

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, CAMP AT NAGPUR.**

ORIGINAL APPLICATION NO.2129/2014

Dated this Friday the 14th day of September, 2018.

CORAM:- DR. BHAGWAN SAHAI, MEMBER (A).

Ku. Sujata D/o late
Shri Vasant Narayan Dahiwale
R/o Ramabai Ambedkar Nagar,
Mata Phail, Badnera,
Distt.Amravati (Maharashtra).

....Applicant.

(Applicant by Advocate Shri. A.B. Bambal)

Versus

1. Union of India Thorough its
General Manager,
Central Railway, CST,
Mumbai.
2. Divisional Railway Manager,
Central Railway,
Bhusawal (M.S.).

....Respondents.

(Respondents by Advocate Shri.Alok Upasani)

Order reserved on: 28.08.2018

Order pronounced on: 14.09.2018

O R D E R

1. In this OA the applicant Ku.Sujata, daughter of late Shri Vasant Narayan Dahiwale, seeks relief by setting aside the order contained in letter no.Con.883/R/Com/Med.1103/B-8 dated 29.07.2013 sent by APO (RRC), Personnel Division, Head Office, Central Railway, CST, Mumbai rejecting her request for employment on compassionate ground

stating that the case was 14 years old and it did not have any scope for showing compassion at that stage, and directing the respondents no.1 and 2 to consider her claim for appointment to a Group 'C' post on compassionate grounds.

2. Facts stated in brief:-

2(a). Father of the applicant late Shri Vasant Narayan Dahiware was working as Safaiwala under Health Inspector, Central Railway, Murtijapur. While in service he died on 21.07.1999. Thereafter, his son applied for appointment on compassionate grounds on 25.08.1999 but because of being educationally not qualified, his application was rejected on 30.06.2006.

2(b). Subsequently, Smt. Ashabai Vasant Dahiware, wife of late Shri Vasant Narayan Dahiware, applied on 24.08.2007 for her appointment on compassionate grounds. When she was called for Medical Examination, she changed her mind and requested for appointment of her daughter Ku. Sujata Vasant Dahiware. She applied on 06.07.2009.

2(c). It is claimed by the applicant that Welfare Officer, Bhusawal recommended her case to Chief Personnel Officer (CPO), Mumbai but it was rejected on 11.07.2011 stating that widow of the ex-employee could have taken up employment at the relevant time

but she chose not to do so, and the family had managed to survive all these years, and that her name (Smt. Sujata Vasant Dahiwalale) appeared differently in various documents without any convincing reason which could not establish that she was the same person in all of them.

2(d). DRM, Bhusawal recommended Kum.Sujata Vasant Dahiwalale for appointment on compassionate grounds on 19.07.2012 but her request was again rejected on 27.07.2013 on re-examination of the case by the General Manager on the ground that the case was very old i.e. 14 years old and there was no cause for any compassion at that stage.

3. Contentions of parties:-

Applicant's advocate has submitted that:-

3(a). in view of decision of the Tribunal Jaipur Bench in OA No.299 of 2001 dated 19.11.2001, rejection of her application dated 29.07.2013 by the respondents is not justified;

3(b). since her case was recommended by the DRM, Bhusawal on 19.07.2012, it ought to have been accepted by the respondents; and

3(c). changed requests for employment on compassionate grounds i.e. first seeking it by Smt. Ashabai Vasant Dahiwalale for her son, then for herself and thereafter for her daughter (Ku. Sujata

Vasant Dahiwale) is after careful thought and it cannot be held against the applicant. Therefore, the letter dated 29.07.2013 communicating rejection of her request for employment should be quashed and the respondents be directed to employ her to a Group 'C' post on compassionate grounds.

Respondents' advocate has submitted that:-

3(d). the applicant and her advocate have not submitted proper facts. Late Shri Shri Vasant Narayan Dahiwale died on 21.07.1999, then his son Shri Dharamshil Vasant Dahiwale (whose date of birth is 13.01.1984) applied for appointment on compassionate grounds on 25.08.1999. With reference to it, on 21.09.1999 the mother of the applicant was informed that age of her son was below 18 years and he was not having the requisite educational qualification of 10th std pass, therefore he could not be appointed on compassionate grounds;

3(e). then Smt. Ashabai Vasant Dahiwale through her letter dated 11.10.2002 requested the respondents that the claim of her son may be kept in reserve and appointment may be granted to him after passing 10th std. Then again by letter dated 03.06.2005, along with submitting his mark-sheet of 10th std examination (in which he had failed), Smt.Ashabai Vasant Dahiwale requested for appointing

her son on compassionate grounds. The claim of her son was again rejected by letter of 26.06.2005 mentioning that a candidate seeking compassionate appointment should have acquired requisite educational qualification at the time of attaining majority, and she was also informed that if she desired, she could apply for herself;

3(f). on 30.05.2006 she informed that she did not want to take up the job and it may be offered to her son with the qualification of only 8th Std pass. However, later Smt. Ashabai Vasant Dahiwale submitted her own application on 01.11.2007 requesting for her own appointment on compassionate grounds. She was offered the employment on 25.03.2009, subject to fulfillment of eligibility criteria. She passed the required medical examination on 09.04.2009 but after it she did not join duty and thus did not avail of the opportunity provided to her at that time;

3(g). then in June, 2009 Ku. Sujata Vasant Dahiwale applied for compassionate appointment for herself. Her request was also examined and through a speaking order 11.07.2011, rejection of her request was communicated. Her subsequent requests dated 18.10.2011 and 24.01.2012 for reviewing her case were also re-examined by the Competent Authority

i.e. the General Manager, Central Railway, Mumbai and she was informed vide letter dated 29.07.2013 that her case being very old i.e. 14 years old after death of her father, there was no reason for showing compassion at such a late stage;

