Chirala Mandal,
Prakasam District.

Applicant

A N D

1. Union of India, ,
Represented by its Secretary,
Railway Board, Rail Bhavan,
New Delhi 110 001,
2. The South Central Railway,
FA&CAO's Office,
Rail Nilayam,
Secunderabad, rep.
by its FA&CAO.

... Respondents

Counsel for the applicant : Mrs. G.Sridevi
Counsel for the respondents : Mr.T.Hanumantha Reddy

C O R A M :

THE HON'BLE MR .B V SUDHAKAR, MEMBER (A)

O R D E R

The OA is filed challenging the rejection order issued by the 2nd respondent containing the proceedings in regard to compassionate recruitment vide letter dated 17.7.2017.

2. Brief facts of the case are that the father of the applicant died on 7.9.2006 while in harness. The applicant represented for compassionate recruitment since he has to take care of his mother, mentally retarded brother and also that his financial condition being very poor. Other family members have given no objection certificate for his appointment. The 2nd respondent on receiving the request for compassionate appointment, approached the revenue authority viz., the Tahsildar and the District Collector in regard to certain discrepancies about the identity and caste of the applicant. The District Collector confirmed the identity and caste details as sought by the respondents informing that they are genuine. Thereupon, the respondent, vide letter dated 24.6.2013 sought details as to whether the applicant's mother is remarried and also about the status of the employment of the applicant. On obtaining necessary details, 2nd respondent without assigning any reason, vide letter dated 7.8.2013 rejected the application of the applicant stating that the competent authority has not considered his request. Thereafter, the applicant made another representation dated 2.9.2013 and uncle of the applicant sought information under the RTI Act to ascertain reasons for rejection of the compassionate recruitment. It was revealed by the respondents that the compassionate recruitment was rejected on 16.9.2015 on the ground that the applicant is married and about 40 years old and that he cannot be said to be dependent on the deceased employee in order to consider for compassionate recruitment. Aggrieved for not being considered for compassionate recruitment, present OA has been filed.

3. The contention of the applicant is that he made application in the year 2008 and his case is being delayed for one reason or the other which are trivial in nature. As far as age is concerned the respondents have powers to relax wherever it is required. The applicant is the sole bread winner of the family with aged mother and mentally retarded brother with no stable source of income to look after her. The applicant claims that 27 other persons have been appointed on compassionate grounds during the years 2010 to 2015 whereas his case has been lingering for no valid reasons. The main point on which the applicant contends is that while rejecting his request, the respondents have not furnished valid reasons. The applicant also states that the ground of not giving valid reasons was challenged in OA 727/2016 dated 17.3.2017 wherein this Tribunal was pleased to direct the respondents to consider the representation of the applicant for compassionate appointment and issue a reasoned and speaking order. Despite being directed so, the respondents once again issued a non-speaking order. The applicant claims that this is contempt of this Tribunal since they have not complied with the orders issued implying that the respondents have made their mind not to grant any relief to the applicant under any circumstances.

4. The respondents have confirmed that the identity and community certificate of the applicant were found to be genuine by the concerned District Collector. The respondents also stated that the competent authority has considered his case and rejected vide letter dated 7.8.2013 and also in response to RTI application dated 11.8.2015, it was informed that the applicant is married and 40 years old and therefore cannot be said to be dependent on the deceased employee. At the time of death

of the ex-employee, the age of the applicant was 33 years and was married. As per the orders of this Tribunal dated 17.3.2017, the competent authority has once again reconsidered the case and did not agree to provide for compassionate recruitment, Therefore, after due consideration and reckoning factors required, the applicant's application was rejected.

5. Heard the learned counsel and perused relevant records.

6. The learned counsel for the applicant has drawn the attention of this Tribunal to the facts that the respondents have not applied their mind in considering the compassionate recruitment of the applicant. Learned counsel claims that they are prejudiced against the applicant, and, therefore, are not issuing any order favouring the applicant for compassionate recruitment. This is evident from the fact that despite repeated directions from this Tribunal, orders which are not speaking are being issued. The learned counsel for the respondents vehemently claims that the submission of the learned counsel for the applicant is not true as grounds have been specified in some responses given by the respondents.

7. This Tribunal in OA 727/2016 dated 17.3.2017 has observed as under:-

“From the material on record it is seen that the applicant is aggrieved by the rejection of his prayer for compassionate appointment vide their proceedings dated 07.08.2013, 04.10.2013 and 16.05.2016. It is the specific contention of the applicant that the 2nd respondent has rejected his case without assigning any reason. Thus the

action of the 2nd respondent in not considering his representation and rejecting his case for appointment on compassionate grounds without assigning any reason is illegal, arbitrary and violative of law.”

8. Complying with the above order of the Tribunal, the respondent, i.e., the General Manager, South Central Railway vide letter dated 17.7.2017 has observed while rejecting the claim for compassionate appointment as under:

“Applicant is married and about 40 years old and cannot be said to be dependent on deceased employee justifying C.G. appointment”.

