

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, Mumbai.

ORIGINAL APPLICATION No.191/2015

Dated this Wednesday the 16th day of August, 2017

CORAM: HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER (A)

Shri Arvind Tulsidas Sakaria,
 S/o Late Shri Tulsidas Kalidas
 Sakaria.
 R/at Bldg.No.213/5,
 Railway Colony, Kherwadi Road,
 Bandra (E), Mumbai 400 051.
(By Advocate Shri R.G. Walia)

... ***Applicant***

Versus

1. Union of India, through
 The Chief General Manager,
 Western Rly, Headquarters'
 Office, Churchgate, Mumbai 20.
2. The Divisional Rly. Manager (DRM)
 DRM's Office, Mumbai Division,
 Western Rly., Mumbai Central,
 Mumbai 400 008.
3. The Chief Personnel Manager,
 Western Rly., Headquarters'
 Office, Churchgate,
 Mumbai 400 020.
(By Advocate Shri S. Ravi)

... ***Respondents***

ORDER (Oral)

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant is the brother of a Government servant who died as a bachelor on 16.07.2012. The Applicant claims that his step brother had declared him as a dependent. The Railway Medical facility and passes were extended

to the applicant by the respondents. After the death of the elder step-brother the applicant had submitted a number of representations to the respondents for considering his case for appointment on compassionate ground. Since the respondents have not offered him compassionate appointment despite his repeated representations, the applicant has filed this OA praying for the following reliefs:

“8.a That this Hon'ble Tribunal will be pleased to order and direct the respondents to consider and appoint the applicant on any suitable post in the Railway on Compassionate Ground.

8.b) Cost of this Original Application is provided for;

8.c) Any other and further orders as this Hon'ble Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.

2. The brief facts of the case, as they appear from the OA, are as follows:

i) The elder step-brother of the applicant late Shri Anil Tulsidas Sakaria was working as Oiler under the Respondents at Bombay Central under the Senior Section Engineer, Western Railway, Mumbai. The Applicant states that he was entirely dependent on his step-brother. The Applicant's father late Shri Tulsidas Kalidas Sakaria was also a Railway employee working as

Jamadar under the Health Inspector, Parel in the Western Railway in the Medical department. He expired on 11.08.1992 and the applicant's step-brother was appointed in the Railways as a Coach Attendant in the year 1993 on compassionate ground. The Applicant is the son of the second wife whom his father had married after the death of the first wife. The late step-brother of the applicant had included his name in the Medical 'I' Card and the Railway Pass. His step-brother was only 44 years of age at the time of his demise. The Applicant was dependent on him and was staying with him in the Railway quarters. He claims that as per the Railway Board's letter No.RBE of 165/1999 dated 05.08.1999 (Annexure A-4) the dependent of a Bachelor/Spinster Railway employee dying in harness may be considered for compassionate appointment by the Railway at its own level, subject to the condition that the candidate proposed for compassionate appointment is shown as dependent on the ex-employee as per the pass declaration. At Annexure A-5 is the copy of the Ration Card where the names of the applicant and his elder brother are mentioned. At Annexure A-6 is the copy of the Railway Medical Attendance Identity Card wherein the name

of the applicant is shown as dependent. The Applicant had submitted a number of representations dated 02.11.2012 and 25.11.2013. His mother had also repeatedly written to the Railway Authorities to give compassionate appointment to the applicant. Since the Railways have not given compassionate appointment to the applicant, he has filed the present OA, praying for the reliefs as mentioned at para 1 above.

3. The grounds on which the applicant has based his prayer are at para 5 of the OA and reproduced herein-below:

“5.a) The impugned action of the respondents of not considering the claim of the applicant for compassionate appointment is absolutely illegal and wrong.

5.b) The impugned action of the respondents of not considering the claim of the applicant for compassionate appointment is unconstitutional and arbitrary.

5.c) The impugned action of the respondents of not considering the claim of the applicant for compassionate appointment is against the rules/Railway Board orders on the subject of compassionate appointment.