3(h). after death of ex-employee Shri Vasant Narayan Dahiware, the applicant's case for employment on compassionate grounds has been considered three times, first for son Shri Dharamshil Vasant Dahiware, then for Smt. Ashabai Vasant Dahiware and in the end also of his daughter Ms. Sujata Vasant Dahiware. Since employment on compassionate grounds is not a vested right, it is intended only to provide immediate succor during penurious condition of the deceased's family and since the applicant's family has been able to manage for itself for 19 years after death of late Shri Vasant Narayan Dahiware, at such a belated stage, there is no cause to show any compassion in this case;

3(i). the respondents' advocate has also cited Supreme Court Case law namely Local Administration Department & Anr. Vs. M. Selvanayagam @ Kumaravelu, Civil Appeal No.2206/2006 in which it has been held that the objective of compassionate appointment is to provide immediate succor to the penurious

condition of the deceased's family as a result of death of the bread winner, an appointment made many years after the death of the employee or without due consideration of 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 Article 14 and 16 of the Constitution and hence, quite bad and illegal. Since the offer of appointment was declined by mother of the present applicant and after lapse of 19 years of death of the employee, employment to the present applicant would be totally unjustified and thus it would be illegal and bad in law; and

3(j). since the wife of the late Shri Vasant Narayan Dahiwale was offered employment in 2009 on her own request but it was not accepted by her, thereby family of late Shri Vasant Narayan Dahiwale lost the opportunity for compassion. Therefore, rejection of the request of the applicant is justified and it be upheld by dismissing the OA.

4. Analysis & Conclusions:-

4(a). As held by Hon'ble Supreme Court in **MGB Gramin Bank Vs. Chakrawarti in Civil Appeal No.6348/2013 (arising out of SLP(C)No.13957/2010)**

(Para 5) that mere death of the Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. Also the person claiming such appointment must possess required eligibility for the post. Compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The provision for liberal interpretation beyond permissible limits on humanitarian ground should not be stretched by the Court. Such appointment can be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

4 (b) . In another case **Umesh Kumar Nagpal Vs. State of Haryana & Ors. (1994) 4 SCC 138** decided on 04.05.1994 the Apex Court examined the considerations which should guide while giving appointment in public services on compassionate grounds. As a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. One such

exception to this rule is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. It must be remembered in this connection that as against the destitute family of the deceased there are millions of the other families which are equally, if not more destitute. Such an employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The compassionate employment cannot be granted after lapse of reasonable period which must be specified in the rule.

4 (c). Death of the ex-employee i.e. late Shri Vasant Narayan Dahiwale in harness is not disputed. Decision of the General Manager, Central Railway dated 29.07.2013 rejecting the request of the applicant Kum.Sujata Vasant Dahiwale is of the Competent Authority by taking a comprehensive view on context of the case. This is the right decision. I can see no infirmity in it. The claim of the applicant that D.R.M., Bhusawal had recommended her case is not binding on the Competent Authority i.e. General Manager, Central Railway. The D.R.M., Bhusawal did not examine full perspective of this

subject while recommending her application. It must be properly understood and realized by the applicant that exception to Recruitment Rules for public services to provide compassionate employment is only a small window of opportunity available for a limited period of time just to help the family during a difficult time to tide over the crisis. It is not an everlasting opportunity for generations to be availed of by dependents of the deceased employee as per their wishes. The applicants in such cases have to carefully make his or her choice and once an employment offered by the concerned authorities to one of the dependents of the deceased employee is declined by him or her on his/her own volition, the dependents will have no subsisting moral or legal right to tenaciously persist with the request.

4 (d) . In fact in this case the respondents have been more than considerate in offering repeated chances of compassionate employment to the family members of late Shri Vasant N. Dahiwalale. However, inspite of this Smt.Ashabai Vasant Dahiwalale declined to take up the offered employment thereby losing the precious opportunity provided by the respondents to her to avail of it and get employed. Also the applicant has been economical with facts in not disclosing about seeking of compassionate employment

first by her brother Shri Dhanshil V. Dahiwale but he could not get employment because he was not qualified for the job. Also the contention of the applicant's advocate that repeatedly changed request for the employment cannot be held against the applicant is not acceptable. Also the case law cited by the Applicant's advocate in C.A.T., Jaipur Bench decision on O.A.299/2001 dated 19.11.2001 does not seem relevant to facts of this case.

4(e). The contention of the respondents' advocate in this regard about first seeking of employment by late Smt.Dahiwale for her son is correct. It is also correct that when Smt.Ashabai Dahiwale on her own request was offered employment on 25.03.2009 and she had appeared for the medical examination, but she herself refused to take up the employment. Thus, it is very clear in this case that the respondents have been more than considerate in accommodating requests of family members of late Shri Dahiwale for compassionate employment three times, first for his son, then for his wife and in the end even for the present applicant. In fact the respondents should not have been so liberal in repeatedly entertaining requests of the applicants in this regard. Reliance placed by the respondents' advocate on the Apex Court case law in **Local**

Administration Department & Anr. Vs. M. Selvanayagam

@ **Kumaravelu** is also correct and relevant.

4(f). In view of these conclusions, I find that the O.A. submitted by Kum.Sujata Vasant Dahiwalé is totally devoid of merits and unjustified, hence it cannot be allowed.

Decision

5. In view of the above analysis of the issues involved, the O.A. is dismissed. No order as to costs.

(Dr.Bhagwan Sahai)
Member (A) .

V/H.