”I have seen the details of the case. I agree with the observations of previous GM”.

9. There are Railway Board’s orders indicating that the age of the applicant can be relaxed if it is found to be genuine and deserves consideration. There is no bar as per the Railway rules to consider the cases of married children of the deceased employee. It is also seen from the letter dated 16.5.2016 of the respondents addressed to the applicant that it had a three liner reply that ”the stand taken by the competent authority communicated vide letter dated 7.8.2013 holds good”. It does not give any reasons for not considering the case of the applicant. Same is the case with regard to the reply given by the respondents vide letter dated 7.8.2013 wherein a cryptic reply was given which obviously aggravates the grievance of the applicant. Another reply which has a bearing in processing of the compassionate recruitment of the applicant is the letter dated 24.6.2013 of the FACAO’s office calling for the family details of the deceased employee. Again on 27.9.2013, the Workshop Accounts Officer, Railway Wagon Workshop

vide cited letter intimated that the declaration given in regard to non-remarriage of Smt. K.Jhansi, widow of the deceased employee and the declaration of unemployment in respect of the candidate Sri K.Yekalavya have been sent for getting them duly witnessed for further course of action. While details were being secured as per the said letters, the respondents, vide letter 7.8.2013 rejected the candidature of the applicant for compassionate recruitment. In other words, the rejection was ordered without obtaining details sought. Any responsible authority may not like to indulge in such extravagance of taking a decision without material facts on record, particularly in the context of this Tribunal repeatedly harping on the issue of a reasoned and a speaking order, which defacto should be the approach to be adopted by any authority empowered to take decisions on behalf of the State. The dates of the letter are a clear indication that the respondents have been discriminating the applicant and rejecting his case with a prejudiced mind. This is also corroborated from the fact that the case of the applicant has not been considered since 2008 despite the directions by this Tribunal in clear terms to issue a speaking and reasoned order in regard to the issue. The learned counsel for the respondents drew our attention to the letter dated 17.7.2017 wherein the competent authority has mentioned that the applicant is married and about 40 years old and therefore he cannot be said to be dependent on the deceased employee, claiming that it is a speaking order. In this regard, the observations of this Tribunal in OA No.727/2016 is as under:

“In these circumstances, the impugned orders are quashed and set aside at admission stage. The Respondents are directed to consider the representations of the applicant for compassionate

appointment in accordance with rules and law, and pass a reasoned and speaking order and communicate the same to the applicant within a period of three months from the date of receipt of a copy of this order. No orders as to costs.”

10. In response, the respondents’ orders are as under:

“The orders of the competent authority i.e., General Manager on reconsideration of the case are reiterated that “I have seen the details of the case. I agree with the observation of previous GM.”

We are perplexed to note the above. A speaking order is an order that speaks for itself. The order should stand to the test of legality, fairness and reason at all the higher appellate forums. That is, the order should contain all the details of the issue, clear findings and reasoned with facts. Order passed by a competent authority without giving sufficient details, applicable rules/law are cryptic orders, devoid of reasoning. In the present, it is lucidly evident that the order referred to does not speak about the background of the case, the plea of the applicant, his financial status, family circumstances, the observations of this Tribunal in multiple OAs pertaining to this case and telescoping these facts on to the objectives of the scheme of compassionate appointment to arrive at a considered decision for meeting the ends of justice.

11. A reading of the orders issued indicates that they are neither speaking nor reasoned. They appear to have been issued without application of mind to the issue. The compassionate appointment is generally offered to enable the distressed family of a deceased employee to overcome the distress that they encounter on the sudden demise of the bread winner. The word compassionate recruitment itself calls for compassion on grounds of penury, dependents to be taken care of and circumstances in which the applicant is placed. In the present

case, the applicant is eking out a living as a labourer with unstable income as was brought out by the learned counsel for the applicant. He has a mentally retarded brother and an aged mother to be taken care of. When the compassionate recruitment rules do not disqualify a person on the basis of age or re-marriage, officers are empowered to relax and consider such cases. It is also depressing to note that when the applicant's case was being processed vide letters dated 24.6.2013 and 27.9.2013, rejecting his case on 7.8.2013 creates an impression that the respondents have made up their mind not to consider his case. Otherwise such orders of rejecting his case before it being processed is usually not done. Hence, this Tribunal is of the view that despite directions to consider, the respondents have not attempted to examine the case in all its entirety by issuing a speaking order as was expounded above. The way respondents have processed the compassionate recruitment does indicate that they have a closed mind in regard to the issue and thereby injustice is being done. Hence, in the interest of justice, 1st respondent is directed to consider the case of the applicant for compassionate recruitment after verifying the reasons for taking a decision without the required facts on file despite repeated directions of the Tribunal to apply themselves to the issue dispassionately; and then issue a speaking and a final reasoned order with full details backed by rules in a balanced manner, within a period of two months from the date of receipt of this order.

12. The OA is accordingly allowed. No order as to costs.

(B V SUDHAKAR)
MEMBER (A)

Dated: 5th OCTOBER, 2018

Vsn/evr