

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.210/373/2016

Dated this Friday the 8th Day of December, 2017.

Coram: Hon'ble Shri Arvind J. Rohee, Member (J).

1. Ahire Chandrakalaben Sureshbhai,
Wd/o Ahire Suresh Baburao,
(Date of Birth : 01.01.1964),
age: 52 years, residing at: 93,
Bajrang Nagar, Vibhag-1, Dindoli,
Udhana, Surat, State of Gujarat,
Pin Code-394 210.
2. Ahire Pramod Suresh Bhai,
son of Ahire Suresh Baburao
(Date of Birth : 08.10.1983)
age: 32 years, and residing at:
93, Bajrang Nagar, Vibhag-1,
Dindoli, Udhna, Surat,
State of Gujarat,
Pin Code-394210. ..Applicants.

(By Advocate Shri G.S. Walia).

Versus

1. The Union of India,
through General Manager,
Western Railway,
Headquarters' Office,
Churchgate,
Mumbai - 400020.
2. Divisional Railway Manager (DRM),
DRM's Office,
Western Railway, Mumbai Division,
Mumbai Central,
Mumbai - 400 008.
3. Smt.Vaishali Viond Ahire,
residing at: New Gharkul
Shivaji Nagar, Sindhudurg Gad,
House No.44, Taluka and
District: Jalgaon-425 113
(State of Maharashtra). ..Respondents.

(By Advocate Shri S. Ravi).

Order reserved on : 07.12.2017

Order delivered on : 08.12.2017

O R D E R

The mother and younger brother of the deceased employee late Shri Vinodbhai Sureshbhai Ahire approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) This Hon'ble Tribunal will be pleased to order and direct the Respondents to consider the application of the Applicant No.2 for appointment on compassionate ground immediately.
- b) This Hon'ble Tribunal will be pleased to order and direct the Respondents to appoint the Applicant No.2 in the Railway Service according to his suitability.
- c) This Hon'ble Tribunal will be pleased to order and direct the Respondent No.1 and 2 to release the amount of provident fund of the deceased employee to Applicant No.1 and 2 herein as per the Nomination Form.
- d) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.
- e) Costs of this Original Application may be provided for;"

2. The deceased employee Vinodbhai was appointed on compassionate ground as Khalasi under Respondent No.2 in Electrical Department in Mumbai Division of the Western Railway after death of his

father. Unfortunately while in service the said Shri Vinodbhai also expired on 21.11.2015 leaving behind him the private respondent No.3 as his widow and one minor son. After his death the applicant No.1 had given no objection in favour of the applicant No.2 to apply for compassionate appointment on the ground that he is unemployed and has liability of one unmarried sister. According to applicant nothing has been heard from the other end. They also claimed the amount of Provident Fund standing in the name of the deceased employee since according to them they were nominated by him to receive the said amount after his death.

3. The impugned inaction on the part of the respondents is challenged only on the ground that the same is illegal and the applicant No.2's case should have been favourably considered for appointment on compassionate ground in place of his deceased brother.

4. On notice the official respondent No.1 and 2 appeared and by a common reply dated 24.06.2016 resisted the O.A. and stated that in terms of the guidelines for compassionate appointment, the applicant No.2 is not eligible or has no preferential right to claim compassionate appointment, since widow, mother and children of the deceased alone can apply for compassionate

appointment. It is also stated that the applicant No.2 is a major person and hence it cannot be said that he was solely dependent on the deceased employee at the time of his death. It is also stated that the private respondent No.3 has applied for compassionate appointment in place of her deceased husband, which is under process. The applicants are, therefore, not entitled to any relief. It is also stated that after death of the husband of the applicant No.1 she is getting family pension and for this reason also it cannot be said that the family was in indigent condition, after death of Shri Vinodbhai. The O.A. is, therefore, liable to be dismissed.

5. The private respondent No.3 filed reply dated 05.07.2017 and also resisted the O.A. It is stated that after death of her husband the applicant ill-treated her and have thrown her out of the house she was, therefore, required to take shelter of her parents. For survival of family she appeared for compassionate appointment. It is also stated that applicant No.2 is working at Petrol Pump and is not unemployed as stated by him. The claim is also denied on the ground that as per the rules the private respondent No.3 being widow of deceased employee has preferential right to claim compassionate appointment.

6. On 07.12.2017 when the matter was called out for final hearing, heard Shri G.S. Walia, learned Advocate for the applicant and the reply arguments of Shri S. Ravi, learned Advocate for the official respondents No.1 and 2. Ms.Vaishali Agane, learned Advocate for private respondent No.3, however, remained absent without any intimation.

7. I have carefully perused the case record including the pleadings of the parties and the documents relied upon by the applicant and the provisions of the guidelines in the form of Master Circular No.16 Compendium on Appointment of Compassionate Grounds particularly Rule III thereof which prescribes who are the persons eligible to apply for compassionate appointment.

FINDINGS

8. It is obvious that composite reliefs are sought by the applicants viz. One for compassionate appointment and the other claiming amount of Provident Fund as nominee of the deceased employee Vinodbhai. It is obvious that the respondents have not considered either of the claim. During the course of arguments learned Advocate for the official respondents submitted that private respondent No.3 is appointed on compassionate ground. In view of this there is no scope for

consideration of claim of applicant No.2 for compassionate appointment.

9. Even otherwise as per rules he being major younger brother, it cannot be said that he was dependent on the deceased employee at the time of latter's death. Being 32 years of age he may have been married also, although he has not disclosed it. According to respondent No.3 he is working on Petrol Pump which fact is not denied by way of rejoinder. As such the applicant No.2 is earning member of family and cannot be said to be unemploye.

9. Not only this the applicant No.1 is getting family pension after death of her husband. As per the guidelines on death of the employee his widow, children, father and mother alone are eligible to apply. If all these claimants on preferential right are not available then only brother or sisters of the deceased employee can apply for compassionate appointment. In this case applicant No.1 has given up her claim for compassionate appointment and her husband /father of deceased Vinodbhai already expired, the private Respondent No.3 also is eligible to apply for compassionate appointment.

10. In the present case there is nothing on record to show that after death of the deceased

employee the family was in indigent condition and unable to survive. In such circumstances of the case it cannot be said that the applicant No.2 is eligible or entitled to be considered for appointment on compassionate ground.

11. However, so far as the claim for grant of amount of Provident Fund standing in the name of the deceased employee is concerned, it appears that the said grievance has not been considered by the official respondents. It appears that applicant No.1 and 2 were nominated by the deceased employee to receive the said amount. However, after his marriage, the deceased employee might have replaced these nominees by his wife. In such circumstances of the case the O.A. is liable to be partly allowed.

12. The claim for compassionate appointment for applicant No.2 stands rejected.

13. However, the official respondents No.1 and 2 are directed to consider the claim for grant of the amount of Provident Fund standing in the name of the deceased employee Shri Vinodbhai Ahire in accordance with law and in case the deceased employee has not altered the nomination and pass a reasoned and speaking order, within a period of 8 weeks from the date of receipt of certified copy of this order.

14. The order so passed shall then be communicated to the applicants, who will be at liberty to approach appropriate forum in case their grievance in this behalf still persists.

15. No order as to costs.

Place: Mumbai.
Date : 08.12.2017

(Arvind J. Rohee)
Member (J).

H.