

(RESERVED ON 26.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the **06th** day of **DECEMBER, 2018**.

ORIGINAL APPLICATION NO. 330/1301/2014

HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Shobh Nath aged about 33, 1/2 years son of Late Ram Sanehi (ex Keyman Gang No. 11 Gaipura Mirzapur) R/o Village – Gaipura, P.O. Kalana, District - Mirzapur.

.....Applicant.

VERSUS

1. Union of India through General Manager, North Central Railway, H.Q.'s Office, Allahabad-211033.
2. General Manager, North Central Railway, H.Q.'s Office, Subedarganj, Allahabad-211033.
3. Divisional Railway Manager, N.C. Railway, DRM's Office, Allahabad.

.....Respondents

Advocates for the Applicant : Shri Sudama Ram
Shri Anand Kumar

Advocate for the Respondents : Shri Manish Kumar Yadav

ORDER

In the present OA, the applicant has challenged the impugned order dated 03.04.2014 passed by the respondents rejecting his application for appointment on compassionate grounds. The applicant has sought the following reliefs through this O.A.:-

- "(i) The Hon'ble Tribunal may graciously be pleased to call for the original records relating to the impugned order as well as the records and instructions laid down criteria fixed for consideration of compassionate ground appointments in case of death on duty in train accident of a railway employee or in other cases related to dying in harness rules with comparative charts of compassionate appointments offered to the wards of the deceased railway employees between the period from 1. 4.2009 to 03.6.2014.
- (ii) The Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 3.4.2014 passed by the Divisional Railway Manager, N.C. Railway, Allahabad (Annexure A-1) in a cryptic and unreasoned manner and direct the respondent no. 2 i.e., General Manager, N.C. Railway, Allahabad to consider the compassionate appointment to the applicant on top priority under the instructions of Railway Board in order to mitigate the hardships being faced by the family of the deceased railway employees due to the sudden death in train accident on duty.

- (iii) Any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case, be issued.
 - (iv) Award cost in favour of the applicant."
2. The facts of the case as mentioned in the OA are that the father of the applicant i.e., late Ram Sanehi, Ex-Keyman (Engineering Department) Gang No. 11, Gaipura Mirzapur met with an accident on 14.05.2011 and died on spot while on duty. At the time of his death, he left behind following legal heirs as per the certificate given by the District Magistrate/Mirzapur on 20.11.2011.
- (i) Shobh Nath son of Late Ram Sanehi aged about 30 years,
 - (ii) Kamlesh Kumar son of Late Ram Sanehi aged about 21 years,
 - (iii) Suresh Kumar son of Late Ram Sanehi aged about 20 years,
 - (iv) Chaman Lal urf Chandrama Prakash son of Late Ram Sanehi aged about 18 years,
 - (v) Sita Devi daughter of Late Ram Sanehi aged about 26 years (married),
 - (vi) Sunita Devi daughter of late Ram Sanehi aged about 23 years (married)
3. It is mentioned in the OA that all the four sons were wholly dependent on the income of their father. The mother of the applicant had already expired on 05.02.2008 well before the death of his father on 14.05.2011. After the death of his father, the applicant received a letter dated 19.05.2011 from the Senior Section Engineer (P. Way), NCR, Mirzapur asking the applicant to apply for consideration of compassionate appointment along with the requisite documents. The applicant, thereafter, applied for consideration of appointment on compassionate grounds and documents were also submitted along with Pension and Settlement form with all requisite information to the North Central Railway, Allahabad for making payment of settlement dues. However, as no action was taken to consider him for compassionate appointment, the applicant represented to the General Manager, North Central Railway, Allahabad and also to Sr. Section Engineer, (P. Way) North Central Railway, Mirzapur on 06/11.10.2012 for considering his case for compassionate appointment

under the rules on priority. Thereafter, the North Central Railway, paid the settlement dues and the applicant's younger brother Suresh Kumar was granted family pension vide PPO dated 11.02.2012 till he attains the age of 25 years.

4. The applicant during this period again filed a representation dated 25.02.2012 to the General Manager, NCR, Allahabad and in reply, the Divisional Railway Manager, NCR vide letter dated 11.07.2013 stated that in reference to his representation dated 25.02.2012, the applicant had submitted incomplete documents and that he should contact the concerned authorities in N.C. Railway, Allahabad. The applicant again submitted representation dated 12.08.2013 which was duly forwarded to the Divisional Railway Manager, N C Railway, Allahabad requesting therein to provide him appointment on compassionate ground. The applicant also submitted the requisite affidavits and undertakings, that being the eldest son, he will look after his younger brothers. The applicant, further, submitted an affidavit on 30.12.2013 to the DRM, North Central Railway, Allahabad showing the details of family members along with High School Certificate and OBC certificate.