5.d) The impugned action of the respondents of not considering the claim of the applicant for compassionate appointment is violative of Article 14, 16 and 21 of Constitutional of India.

5.e) The impugned action of the Respondents of not considering the claim of the applicant for compassionate appointment is whimsical and capricious.

5.f) *The impugned action of the respondents of not considering the claim of the applicant for compassionate appointment is mala fide and biased.*

5.g) *The Applicant was staying with his brother and the later brother of the applicant used to take care of the applicant's daily needs and other requirements. The Applicant was dependent of his late brother.*

5.h) *The family of the applicant i.e. his father and late brother has always served the Railways with utmost sincerely and dedication and atleast the respondents should have appointed a Welfare Inspector to determine whether the case of the applicant was deserving or not for compassionate appointment.*

5.i) *Applicant further states and submits that the contentions and averments as stated in para 1 and 4 of this OA may be treated as a part of para 5 i.e. Grounds."*

4. The Applicant has also filed a delay condonation application through MA 443/2015 on 20.04.2015 on the ground that the applicant had submitted a number of representations starting with 02.11.2012 for grant of compassionate appointment and was waiting for the Railways' response. Since he did not get any reply from the Railways, he has filed this OA on 15.12.2014 and has prayed for condonation of delay.

5. The Respondents in their reply filed on 04.01.2016 have opposed the OA on the ground of long delay and laches and as devoid of merit. It is their contention that the Hon'ble Supreme Court has laid down certain basic principles and

guidelines for granting compassionate appointment to the dependents. As per the Hon'ble Apex Court, compassionate appointment can be given only as a relief for minimum succour on the death of a Government servant to his family. In ***Local Administration Department Vs. M. Selvanayagamn, 2011(2) SLJ 260***, the Hon'ble Supreme Court has observed that even a son of the deceased government servant if he is able to survive for certain years, then it is deemed that the immediate mitigating poverty has been overcome and the applicant will not be entitled to the Compassionate Appointment. The Applicant was born on August, 1984 and was around 31 years of age at the time of filing of the OA. His elder step-brother had himself got an employment in the Railways on compassionate appointment on the death of their father in 1992. Since the applicant was already more than 30 years of age at the time of filing the OA, it is unlikely that he was dependent on the deceased and therefore, is not entitled to compassionate appointment. Once the applicant had become a major, he was not entitled to the Medical facility under the Identity Card of his elder step-brother nor is he entitled to the Railway passes or other welfare facility as a dependent.

As per the records submitted by the applicant, he passed SSC in the year 2007 and he has not explained what he was doing from 2007 to the time of filing the OA. It is unlikely he will be without any work till the age of 30/31 years and therefore cannot seek compassionate appointment by way of right on the ground that he was totally dependent on his late step-brother for all his needs. Therefore, the OA deserves to be dismissed on the ground of being devoid of merit.

6. The Applicant filed a Rejoinder on 18.03.2016 in which he has reiterated that he was dependent on his deceased step-brother. The Railway Authorities did not bother to depute a Welfare Inspector for conducting necessary inquiry for grant of compassionate appointment to the applicant which is usually done while considering the case of compassionate appointment. The applicant completed his Matriculation in the year 2007. He appeared for his 11th Standard in 2008. He failed the 12th Standard Board Examination in 2009 and subsequently obtained an ITI Certificate in General Fitter Trade and was awarded a certificate on 20.08.2010. His step-brother was sick since the year 2009 and finally expired on

16.07.2012 due to liver failure and the applicant used to take care of his brother. Due to this, he could not apply for a proper job and was therefore, totally dependent on his step-brother late Shri Anil Sakaria. He, therefore, deserves to be given a compassionate appointment by the respondents.

