

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00070/2017

DATED THIS THE 17<sup>TH</sup> DAY OF JANUARY, 2019

**HON'BLE DR.K.B.SURESH, MEMBER (J)**

**HON'BLE SHRI C.V. SANKAR, MEMBER (A)**

Sri Prakash R

S/o Late Lakshmamma,

Aged about 35 years,

R/a House No. 10, 3<sup>rd</sup> Cross,

10<sup>th</sup> Main, M.K. Nagar,

Yeshwanthpur,

Bangalore – 560 022

.....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. The General Manager,  
South Western Railways,  
Club Road, Keshavapura,  
Hubli – 580 023

2. The Chief Personnel Officer,  
Office of the General Manager,  
South Western Railways,  
Gadag Road,  
Hubli – 580 023

3. The Senior Divisional Personnel Officer,  
Office of the Divisional Railway Manager,  
South Western Railways,  
Bangalore Division,  
Bangalore – 560 023

....Respondents

(By Shri N.S. Prasad, Counsel for the Respondents)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The matter relates to compassionate appointment which is a special genre of backdoor appointment. The basis of compassionate appointment is the mercy which should visit an employee and his family on the sudden death of a breadwinner so that there should not be any vagrancy. That is the principle behind compassionate appointment which is a backdoor entry and therefore under Article 13 of the Constitution of India normally not possible.

2. Apparently in this case we had earlier passed an order in OA No. 1313/2015 dated 17.02.2016 which we quote:

*“Heard. Apparently the applicant seeking compassionate appointment had produced the SSLC certificate which was found to be from an institution which is not recognized at all. On this being intimated to him, he had enrolled for Karnataka Secondary Education Examination Board examination and apparently had passed in June, 2013 as a private candidate. Issued by the Government of Karnataka, it is a genuine certificate. It appears that in the interregnum, thinking that the applicant ought to have produced the certificate which had bearing on the situation occurring at the time of death of the government servant he had apparently produced certificate of marks card which was also rejected. Merely because the applicant did not know the procedure involved it does not mean that he has produced a fake certificate and forged documents to get an employment since he has produced Karnataka Secondary Education Examination Board certificate. On the basis of the contention of the applicant for compassionate appointment, he will be examined by the respondents within 2 months next. At this point of time the learned counsel for the respondents took us through the averments he had made in the reply regarding status of the school. It is unfortunate in the state of Karnataka that many such institutions exist where they claim to have recognition from many other state boards. In Delhi there is many number of institutions which will admit students and give them coaching also having recognition from places in Uttaranchal, Bihar, Nepal etc. This has been considered by the Hon’ble High Court of Delhi also in many a case and held that his cannot be held to be prejudicing the students rights. If Sunita’s name appears before the applicant’s name or if they have not given any coaching to him, it will be appropriate for the authority to ignore it but then the certificate issued by the Karnataka Government Secretary, Secondary Education Examination Board cannot be ignored at all. Therefore, the applicant will be considered for compassionate appointment on the basis of the certificate issued by the State of Karnataka.*

*2. OA is allowed to this extent. No order as to costs.”*

3. It is taken up in challenge to the Hon’ble High Court of Karnataka in Writ Petition No. 46052/2016 dated 21.10.2016 which we quote:

**“FINAL ORDER**

*The present petition is directed against the order dated 17th*

*February 2016 passed by the Tribunal, whereby, the Tribunal for the reasons recorded in the order has directed the consideration of the application of the original applicant/respondent herein for compassionate appointment on the basis of the certificate issued.*

*2. We have heard Mr. Abhinay Y.T., learned counsel appearing for the petitioners.*

*3. The contention raised on behalf of the petitioners is, that the School Certificate was produced by the respondent to show that he had passed 8th Standard Examination which is the requirement by way of eligibility criterion but the Railway Authority examined the registered and in the register, it was found that a student named in Sl.No.57 was granted admission at the later date, whereas, the respondent who was granted admission prior date. Based on the same, the Railway Authority found that the Certificate is not genuine and therefore, declined the compassionate appointment. He submitted that the Tribunal ought not to have ordered for consideration of the compassionate appointment on the premise that respondent had requisite educational qualification.*

