

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

**O.A. No. 245 of 2018 With M.A. No. 206 of 2018
Ahmedabad, this the 20th Day of November, 2018.**

**CORAM :
Hon'ble Mr. Jayesh V. Bhairavia, Member (J)**

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1) Mr. Dilip Maruti More, Male aged about 36 years.

2) Smt. Shakuntala Maruti More, female Widow.

Both residing at : A/8, Shri Society, Opp. Chirayu Nagar, Nandeshwar, Vadodara-390004.

.....Applicants

(By Advocate : Mr. P.H.Pathak)

Versus

1. Union of India Notice to be served through the General Manager, Western Railway, Churchgate, Mumbai – 400 020.
2. Chief Workshop Manager, Western Railway, Pratapnagar, Vadodara – 390004.

.....Respondents

(By Advocate : Mr. M.J.Patel)

O R D E R

Per Jayesh V. Bhairavia, Member (Judicial) :

In the present O.A. aggrieved by the impugned order dated 27th May, 2016 whereby the respondents had refused to relax upper age of applicant No.1 for appointment on compassionate grounds, filed the present O.A. and mainly sought the following reliefs :

“8.(A) The Hon'ble Tribunal be pleased to declare the impugned decision of respondent No. 1 Annex. A/2 and in action on the part of respondent No. 1 to decide the appeal preferred by the widow for grant of compassionate appointment to the applicant No. 1 as arbitrary, illegal and direct the respondents to grant compassionate appointment to the applicant No. 1.

(B) Be pleased to declare that the reasons given by respondent No. 1 are ex-facie bad in law to deny compassionate appointment to the applicant and direct the respondents to grant compassionate appointment to the applicant.”

2. The brief facts as pleaded by the applicants in the present O.A. are that the father of the applicant No. 1 who was working as MCF in the Wagon Shop (i.e. Chief Works Manager, Western Railway, Pratap Nagar, Vadodara) under respondent No. 2, died in harness on 1st July, 2015. The widow i.e. applicant No. 2. herein, had submitted a copy of death certificate of deceased Railway employee i.e. Maruti More on 16.7.2015. The applicant No. 1 has passed XII standard. The applicant No. 2 (widow) had requested the authority for grant of appointment on compassionate grounds in favour of applicant No. 1 i.e. son of deceased Railway employee, vide application dated 8.8.2015. In response to the said claim, applicant No.1 was called for screening test by the respondents vide their letter dated 1st December, 2015 (Annex. A/3 refers). The applicant No. 1 appeared in the said screening test and after successfully passed the said test, he was asked by the respondents to accept Class IV post. In response, applicant No. 1 had shown his willingness to accept the offered post. The applicants were waiting for appointment order, however, no order for CGA was issued, thereupon, applicant No. 2, had again submitted her request for grant of compassionate appointment. The respondent No. 2 vide his letter dated 31.05.2016 had informed the widow i.e. applicant No. 2 that his office had received letter dated 27th May, 2016 / 29th May, 2016 from the headquarters i.e. competent authority and intimated that the CPO has not agreed for granting upper age relaxation in favour of applicant No.1 (Annex. A/4). A copy of decision of the General Manager dated 27.05.2016 also supplied to the applicant (Annex.A/1 refers). Thereupon, applicant No. 2 had filed an appeal before the respondent No. 2 in the month of August 2017 (Annex.A/5) which remains un-answered, hence the present O.A. against the decision of the respondents dated 27.5.2016 (Annex.A/1).

3. The applicants have filed M.A. No. 206/2018 for condonation of delay to which, respondents have also filed their reply. However, considering the sufficient reasons and the grounds explained therein, the delay caused in filing the O.A. is condoned. Accordingly, the M.A. No. 206 of 2018 is allowed.

4. The respondents have filed their written statement and denied the contentions of the applicants raised in the O.A. It is submitted by the respondents that in response to application dated 8.8.2015 the claim in favour of applicant No. 1 for CGA was initially recommended for Group 'C' by the Chief Works Manager Pratapnagar, Western Railway,

Vadodara, on 7.10.2015(Annex.R/1 refers), however, he was not found suitable for Group 'C' post, therefore, his claim for CGA was processed for group 'D' post and, accordingly, screening test was held for it. Though, applicant No. 1 had successfully passed the said test and found suitable for the post of Group 'D' but, due to over-age, his case was forwarded to the headquarters-CCG for age relaxation but, the competent authority did not find any accentuating circumstances to relax the over age of the applicant, hence the recommendation was regretted vide letter dated 27.05.2016 (Annex.A/1). It is submitted that CGA cannot be claimed as of right, therefore, applicant is not entitled to any relief as sought in the application.

