

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

Original Application No.020/01184/2016

Reserved: 28.09.2018

Order pronounced: 01.10.2018

Between:

M. Shajadi Bi, W/o. late R. Nazeer Ahmed,
Aged about 42 years, R/o. H. No. 12/508-A,
Satyanarayanapeta, Kasapuram Road,
Guntakal – 515801.

... Applicant

A N D

1. Union of India,
Rep. by General Manager,
South Central Railway, Rail Nilyam,
3rd Floor, Secunderabad-500071.
2. The Divisional Railway Manager,
Guntakal Division, South Central Railway,
Guntakal – 515801.
2. The Senior Divisional Personnel Officer,
Personnel Branch, Divisional Officer,
South Central Railway, Guntakal.

... Respondents.

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mr. M. Venkateswarlu, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

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

The OA is filed against the order of termination issued to a missing person vide letter number G/P227/III/NECH/DSL/Man Missing dt 23.12.2010/28.12.2010 issued by 3rd respondent and questioning the non consideration of representation seeking sanction of family pension and compassionate appointment.

2. Brief facts of the case are that the applicant's husband joined the respondents as Trainee fitter (diesel) on 4.9.2003 on compassionate grounds. After undergoing training for around two years three months he was found missing and hence a complaint was lodged at Kasapuram police station on 5.1.2006 by the applicant and her mother in law, based on which an F.I.R was registered on 23.1.2006. The police have filed a report dt 25.7.2008 stating as man missing to the JFCM, Guntakal who in turn issued proceedings dt 20.2.2009 closing the case as man missing and undetectable. When these reports were submitted to the 2nd and 3rd respondent they issued orders of termination of service for the applicants missing husband on 23.12.2010. The applicant represented for compassionate appointment and family pension but in vain. Again by representing on 12.2.13 respondents called for requisite documents to consider her case for compassionate appointment. After protracted correspondence, respondents rejected the request of compassionate appointment on 6.2.2015 though after the death of her mother in law on 28.12.2014 she took consent of the remaining family members for seeking compassionate appointment. Hence the present OA.

3. The contention of the applicant is that her husband died in harness. She was duly married to the railway servant on 24.2.2007. Despite her missing husband has been declared dead by municipal authorities and as undetectable by the competent court terminating services of a missing man is illogical. As per Railway Board circular dt 14.9.2012 which deals with compassionate recruitment states that a trainee is a govt servant and his/her dependents are eligible for compassionate recruitment. The applicant also satisfies the conditions stipulated in Railway Board circular dt 26.7.1998 and hence need to

be considered for compassionate appointment. Further as per rule 75 (2) (B) of railway service pension rules 1993 family pension is to be granted, if the railway servant dies before one year completion of one year of continuous service provided he was found medically fit by the competent medical authority prior to the appointment.

4. The respondents defend claiming that the applicant's husband as per the official record was not married. They confirm that the applicants husband being declared missing by the police and the competent court and that the applicant's representation for compassionate appointment has been rejected as per sl circular 100/2007 on grounds that the servant has not been declared dead/medically invalidated. The termination of the applicant's husband has been done as per rules. Respondents contend that Railway Board circular dt 14.9.2012 is applicable only to group D employees and not to group C employees. The respondents quoted the Honourable High Court of Gujarat Judgment dt 27.7.1973 declaring that an apprentice is not a Railway Govt. Servant. More so, when he was drawing only stipend and not regular salary. They pointed out that as per para 103 (IV) of IREM vol .I an apprentice or a trainee is one who does not work against a substantive vacancy and hence he is not a regular railway servant. Compassionate appointment is not a matter of right is one another contention. The fact that the applicant has sought consent of family members is false as her mother in law lodged a objection that she is not being taken care of.

5. Heard the learned counsel and scrutinised the documents submitted.

6. The learned counsel for the applicant has strongly contended that the applicant's case is genuine and requires to be considered as the rules and facts of the case support her plea. It was equally opposed by the respondent counsel stating that the Govt. Servant has not been declared dead and that he did not work in a substantive vacancy. Besides, the mother in law of the applicant took objection to be given compassionate recruitment.

7. The applicant's husband was declared undetectable by the competent court on 20.2.2009. The Municipal authorities declared the railway servant dead under rule 8/13 of section 12/17 of the A.P Registration of Births and Deaths act 1969 vide death certificate dt 17.4.2015. The fact that the applicant was married to the railway servant is evident from the marriage certificate dt 24.2.2007 issued by the Govt. Khazi of Guntakal town and FIR dt 23.1.2006. As per railway board lr dt 14.9.2012 clause 3 (i) a trainee enjoys the status of a Govt. Servant from initial day and will be allowed all the allowances and benefits allowed to a government servant and clause 3 (vii) says that a trainee has the status of Govt/Railway servant from the initial day, as such, dependent of a person appointed on compassionate ground as trainee would be eligible for compassionate appointment in the event of his /her death in harness/medical unfitness. Rule 75 of railway pension rules (pension) rules 1993 provides for family pension for railway servant after completion of one year of continuous service. The railway servant in question with more than two years of service satisfies this rule. Due to internal squabbles the mother in law did complain that she was not taken care of as stated by the respondents but they were not proved as no document to this effect has been placed on record and she has also passed away on 28.12.2014. The consent taken by other family members by the

applicant also satisfies the norms of compassionate recruitment. The respondents claimed that the railway board circular dt 14.9.2012 applies only to Group D employees and that the railway servant was a Group C employee is incorrect as a close reading of the said circular indicates that it was issued to clarify that a widow who does not have the required qualification, will be placed in the grade pay of Rs 1800. Nowhere, it was said that it applies only to group D staff. The respondents also objected that the same family is being granted compassionate recruitment twice but that is provided for in sl circular no 100/2007. The respondents claim that the applicants late husband was not working against a substantive vacancy does not hold good in the context of the railway board circular 14.9.2012 declaring a trainee as a Govt. Servant. The appointment letter issued to the applicants late husband dt 29.8.2003 stands testimony to the fact that the applicant was appointed as a Temporary trainee fitter /DSL. The applicant is a trainee and not a apprentice as it was tried to be presented by the respondents and hence the judgment quoted by them is irrelevant. To sum up the applicant is the legal wife, railway servant declared dead, railway board circular cited provides for compassionate appointment, consent of other family members has been taken and railway pension rules stated direct payment of family pension. Therefore the OA succeeds comprehensively based on facts stated in paras supra. The action of the respondents is against rules and arbitrary in not considering the case of the applicant for compassionate recruitment and family pension.

8. Hence the respondents are directed to consider

- i) the applicant for compassionate appointment as per prevalent instructions in vogue

- ii) fix the family pension as per rules and regulations on the subject from date due and release the same along with due arrears
- iii) Time calendared for compliance is 3 months from the date of the receipt of this order.

9. No order to costs.

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

Dated, the 1st day of October, 2018

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