7. The Respondents filed a Sur-rejoinder on 22.07.2016 in which they have reiterated that the applicant has been able to survive after his step-brother expired on 16.07.2012 and therefore, the minimum mitigating poverty has been overcome. Even after obtaining the qualification of SSC and Fitter Trade, the applicant is claiming to be a dependent on the deceased brother which is unlikely. His two brothers and one elder sister are married and settled. Except for the one sister and the applicant himself both of whom are unmarried, the family appears to be well settled. His step-brother himself was given compassionate appointment, his mother is receiving family pension and other pensionary benefits, therefore the applicant does not deserve to be considered for compassionate appointment.

8. The matter was finally heard on 17.07.2017 and the respondents were directed to produce the

records including the Welfare Inspector's Report on the next date of hearing. It was reserved for orders on 03.08.2017.

9. During the arguments, the learned counsel for the respondents cited the judgment of the Hon'ble Supreme Court in ***Umesh Kumar Nagpal Vs. State of Haryana & Ors., 1994 SCC (L&S) 930, Union of Union & Anr. Vs. B. Kishore, Civil Appeal No.1045/2006 decided on 06.04.2011, National Institute of Technology & Ors. Vs. Niraj Kumar Singh, 2007 AIR SCW 1169, Local Administration Department & Anr. Vs. M. Selvanayagam @ Kumaravelu, Civil Appeal No.2206/2006, Union & India & Anr. Vs. Shashank Goswami & Anr., Civil Appeal No.6224/2008 and Sanjay Kumar Vs. State of Bihar & others, AIR 2000 SCC 2782*** to emphasize the principle that compassionate appointment is not a regular mode of employment and should be resorted to only when the minimum compulsive necessity of the applicant is proved. It should be within a reasonable short time and is meant to give immediate succour to the family. The Respondents have also produced the Master Circular No.16 issued in 1992 wherein it has been mentioned that the son/daughter/widow/widower of the employees are eligible to be appointed on compassionate ground in the circumstances in which such appointments are permissible. A near

relative can also be considered, provided if a son or daughter or the widow is also not working and not earning. In the subsequent Railway Board Master Circular No.16 the benefits of compassionate appointment can also be extended to a near relative/adopted son/daughter subject to the following conditions:

“III. Persons Eligible to be appointed on Compassionate Grounds;

“Son/daughter/widow/widower of the employees are eligible to be appointed on compassionate grounds. In the circumstances in which such appointments are permissible. Where the widow cannot take up employment and the sons/daughters are minor, the case may be kept pending till the first son/daughter becomes a major i.e. attains the age of 18 years, subject to time limits as provided under Para (V) of the Circular. The benefit of compassionate appointments may also be extended to a “near relative/adopted son/daughter”. The eligibility of a near relative/adopted son/daughter to such appointments will be subject to the following conditions:

a. Near Relative:

- i. Such appointment is not permissible where the railway employee who has died in harness has left behind only the widow, with no son/daughter to be supported by her.*
- ii. The son or daughter of the employee or ex-employee is a minor one and the widow cannot take up employment.*
- Iii. A clear certificate should be forthcoming from the widow that the “near relative” will act as the bread-winner of the family.*
- iv. If the family certifies at a later date that the “near relative”, who was appointed on compassionate grounds, refuses to support the family, the services of that employee are liable to be terminated.*

v. *Once a “near relative” is appointed on compassionate grounds, no further appointment shall be given later to a son, or daughter or the widow of the employee, on compassionate grounds.*

vi. *The appointment of the “near relative” shall not be considered, if a son or daughter, or the widow herself is already working and is earning.*

A blood relation who is considered to be a bread-winner of the family can be considered as “near relative” for the purpose of appointment on compassionate grounds.