5. A rejoinder to the reply has also been filed by the applicant reiterating the stand taken by the applicants in the O.A. Learned counsel for applicants submitted that in fact, applicant was called for the screening test and he remained successful and recommendation for appointment for Group D was forwarded by the APO (Works) Officer, Dahod, Western Railway, vide its Note dated 17/12/2015. There is no reason stated for not relaxing the so called over age of the applicant, as such, respondents have not placed any rules with respect to age limit for consideration of claim of family member of deceased employee for CGA.

It is further submitted that the office of the D.R.M, Vadodara had granted compassionate appointments to dependents viz. Mr. Deepak Bhawan and also one Mr. Sanjay More, who were at the age of 42 but, in the case of applicant, the respondent No. 1 had arbitrarily and discriminately passed the impugned rejection order.

It is additionally submitted that in the impugned decision the respondents have taken contrary view which can be seen from its observation and the learned counsel again emphasized on the impugned order wherein respondents had observed that "*dependency of the son is not being disputed*". *It is further stated that the son was of 34 years of age when his father was expired and by any stretch of imagination it is high time for the applicant to be settled at this age. The employee has less than two years service left after which the son will have to tied at his own.* It is further observed in the said impugned order that "*more over CWM has not brought out any accentuating circumstances which may justify that relaxation in UAR is warranted.* The employee has left only widow with no other liabilities. The settlement dues and family pension should be sufficient for her and, therefore, the concept of "*bread-winner* " (Circular 8/7/14) should also not arise., it is submitted that since the

respondents have not disputed the dependency of the applicant No. 1 being son of deceased employee without any proper inquiry ought not to have passed the impugned order on the ground that mother of the applicant has received the settlement dues and family pension and applicant is not a bread-winner for her. The said conclusion is contrary and without any material on record. On the contrary respondent No. 1 ought to have considered the fact that due to dear need of the family members of the deceased employee, applicant was considered for screening test and subsequently found suitable for Group 'D' post. Since the respondents have relaxed the over-age in the case of other such dependents the said benefit ought to have been granted to the applicant.

6. The learned counsel additionally submitted that on one hand respondents had observed that dependency of son is not in dispute whereas, on the other hand, it is observed that Chief Works Manager has not brought out any accentuating circumstances which may justify the relaxation in UAR. The said contradictory stand on the part of the respondents prove that the case of the applicant has been not considered in its true spirit.

7. Heard the submissions of learned counsel for both the parties and perused the record.

8. It reveals that late Shri Maruti B. More, Ex. MCF, Wagonshop, Pratapnagar, Western Railway, Vadodara died in harness on 1.7.2015 and, thereafter, applicant No. 2 had submitted an application on 8.8.2015 for appointment on compassionate grounds in favour of applicant No. 1 i.e. son of deceased employee. In response to it, the respondent No. 2 had initially recommended for CGA in favour of applicant No. 1 in Group C subject to relaxation in overage as he was aged 33 years and 11 months old (Annex.R/1 refers). It is also noticed that since the applicant was not found suitable for Group C, he was considered for Group D post for which he was sent for screening test which he had completed successfully. Therefore, the APO (Works) DHD, vide its Note No. E/Con/890/1 Vol – II dated 17.12.2015 recommended the name of the applicant for appointment in Group D as per the decision of screening committee (Annex.A/7 refers). However, his case was forwarded for age relaxation before the competent authority. Vide impugned order dated 27.5.2016 not accepted the recommendation.

9. On examination of reasons stated it found that the respondent No. 1 had categorically stated that the dependency of the son is not being disputed. Though the applicant No. 1 is the son of the deceased Railway employee his claim for CGA was not accepted on the ground that Chief Works Manager has not brought any accentuating circumstances which may justify their relaxation in upper age. It is noticed that on considering the circumstances of dependent family the case for CGA was considered by respondent No. 2 and recommended for the screening test and, thereafter, on being found suitable the applicant no. 1 was recommended for Group D post. The respondent No. 1 has totally failed to consider the said fact and without any sufficient material on record about the settlement of the applicant No. 1 only on assumption rejected the recommendation forwarded by Chief Works Manager. It is also noticed that the respondents had extended the benefit of age relaxation in the case of other similarly situated claimants/dependents for CGA. The applicant was ought to have considered equally by the respondent No. 1 for the purpose of relaxation of age, therefore, in my considered opinion, the case of the applicant has been not considered suitably by the respondent No. 1. The impugned decision deserves interference.

10. In view of above discussions, the impugned order is hereby quashed and set aside. The respondents are directed to decide the pending representation / appeal of the applicant No. 2 (Annex. A/5) and, consider the case of applicant No. 1 afresh for relaxation of age for grant of appointment on compassionate ground in Group 'D' post and, pass appropriate speaking orders within two months from the date of receipt of a copy of this order.

11. The parties are, however, left to bear their own costs.

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[Jayesh V. Bhairavia]
Member (Judicial)