*4. We may at the outset record that, even as per the petitioners, requirement for meeting with the eligibility criterion for compassionate appointment is passing of 8<sup>th</sup> Standard. The respondent produced not only the School Certificate and marks sheet, but also produced the Certificate-VI issued by the Head Master of Sri. Veerabhadra High School which is duly counter signed by the Block Education Officer who is the State Government Officer of the Education Department. As per the said Certificate, it is certified that the respondent has studied 8<sup>th</sup> Standard from 1994-95 and he has also passed 10th standard during the academic year of 1996-1997. The fact that the respondent has passed 8<sup>th</sup> standard duly certified by the Head Master duly counter signed by the Block Education Officer, could not have been discarded by the Railway Authority, merely because, there was some discrepancy in the date of grant of admission. It is not unknown that the admission may be granted at the later date, but thereby, the factum of passing the 8th Standard examination which was the requisite criterion could not be discarded merely some discrepancy in the Admission Register of the school. As such, when the certificate of the school is produced, unless the said certificate is found to be fake, the further enquiry was uncalled for. It is a matter when the school authority has not stated that the respondent did not studied at all. On the contrary, the Head Master as well as the Block Education Officer have certified the factum of passing of the 8th Standard and 10th Standard during the period from 1994-1995 to 1996-1997. Under this circumstance, when the respondent held the requisite educational qualification and ultimately, the Tribunal has directed for consideration of the application for compassionate appointment on the premise that he was fulfilling the requisite educational qualification, we do not find that any error has been committed by the Tribunal which may call for*

*interference in exercise of the power under Article 227 of the Constitution. Hence, no case is made out for interference. The petition is dismissed."*

4. Thereafter since we have asked the consideration of the applicant on cogent grounds including indigency which has not been considered, the concerned authorities seems to have passed an order which we quote:

**SOUTH WESTERN RAILWAY**

*Divisional office  
Personnel Department,  
Bengaluru – 23,  
Dated 06.01.2017*

*No. B/P.209/R.Prakash/17*

*Sri R. Prakash,  
S/o Late Lakshmamma,  
No. 10, 3rd Cross, 10<sup>th</sup> Main,  
M.K. Nagar, Yeshwanthpur,  
Bengaluru – 560 022*

*Sub: Compassionate Ground appointment*

*Ref: 1. Order of Hon'ble CAT/Bengaluru  
2. Your representation dated 18.11.2016*

*In compliance with orders of the Hon'ble CAT/Bengaluru and with reference to your representation dated 18.11.2016 you are hereby advised as follows:-*

*You had filed OA No. 1313/2015 praying the Hon'ble Tribunal to quash the advice dated 21.11.2014 issued by Sr.DPO/SBC and to direct the Respondents to consider you for compassionate Ground appointment on the basis of educational qualification. The Hon'ble Tribunal has allowed the OA vide order dated 17.02.2016 and directed Railways that you will be considered for compassionate appointment on the basis of the certificate issued by the State of Karnataka.*

*The appointment on compassionate grounds is to be considered by the General Manager (sub-delegated to Divisional Railway Manager vide RBE NO. 300/1999) as per the directions contained in RBE No. 144 of 2000.*

*Para 3 of RBE No. 144 of 2000 provides as under:*

*“3. While considering such requests for compassionate appointment, the General Manager should satisfy himself on the basis of a balanced and objective assessment of the financial condition of the family, that the grounds for compassionate ground appointment in each such case is justified, having regard to the number of dependents, assets and liabilities left by the Railway employee, income of any member of the family, as also his liability, including the aspect of whether the earning member is residing with the family of the deceased employee and whether he provides any support to the other members of the family, so that the facility of appointment on compassionate grounds is not circumvented or misused by putting forward the ground that the eldest son of the employee is staying separately and not supporting the family.”*

*Further the Hon'ble Supreme Court of India in the case of Umesh kumar Nagpal versus State of Haryana and others reported in **(1994) 27 Administrative Tribunals cases 537** has held that “Object of compassionate appointment held, is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment.” “Factors necessary for being taken into account before offering – Held, mere death of an employee does not entitle his family to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee’s death.”*

*Thus, based on the judgment dated 17.02.2016 passed by the Hon'ble Tribunal, the procedure provided in RBE No. 144 of 2000 and the dictum issued by the Hon'ble Supreme Court of India, your case was considered for appointment on compassionate grounds.*

*In order to ascertain whether your case complied with instructions of RBE No. 144 of 2000 and to ascertain the present financial condition of the family, a staff and welfare inspector was nominated. The nominated inspector has submitted a report stating that deceased Railway Employee had left behind 3 children, viz, (1) Shri R. Prakash, (2) Smt. Nesamani and (3) Smt. Vasanthi. Smt. Vasanthi is a widowed daughter and she is in receipt of secondary family pension of Rs. 10,731/- per month sanction as a result of death*