*[No.E(NG)III/78/RC-1/1 Dated 03.02.1981,
No.E(NG)II/88/RC-1/1/Policy dated 12.02.1990]*

b. Adopted Sons and Adopted Daughters

i. *There is satisfactory proof of adoption valid legally;*

ii. *The adoption is legally recognized under the personal law governing the Railway servant;*

iii. *The legal adoption process has been completed and has become valid before the date of death/medical decategorisation medical incapacitation (as the case may be) of the ex-employee.*

[No.E(NG)II/86/RC-1/1/Policy dated 20.5.1988.(RBE 106/1988)]”

10. We have heard the learned counsels from both the parties and perused the documents submitted by them. The Applicant in the present OA is the step-brother of the deceased government employee who himself had got compassionate appointment on the death of their father. The issue for consideration in the present OA is whether the applicant is entitled to a compassionate appointment on the death of his

step-brother in 2012.

11. The Government have issued guidelines on compassionate appointment from time to time including the OM No.14014/6/94-Estt(D) dated 09.10.1998. The following principles are followed while considering cases for compassionate appointment;

i) The Appointment on compassionate ground may be done when:

(a) a Government Servant dies in harness or is retired on medical grounds before attaining the age of 55 years (57 years for Group 'D' Government servants);

(b) the family of deceased Government Servant is in indigent condition;

(c) the person seeking compassionate appointment is a dependent family member of the deceased Government servant, that is to say that he/she is spouse; son; daughter; brother/sister (in the case of unmarried Govt. Servant) of the deceased Government servant who was wholly dependent on him;

(d) the claimant has attained the age of 18 years;

(e) the claimant is eligible and suitable for the post on which his compassionate

appointment is being considered.

ii) Any request for compassionate appointment may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

iii) 5% of the vacancies are to be filled by appointment on compassionate grounds.

iv) Compassionate appointments can be made in Group 'C' or 'D' post only.

v) While considering an application for compassionate appointment, a balanced and objective assessment of financial condition must be made taking into account its assets and liabilities, presence of earning member, size of the family, ages of children, and essential needs of the family etc.

vi) An application for compassionate appointment shall not be rejected merely on the ground that the family of Govt. Servant has received benefits under various welfare schemes.

vii) Compassionate appointment shall have precedence over absorption of surplus employees and regularization of daily wagers.

12. By an office memorandum dated 5th May 2003,

following modifications were introduced in the compassionate appointment scheme-

(a) If compassionate appointment to genuine and deserving persons cannot be offered in the first year due to non-availability of regular vacancy, his name must be continued for consideration for one more year.

(b) The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years.

13. The DOPT OM No.14014/19/2002-Estt(D) dated 05.05.2003 has provided the following:

"1. The undersigned is directed to refer to Department of Personnel and Training OM No. 14014/6/94 Estt(D) dated October 9, 1998 and (O.M.) No. 14014/23/99 Estt. (D) dated December 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% direct recruitment quota.

2. It has therefore been decided that if compassionate appointment to genuine and deserving cases as per the guidelines contained in the above OMs is not possible in the first year due to non-availability of regular vacancy the prescribed committee may, review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular cases warrants extension by one more year for consideration for compassionate appointment by

the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee a case is considered to be deserving, the name of such a person can be continued for consideration for one more year”.

3. The maximum time a person's name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.”

14. The issue of compassionate appointment has been extensively dealt with in a catena of judicial pronouncements. In the case of **Mukesh Kumar Vs. Union of India & Ors., (2007) 2 SCC (L&S) 926** the Hon'ble Supreme Court had remitted the appellant's case back to the Central Administrative Tribunal for fresh consideration since no indication was available on how the departmental authorities had arrived at the conclusion that the family was not in indigent condition. In **Syed Khadim Hussain Vs. State of Bihar & Ors., (2006) 9 SCC 195** the Hon'ble Apex Court had held that the rejection of the appellant's application was not justified as at the time of rejection appellant had attained above 18 years of age, although at the time of filing the application his age was around 13 years. In **Govind Prakash**

