

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,**  
**CIRCUIT SITTING : BILASPUR**

**Original Application No.203/00922/2017**

**Bilaspur, this Friday, the 23<sup>rd</sup> day of February, 2018**

**Hon'ble Mr. Navin Tandon, Administrative Member**  
**Hon'ble Mr. Ramesh Singh Thakur, Judicial Member**

**Ankush Kumar Bunkar, S/o late Lakshmi Narayan**  
Aged 23 years, Village Paraghat, Jairam Nagar,  
Tahsil-Masturi, District-Bilaspur (C.G.)-495550- **Applicant**

(By Advocate – Shri Malay Shrivastava)

**V e r s u s**

1. Union of India, through General Manager,  
South Eastern Railways, 11 Garden Reach Road,  
Kolkata (W.B.) PIN-400043

2. Senior Divisional Personnel Officer,  
South Eastern Central Railways  
Raipur (C.G.)-492001

3. Senior Divisional Personnel Officer South Eastern  
Railways, Bilaspur (C.G.) PIN - 495001      **-Respondents**

(By Advocate – Shri R.N.Pusty)

(Date of reserving the order :20.02.2018)

**ORDER**

**By Navin Tandon, AM,-**

The applicant is aggrieved that he has not been granted  
compassionate ground appointment and hence this Original  
Application.

**2.** The facts of the case are that the father of the applicant late Shri Lakshmi Narayan was an employee with the respondent-department. He went missing on 10.12.1995. The mother of the applicant filed Civil Suit No.96A/2003 for declaration of the father of the applicant as dead. The Additional Civil Judge, Class-I, Durg vide its judgment and decree dated 31.08.2004 (Annexure A-2) passed a decree of declaring the father of the applicant as dead.

**2.1** After the death of the father of the applicant, the mother of the applicant filed an application on 18.07.2006 for compassionate appointment. However, the respondents vide their order dated 23.04.2007 (Annexure A-3) did not consider the case of the mother of the applicant as fit case for the following reasons-

*“(1) The ex-employee was missing from service since 17.11.1995 whereas compassionate appointment has been requested by you only after 18.07.06. For last 11 years, you are managing the family front without facing any financial difficulties.*

*(2) Your date of birth is 01.07.1976, while the date of birth of Sri Laxminarayan is 15.03.1953. There is a age gap of 23 years, which is very much doubtful.*

*(3) From the judgment order passed on 31.08.2004 by Hon'ble Addl. Judge family court, Durg, it is seen that you have married Sri.Laxminarayan in the year 1990 i.e. when you were hardly 14 years of age. This is objectionable since a Central Govt. employee cannot*

*marry a spouse below 18 years of age. Hence the marital status is also doubtful.*

*(4) You have submitted a school certificate issued by Zila Madyamik Pariksa in the year 2001 indicating that you have passed Class 8<sup>th</sup> exam as a private candidate in the year 2001 i.e. 06 years after missing of your husband. The reasons for appearing the exam under such circumstances is not understood.*

*(5) In addition to settlement dues, you are in receipt of pension of Rs.1275/- + Dearness relief which is sufficient for your maintenance considering length of service (8 yrs) rendered by late Laxminarayan.*

**2.2** The mother of the applicant again submitted an application dated 29.05.2007 (Annexure A-6). The applicant attained the age of majority in the year 2013 and immediately thereafter applied for compassionate appointment for himself on 03.09.2013 (Annexure A-5). It was followed by application from the mother of the applicant dated 12.08.2017 (Annexure A-6) for considering compassionate appointment to the applicant. However, the same has been refused by the respondents by communication dated 19.06.2017 (Annexure A-1) citing the same reasons as communicated vide Annexure A-3.

**3.** The applicant has prayed for the following reliefs:-

*“8.1 That, this Hon’ble Tribunal may kindly be pleased to call for the entire records with regard to case of the applicant.*

*8.2 That, this Hon'ble Tribunal may kindly be pleased to quash the order dated 19/06/2017 passed by the respondent no.2 by which the application of the mother of the applicant for grant of compassionate appointment to the applicant is rejected.*

*8.3 Any other relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case may kindly be given to the applicant.*

*8.4 Cost of this application may kindly be awarded to the applicant."*

4. The applicant has submitted that the order passed by the respondents is unsustainable in the eyes of law as the grounds on which the order dated 23.04.2007 was passed is unsustainable.