*of ex-employee Smt. Lakshamma. The Second Daughter Smt. Nesamani is married and residing at Vellore, Tamilnadu. The Petitioner Sri R. Prakash, is working as a car driver in a private travels and earning approx. Rs.10,000/- per month. It is also noted that you were already married and is having two children. You had married long before the death of your mother (Railway Employee) and was maintaining your family out of his own earning.*

*Your case has been considered by the Competent Authority and it is observed that there is no dependency of any of the primary family members on you, in as much that, Smt. Vasanthi (Widowed daughter) is in receipt of family pension of Rs. 10,731/- per month sanction as a result of death of ex-employee Smt. Lakshamma and Smt. Nesamani is married and living separately with her husband. Further since, you are already employed as car driver and earning approximately Rs. 10,000/- per month, the family was found not to be in a financial distress and hence the case does not merit appointment on compassionate grounds.*

*In view of the above the order of the Hon'ble CAT has been complied with.*

*Note and acknowledge the receipt.*

*(Asif Hafeez K)  
Sr.DPO/SBC,  
South Western Railway,  
Bengaluru – 560 023”*

5. Therefore, if the applicant had already been married much before the death of Smt. Lakshamma, Smt. Nesamani is already married and settled elsewhere, the widow daughter Smt. Vasanthi is getting a family pension of Rs. 10,731/- per month, then there cannot be any indigency attached to the applicant. That widowed daughter now Shri Vishwanath Bhat, learned counsel for the applicant, claims is staying separate. That will not in any way enhance the cause of the applicant. The railways after having conducted an enquiry have found out that applicant is a driver in a private firm and earning not less than Rs. 10,000/- per month. Shri Vishwanath Bhat, learned counsel

for the applicant, says that he does not have a driving license but then he has no evidence to support it. Therefore, having raised a claim and not being able to support it, an adverse presumption has to be taken and it is also to be noted that after the death of the government employee much time had elapsed and therefore the immediacy of succour as mandated by the Hon'ble Apex Court order does not seem to arise in this matter. Therefore, we are unable to find anything wrong in the order passed by the concerned authority.

6. The OA is held to be without merit. The OA is dismissed. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

/ksk/

**Annexures referred to by the applicant in OA No. 170/00070/2017**

Annexure-A1: Copy of Death Certificate of Smt. Lakshamma dated 16.03.2012

Annexure-A2: Copy of representation dated 02.08.2012



Annexure-A3: Copy of SSC marks card of the applicant

Annexure-A4: Copy of reply by the 3<sup>rd</sup> respondent dated 05.11.2012 to the representation of the applicant

Annexure-A5: Copy of SSLC Marks issued by Karnataka Secondary Education Examination Board

Annexure-A6: Copy of the representation dated 21.10.2013

Annexure-A7: Copy of the representation dated 14.05.2014

Annexure-A8: Copy of the letter/endorsement dated 21.11.2014

Annexure-A9: Copy of the representation dated 02.12.2014

Annexure-A10: Copy of the PUC Pass Certificate cum Marks Card

Annexure-A11: Copy of the PUC Pass Certificate cum Marks Card

Annexure-A12: Copy of the order dated 21.10.2016 passed in WP No. 46052/2016

Annexure-A13: Copy of the endorsement dated 04.01.2017

Annexure-A14: Copy of the order dated 06.01.2017

Annexure-A15: Copy of the circular RBE No. 38/2007

Annexure-A25: Copy of the Report dated 24.12.2016

Annexure-A26: Copy of the letter dated 24.11.2017

Annexure-A27: Copy of the appointment order of Smt. M.C. Rekha and information furnished under RTI Act.

**Annexures with Reply:**

Annexure-R1: Copy of the CPO/SWR/UBL letter dated 20.09.2012

Annexure-R2: Copy of the RBE-88/2007

**Annexures with Rejoinder:**

Annexure-A16: Copy of the letter dated 05.09.2014

Annexure-A17: Copy of the complaint dated 07.10.2014

Annexure-A18: Copy of letter from PMO dated 03.11.2014

Annexure-A19: Copy of the complaint dated 11.03.2015

Annexure-A20: Copy of the Income Certificate dated 22.12.2014

Annexure-A21: Copy of Income Certificate dated 27.03.2015

Annexure-A22: Copy of domicile certificate dated 21.02.2017

Annexure-A23: Copy of income certificated dated 01.02.2017 for the year 2017

Annexure-A24: Copy of the information from RTI dated 28.02.2017

**Annexures with Additional Reply :**

Annexure-R1: Copy of the order in CP No. 99/2016 dated 11.01.2017

Annexure-R2: Copy of the order of the Hon'ble High Court of Karnataka in Writ Petition No. 37241/2016 dated 06.12.2016

\* \* \* \* \*