Verma Vs. Life Insurance Corporation of India & Ors., (2005) 10 SCC

289 the Hon'ble Apex Court had held that the scheme of compassionate appointment is over and above whatever is admissible to legal representatives of the deceased employee as benefits of service which they get on death of the employee. Hence compassionate appointment cannot be refused on the ground that any member of family had received such benefits. In ***Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors., (Civil Appeal No.11881/1996) and Smt. T.K. Meenakshi and Anr. Vs. Steel Authority of India Ltd. & Ors. (Civil Appeal No.11882/1996), 2002 LAB I.C.1900***, the Hon'ble Supreme Court had held that benefit of compassionate appointment cannot be negatived on ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee. In ***Sudhir Sakharam Joshi Vs. Bank of Maharashtra & Anr., 2003(1) Mh.L.J.*** the Nagpur Bench of Hon'ble High Court of Bombay had directed the respondents to give an appointment to the petitioner in clerical cadre since his application for compassionate appointment was rejected without assigning any valid reasons. The Hon'ble High Court had held the fact that retiral benefits given to the

deceased cannot be a good ground for such rejection and no material was produced to show that any detailed inquiry was made in order to determine the financial condition of the deceased family. Similarly in ***Rajani (Smt.) and Anr. Vs. Divisional Controller of M.S.R.T. Corporation, Bhandara & Ors., 2003-IV-LLJ (Suppl)-NOC-474***, the Hon'ble High Court of Bombay had ordered grant of compassionate appointment even, if necessary, by creating supernumerary post to the wife of an employee compulsorily retired on medical ground since such compassionate appointment was denied for more than 10 years resulting in grave injustice to the family of the said employee. In ***Arun Kumar Vs. Union of India & Ors., 2002 LAB.I.C. 3196***, the Hon'ble Himachal Pradesh High Court had held that grant of family pension or the fact that the family of the deceased employee was receiving benefit under various welfare schemes cannot be a ground to deny compassionate appointment. In ***Smt.M.Reddamma Vs. APSRTC & Ors., WP No.23759/1995 dated July 17, 1996*** the Hon'ble High Court of Andhra Pradesh had gone to the extent of issuing a writ of *mandamus* to appoint the petitioner in a suitable post within three weeks on the ground that the Apex Court and

the High Court have held that the appointment on compassionate grounds should be provided to the dependents of the deceased employee immediately after the death of the bread-winner to enable the family to tide over the sudden crises and denial of appointment even after a lapse of six years of making representation amounts to disobedience of the mandate of the Apex Court without any satisfactory explanation for the delay. In ***Mona (Smt.) & Anr. Vs. Municipal Corporation of Delhi & Others (WP No.4952/1994 dated 11.07.1996)***, the Hon'ble High Court of Delhi had quashed the impugned order denying compassionate appointment on the ground that relevant record justifying denial of appointment was not produced. In ***Swati Chatterjee Vs. State of West Bengal & Ors.(W.P.S.T. No.21/2010 decided on 02.02.2010)*** the Hon'ble Calcutta High Court had held that wife of the deceased employee was entitled to compassionate appointment and family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment. In ***OA No.2060/2008*** this Tribunal in its order dated 22.01.2009 had considered the OA in the matter of compassionate appointment and held that the respondents cannot

reject the application for compassionate appointment on the ground that the applicant did not apply within a period of five years. It was held by this Tribunal that the applicant was a minor at the time of the death of his father and deserved to be considered for compassionate appointment after attaining the age of a major. Similarly, in ***OA No.1005/2005*** in ***Akeel Ahmed Khan Vs. General Manager, State Bank of India & Ors., 2003 (4) MPHT 167***, the Hon'ble High Court of Madhya Pradesh had held that if an appointment on compassionate ground is rejected on the grounds of gratuity and provident fund amount received by the family, it will frustrate the entire purpose of compassionate ground appointment. In ***Aparna Narendra Zambre & Anr. Vs. Assistant Superintendent Engineer, Sangli & Ors., 2011(5)Mh.L.J., WP No.1284/2011 decided on 01.08.2011*** it was held by the Hon'ble Bombay High Court that the fact of receipt of family pension cannot be the basis to deny benefit of compassionate appointment. In the case of ***Director General of Posts & Ors. Vs. K. Chandrashekar Rao, Civil Appeal No.9049/2012 arising out of SLP (C) No.19871/2009 decided on 13.12.2012*** and similar Civil Appeals the Hon'ble Apex Court had laid down the principle that the 1998 Scheme floated by the

Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. In ***Nirmala Saha & Anr. Vs. Union of India & Ors., 2010(124) FLR 88***, the Hon'ble Calcutta High Court had observed that by merely placing the application for compassionate appointment in three consecutive years from the date of filing the application irrespective of the fact that there were no vacancies will result in the applicant being deprived of the benefit under the scheme. In the case of ***National Institute of Technology Vs. Niraj Kumar Singh, (2007) 2 SCC 481*** the Hon'ble Apex Court had laid down the following principle with regard to compassionate appointment;

“All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any

benefit thereunder.”

In ***Haryana SEB Vs. Naresh Tanwar, (1996) 8 SCC 23, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481, Haryana SEB Vs. Krishna Devi, (2002) 10 SCC 246, State of U.P. Vs. Paras Nath, 1998, (1998) 2 SCC 412*** and ***National Hydroelectric Power Corporation Vs. Nanak Chand, (2004) 12 SCC 487,*** the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In ***State Bank of India Vs. Anju Jain, (2008) 8 SCC 475*** the Hon'ble Supreme Court had pertinently observed the following;

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.”

15. In the case of ***V. Sivamurthy Vs. State of A.P., (2008) 13 SCC 730,*** the Hon'ble Supreme Court have observed the following in respect of principles

relating to compassionate appointment.

“.....9. The principles relating to compassionate appointments may be summarized thus :

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts.”

16. A perusal of the catena of judgments

pronounced by the Hon'ble Apex Court, Hon'ble High Court and various Benches of this Tribunal discussed at para 14 and 15 above makes it abundantly clear that the Courts of law have firmly supported the principle that compassionate appointment cannot be denied merely because the family of the deceased have got some financial benefits consequent to the death of the sole bread winner of the family. The overwhelming trend of the judgments is that the applicants for compassionate appointment have to be considered for providing a fresh job so that the immediate financial need can be met and dire consequences of distress can be avoided. At the same time in various judgments the Courts have also laid down the principle that compassionate appointment is not a matter of right and cannot take away the principles enunciated in the constitution of equal opportunity for employment. In **V. Sivamurthy Vs. State of A.P., (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481**) it has been held that there is no vested right on the relatives of the deceased employee to seek and obtain compassionate appointment. In **Umesh Kumar Nagpal Vs. State of Haryana, (1994)**

4 SSC 138 the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood.

17. Keeping this in mind, the Government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The Government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application

against certain laid down criteria. Such criteria include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most deserving will be offered appointment on compassionate ground.

18. In 2012, the Government issued the DOPT OM No.F. No.14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. The OM dated 26.07.2012 and the subsequent clarification dated 04.10.2012 read as follows:

“The primary objective of scheme for compassionate appointment circulated vide OM No.14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to receive the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No.2206 of 2006 filed by Local Administration Department Vs. M.

Selvanayagam @ Kumaravelu has observed that “an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind”.

2. *This Department's OM No.14014/6/1994-Estt.(D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to receive it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.*

3. *Subsequently vide the Department's OM No.14014/19/2002-Estt (D) dated 05th may, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No.13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the OM dated 05.05.2003.”*

Clarification dated 04.10.2012 :

Sub: Clarification for clarification to consideration of

compassionate appointment cases reg.

Sir,

In continuation of Board's letter of even number dated 03.08.2012 on the above mentioned subject and to say that with reference to the DOP&T instruction contained in their OM No.14014/3/2011-Estt.(D) dated 26.07.2012 a reference was made them to clarify whether the cases of compassionate appointment already decided and closed after expiry of 3 years in terms of their OM dated 5.5.2003 are required to be re-opened/examined or not.