5. The Divisional Railway Manager, North Central Railway, Allahabad vide his letter no. CS/DPO/CG/Regret/212 dated 03.04.2014 rejected the claim of the applicant allegedly by a cryptic and unreasoned order rejecting the applicant's claim stating that it was not found to be a fit case for compassionate appointment on the grounds that wife of late Ram Sanehi died during the life time of the deceased railway employee, two daughters are married and the applicant is major and married. Applicant contended that the DRM, N C Railway has passed the aforesaid impugned order completely ignoring the rules and instructions contained in the Master Circular No. 16.

6. It is further emphasised by the applicant that as per rules one ward of the deceased employee is to be considered and granted compassionate appointment irrespective of the fact whether the ward is married or not. The applicant has relied on Para-III of the Master Circular No. 16 which is quoted below:-

"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."

7. It has been stated that in the above Railway Rules for providing compassionate appointment, there is no distinction between married son or unmarried son and married daughter or unmarried daughter.

8. Aggrieved by the aforesaid impugned order dated 03.04.2014, the applicant submitted representation to the General Manager, NC Railway, Allahabad on 28.04.2014 seeking redressal of his grievances in pursuance of the instruction of Railway Board, New Delhi.

9. Learned counsel for the applicant has also quoted the Railway Board letter no. E(NG) II/90/RC-1/117 dated 06.12.1993. Relevant portion of the aforesaid letter is quoted below:-

- "1. Please refer to your letter N.E/239/O/Part. I dated 23.9.93 seeking Board's clarification as to asking the major sons has to be considered for compassionate appointment in cases where the widow has already expired prior to the death of the Railway Employee and all the major sons lay their claim for compassionate appointment.
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- 3. Keeping in view the above provisions, Board desire to clarify that in the situation referred to in para 1 above, it is the eldest so who gets priority for appointment on compassionate grounds."

10. Learned counsel for the applicant argued that despite detailed representation having been sent to General Manager, N C Railway, Allahabad on 28.04.2014 by the applicant, no action was taken on the same. He has also argued that the entire family consisting of four sons were entirely dependent on the income of their father's salary and after his death, the family is living in penury condition. He has also argued that the Railway Board letter dated 06.12.1993 has already clarified that the eldest son is eligible for compassionate appointment. It has also been alleged that the Railways have adopted a pick and choose policy while passing the impugned order dated 03.04.2014 and detailed reasons have not been given for the rejection of the case of the applicant for appointment on compassionate grounds. The only reasons that have been given is that both the daughters are married and the applicant is major and married and therefore, he is not eligible for compassionate appointment in the Railways.

11. Learned counsel for the applicant has also reiterated that relief sought is by requesting the Tribunal to call for the original records relating to the impugned order as well as the records and instructions laid down, criteria fixed for consideration of compassionate ground appointments in case of death on duty in train accidents of a railway employee or in other cases related to dying in harness rules with comparative charts of compassionate appointments during 2009 to 2014 and to quash the impugned order dated 03.04.2014 passed by the DRM, N C Railway, Allahabad and direct the respondent i.e., General Manager, N.C. Railway, Allahabad to consider giving compassionate appointment to the applicant on top priority.

12. Learned counsel for the applicant has further drawn the attention of this Tribunal to Master Circular No. 16 of the Railways for compassionate

appointment and also the various judgments of the Apex Court, High Court as well as of this Tribunal, which are as under:-

- (a) In case of **Nirmala Devi Vs. Union of India and Ors (2002) (1) ATJ/CAT,Jaipur** in which it has been held that "length of service put in by the employee at the time of his death also is not a relevant consideration at all."
- (b) In case of **Mumtaz Yunus Muleri (Smt.) vs. State of Maharashtra (2008 (2) SCC (L&S) 1077 and in V. Sivamurty Vs. State of Andhra Pradesh & Ors (2009 (1) SLJ (SC) 69**, the Hon'ble Supreme Court has held that compassionate appointment cannot be denied merely because widow was getting family pension.
- (c) In the case of **Govind Prakash Verma vs. Life Insurance Corporation (2005) 10 SCC 289/2005 SCC (L&S) 590** held that compassionate appointment in case of death in harness cannot be refused on ground that any member of family had received some benefits and family pension and terminal benefits was being paid to the widow. The Apex Court expressed a similar view in the case of **Valsala Kumari Devi Vs Director, Higher Sec. Education & Ors (2007 SCC (L&S) 936.**

13. In a recent similar case, this Bench of the Tribunal in **OA No. 1314 of 2014** vide order dated 25.05.2017 considered the case of compassionate appointment. In that case, the compassionate appointment was not granted to the applicant. Hence, he had filed OA No. 195 of 2013 and the Tribunal quashed the order dated 22.02.2012 and directed the respondents to reconsider the representation dated 24.01.2013 by passing a detailed and speaking order. However, the representation of the applicant was rejected vide order dated 23.05.2013 mainly on the ground that the son is married and another son is in employment. The claim was further rejected by the competent authority. The order dated 25.05.2017 passed by this Tribunal discussed the DoPT OM dated 30.05.2015 and the clarification dated 15.02.2015 issued by the DoPT that the married son can be considered for compassionate appointment. The relevant portion of the order dated 25.05.2017 passed by this Tribunal is quoted below:-

"11. In view of the above, I am of the considered view that the claim of compassionate appointment can neither be rejected on the ground of marital status nor it can be refused on the ground that a large amount of retiral dues have been paid and applicant is getting pension.