5. The respondents have filed their reply on 20.02.2018, in which they have submitted that the father of the applicant was reported to be missing with effect from 17.11.1995. However, the mother of the applicant came forward for compassionate ground appointment only on 17.07.2006 which was regretted by the competent authority. After a lapse of considerable period the mother of the applicant has applied for extending compassionate ground appointment in favour of her son. They have submitted that

the Original Application is misconceived and deserves to be dismissed.

**6.** With the consent of both the parties the matter was heard finally.

**7.** The learned counsel for the applicant submitted that in this case it was not the death of the employee which is treated as a record date. The employee of the department went missing and the family was trying to locate him with the help of police and the department. It was only after the required lapse of period, and completion of legal formalities that the employee of the department was considered as legally dead. Soon thereafter the application for compassionate ground appointment was made at the first available opportunity.

**7.1** The learned counsel for the applicant also submitted that the applicant applied for his own job as soon as he attained the age of majority which is as per rules of compassionate ground appointment of the respondent-railways.

**8.** The learned counsel for the respondents argued that compassionate ground appointment can not be claimed as a matter

of right by relying on the decision of the Hon'ble Supreme Court in the matters of **MGM Gramin Bank Vs. Chakrawarti Singh**, (2013) 10 SCR 1.

9. We have also carefully perused the pleadings of the respective parties and the documents annexed therewith.

10. The Hon'ble Supreme Court in the matters of **State Bank of India and another Vs. Raj Kumar**, (2011) 1 SCC (L&S) 150: (2010) 11 SCC 661 has reiterated that compassionate appointment is not a source of recruitment but it is an exception to general rule that recruitment to public services should be on basis of merit by open invitation providing all opportunities to all eligible persons to participate in selection process. Relevant paragraph of the said judgment read thus:

*"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme".*

*(emphasis supplied by us)*

**11.** The respondent-department has got a scheme for compassionate ground appointment in which either the widow can be granted compassionate ground appointment or a minor child can be granted appointment in case the application is made within two years of attaining the age of majority.

**12.** It is seen that the respondent-department turned down the request of compassionate appointment for the widow of the employee on the reasons which have been listed in Para 2.1 above. In Points 2, 3 & 4, the respondent-department has raised doubts about the bona fide of the widow of the employee. However, in Point No.5 she has been said to be awarded the family pension. Grant of family pension to the widow clearly indicates that the respondent-department has considered her to be the legal widow of the deceased employee. Therefore, the reasons mentioned in points 2, 3 & 4 on the one hand and the reason mentioned in point No.5 are contradictory and display prejudice on the part of the respondents. Therefore, we have no doubt that this order is unjust and is against natural justice to the widow of the deceased-employee.

**13.** Point No.1 also talks of delay in filing application for compassionate ground appointment. However, it is to be seen in

this case that she could approach the respondent-department only after declaration of legal death of her husband.

**14.** The applicant himself has applied for the compassionate ground appointment as soon as he attained the majority and, therefore, this is also as per the rules/scheme of compassionate ground appointment of the department.

**15.** The Hon'ble Supreme Court in the matters of **Raj Kumar** (supra) has specifically held that compassionate ground appointment can be offered as per the scheme of the department. In the instant case, the applicant has been refused the compassionate ground appointment not because his case does not come under the scheme but because of the biased attitude of the respondent-department as reflected in their order dated 23.04.2007.

**16.** In the case of **Chakrawarti Singh** (supra), relied upon by the respondents, the Hon'ble Supreme Court has held that the "Courts cannot confer benediction to make appointments on sympathetic grounds when the regulation framed in its respect does not contemplate or cover such appointment". However, in the instant case we find that the respondents themselves have failed to consider the case of the applicant in terms of their scheme itself, as



mentioned above. Therefore, the reliance placed by the respondents on the decision of **Chakrawarti Singh** (supra) is not applicable in the present case.

**17.** In view of the above, the Original Application is allowed. The respondent-department is directed to consider the case of the applicant for compassionate ground appointment, if otherwise found fit, within a period of three months from the date of communication of this order. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

*rkv*