2. *The DOPT has now clarified that “with issue of instructions dated 26.07.2012, there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case”.*

3. *The above decision may please be brought to the notice of all concerned for information, guidance and compliance.”*

19. The Applicant in the present OA has produced the extract of the Establishment Rules as per which the dependent of Railway employees dying as bachelors/spinsters are eligible for compassionate appointments if they have been shown as dependents of the ex-employees in their pass/PTO entitlements or in Ration cards. In the absence of any such documentary proof the factual position regarding the extent of dependency may be verified by deputing a Welfare Inspector to

enquire into the circumstances.

20. In the present case from the documents submitted by the applicant, his name appears as the dependent in the Railway Medical Attendance 'I' Card. He is also mentioned in the Ration Card along with the deceased employee. The fact that he was living with his deceased elder brother and that he was dependent on him is not in doubt. The only other issue to be considered is the level of indigence to determine his eligibility for consideration for compassionate appointment. We have called for the production of original records from the office of the respondents. The Railway Authorities had deputed the Welfare Inspector to make an inquiry about the claim of the applicant, since his mother had prayed for compassionate appointment to him. The Welfare Inspector had submitted three reports on 26.05.2013, 31.08.2015 and 27.07.2016 after making inquiries with the applicant and his family. As per the report dated 31.08.2015 the applicant was working as a Courier boy with V.V. S.H. Press in the past five months and was earning approximately Rs.3500/- p.m. As per the latest report of the Welfare Inspector as on 27.07.2016, Smt. Manjula step-mother has stated

that both her elder sons are not supporting them financially as their income is only sufficient to look after their own family. From the earlier report also it appears that the applicant supports his mother. On 31.08.2015, the Welfare Inspector has made the following observations:

“The Applicant/step brother, Arvind is 31 years old, he is not dependent as per pass rules. However, Smt. Manjula, step-mother has declared that with help of Anil, (her step son) all her children had studied and got married. Arvind is unmarried. Details of all the family members are mentioned in earlier reports. At present step-mother of the deceased, Smt. Manjula is getting family pension of her late husband. Her son/step-brother of the deceased, Arvind is working as a courier boy (since last five months) and earns approx.Rs.3500/- per month. In view of the above, Smt. Manjula, step-mother of the deceased, is requesting for compassionate appointment of her son/step-brother of the deceased, Arvind Sakaria.”

21. A perusal of the various records and the report of the Welfare Inspector shows that the applicant was living with the deceased government employee along with other family members. After the death of his step-brother, his mother and unmarried sister are living with him. The fact that he is working as Courier boy earning Rs.3500/- since February, 2015 (as per the certificate furnished by his employer) should have been taken into consideration by the Railways to determine the level of indigence of

the applicant and the family of the deceased while considering the application of the applicant for compassionate appointment. The Applicant has cited the rule relating to compassionate appointment to the dependent of a bachelor/spinster (RBE No.165/1999 dated 05.08.1999) and since rule permits consideration of such dependents, the Railway Authorities should have submitted the case of the applicant to the appropriate committee on compassionate appointment. The Applicant had submitted a representation immediately after the death of his step-brother and followed it with a number of representations by him and his mother but the Railways have not bothered to even give a reply to him. As discussed in para 16, although the compassionate appointment is not a matter of right, the dependent of a deceased government employee is entitled for consideration as per rules depending on a number of factors including the level of indigence and the need of the family for such compassionate appointment. In the present case, I am of the view that Railway Authorities have not bestowed the consideration that the applicant deserves. He is entitled to be considered as per prescribed rules of

compassionate appointment.

22. In view of the above, the OA is **partly allowed**. The Respondents are directed to consider the case of the applicant taking into account his own representation and the relevant records and take a decision for compassionate appointment as per rules. This action of the respondents should be completed within a period of twelve weeks from the date of receipt of this order.

23. The Original Application is disposed of with the above directions. MA stands closed. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

dm.