12. In consequence, I direct that the claim of applicant for compassionate appointment of his son is liable to be reconsidered ignoring his marital status and amount paid as retiral dues and pension.

13. Accordingly, the OA is allowed and order dated 17.02.2012 (Annexure No.A-1) is quashed and set aside. The respondents are directed to reconsider the representation of applicant for consideration of compassionate appointment of his married son within a period of 2 months from the date of receipt of certified copy of this order. No order as to costs."

14. In the counter reply submitted by the respondents, it is stated that compassionate appointment is given only to help tide over the financial crises of the family and compassionate ground appointment is granted only to the dependent of the deceased employee's family member. As per the Office Memorandum dated 30.05.2013 published by DoPT married son is not considered dependent on government servant. In this case, the applicant is married as such he is not entitled for getting compassionate appointment. Reference has also been made by the respondents to the order dated 02.07.2014 passed by this Tribunal in the case of **Vinod Kumar Kushwaha Vs UOI in Review no. 52/11 arising out of OA No. 1154/08**, in which it has been held that married sons are not entitled for getting compassionate appointment.

15. Learned counsel for the respondents has argued that decision taken by the respondents to reject the claim of the applicant is based on the DoPT circular dated 30.05.2013 which clearly mentions that married sons are not entitled to get compassionate appointment. He has also argued that the family pension has been granted to the applicant's younger brother till him attaining the age of 25 years and therefore, there is no occasion for the applicant for getting any compassionate appointment, he being not dependent on the deceased Shri Ram Sanehi. The Competent

Authority, accordingly, rejected the claim of the applicant for getting compassionate appointment.

16. Learned counsel for the respondents has relied upon the judgement of the Apex Court in the case of **Umesh Kumar Nagpal Vs State of Haryana** dated 04.05.1994 in support of his argument. He has also enclosed the DoPT OM dated 30.05.2015, in which column no. 13 asks whether 'married son' can be considered for compassionate appointment and the clarification is given as '**No. A married son is not considered dependent on a government servant**'.

17. In the rejoinder affidavit submitted by the learned counsel for the applicant it has been mentioned that OM dated 30.05.2013 published by DoPT on the basis of which the applicant has been denied compassionate appointment being married son has been recalled and modified and it has been clarified by DoPT that married son can be considered for compassionate ground appointment as per revised order of DoPT dated 25.02.2015. It has been further argued that as per the Railways Master Circular No. 16, there is no distinction between son/ward whether married or not. He has further argued that this aspect has been duly addressed by Hon'ble Tribunal in OA No. 1314 of 2014 which was decided vide order dated 25.05.2017

18. Heard the arguments of learned counsels for both the parties, perused the record and the judgements quoted by the parties.

19. From the facts of the case, it is evident that father of the applicant who was working as a Key Man in the Railways died while on duty on 14.05.2011. After his death, the applicant being his eldest son applied for compassionate appointment. However, his case was rejected vide order dated 03.04.2014 after almost 3 years.

20. Although the Railway Master Circular No. 16 does not specify any condition restricting the married son to be appointed on compassionate grounds, in the present OA, the respondents have relied upon the DoPT OM dated 30.05.2013 which clarifies that married sons cannot be considered for compassionate appointment. However, this has been recalled and modified by DoPT OM dated 25.02.2015 as per which married sons are also eligible for compassionate appointment. The applicant's case was rejected vide letter dated 03.04.2014. This issue has already been settled through various Apex Court judgments as well as this Tribunal, which have been quoted. Similar case has been considered in terms of DoPT OM dated 30.05.2013 and modified OM dated 25.02.2015 in order passed by this Tribunal dated 25.05.2017 in OA No. 1314 of 2014 and it has been decided that compassionate appointment can be granted to married son, if eligible otherwise.

21. In view of the above mentioned, that the compassionate appointment cannot be rejected on the grounds of marital status of the eldest son, the OA is allowed and the impugned order dated 03.04.2014 is quashed and set aside. The respondents are directed to decide the representation dated 28.04.2014 preferred by the applicant for consideration of compassionate appointment to him within a period of three months from the date of receipt of copy of the order. No order to cost.

**(MOHD JAMSHED)
MEMBER-A**

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