

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 1111 of 2014

Present: Hon'ble Mr.Gokul Chandra Pati, Member (A)

Prasanta Toppo, aged about 30 years, S/o Late Bisu Oram @ Toppo, permanent resident of Vill – Sukhabandha, PO – Kalosiria, PS – Biramitrapur, Dist. – Sundergarh (Odisha).

.....Applicant

VERSUS

1. Union of India, represented by its General Manager, South Eastern Railway, At – Garden Reach, Kolkata – 700043, West Bengal.
2. Divisional Railway Manager, S.E.Railway, Chakradharpur Division, PO – Chakradharpur, Dist. – Singhbhum, Jharkhand – 833102.
3. Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur Division, PO – Chakradharpur, Dist. – Singhbhum, Jharkhand – 833102.
4. Divisional Operation Manager (L), S.E.Railway, Chakradharpur Division, PO – Chakradharpur, Dist. – Singhbhum, Jharkhand – 833102.
5. Chief Yard Master, S.E.Railway, Biramitrapur Railway Station, At/PO-Biramitrapur, Dist. – Sundergarh (Odisha).

.....Respondents.

For the applicant : Mr.R.B.Mohapatra, counsel

For the respondents: Mr.T.Rath, counsel

Heard & reserved on : 25.1.2019

Order on : 8.2.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

This OA has been filed under the section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- “(a) Admit, issue notice to the respondents, requiring them to file their show cause within the stipulated period as to why the relief sought for in the present Original Application shall not be allowed;
- (b) and if the respondents fails to file their show cause within the stipulated period, or caused insufficiently, then call for the relevant records from the custody of the Sr. Divisional Personnel Officer, Chakradharpur Division and the General Manager, S.E.Railway for the perusal of this Hon'ble Tribunal at the time of hearing;
- (c) and after perusing the pleadings of both the parties and hearing them finally, allow this present Original Application by quashing

the impugned order of denial of employment dtd. 5.2.2009 communicated to the applicant's elder brother Bicha Topopo by the Sr. Divisional Personnel Officer, Chakradharpur in Annexure A/7;

- (d) and pass an appropriate order directing the General manager, S.E.Railway, Kolkata – respondent No.1 to consider the case of the applicant for his employment assistance in Group D category post in the Chakradharpur Division on compassionate ground taking into consideration his appeal in Annexure A/11 and reminder in Annexure A/12, keeping in view the circular as stated in the above paragraphs by the Railway Board from time to time in respect of the compassionate appointment and to provide the employment in favour of the Applicant within a stipulated period;

And pass any other appropriate order(s) as deem proper and fit in the interest of justice."

2. The applicant's father Bisu Oram @ Toppo expired on 2.2.2001, while he was under employment of the respondent-railway. The mother of the applicant had expired prior to the death of his father. The applicant received his caste certificate dated 26.5.2001 as Scheduled Tribe (Annexure-A/5) and legal heir certificate dated 12.6.2001 (Annexure-A/4). He applied for employment on compassionate ground on 12.12.2008 (Annexure-A/8). After submission of the Succession Certificate and other documents, Bicha Toppo, the elder brother of the applicant was disbursed all retirement benefits of his deceased father including family pension till 25 years of age or employment whichever is earlier, vide order dated 11.8.2009 (Annexure-A/6). Bicha Toppo wrote to the respondent no. 4 to provide employment assistance in favour of his younger brother, the applicant. This was regretted by the respondent no. 3 vide his letter dated 5.2.2009 (Annexure-A/7). Thereafter, a mercy petition was filed by the applicant vide letter dated 20.2.2009 (Annexure-A/9). Vide order dated 13.5.2010 (Annexure-A/10), the respondents sanctioned family pension in favour of the applicant till the age of 25 years or employment whichever is earlier. An appeal dated 25.6.2010 (Annexure-A/11) was filed by the applicant, with a reminder on 4.6.2012 (A/12) and he visited the office of the respondent no. 1. But as no action was taken, the applicant has filed this OA.

3. The applicant has filed the MA No. 51/15 on 16.1.2015 with the prayer to condone delay of about five years ten months in filing the OA after the delay in filing the OA was pointed out by the Registry. The counter was filed by the respondents on 18.9.2017 by the respondents and Rejoinder on 6.8.2018. On 25.1.2019, both the MA No. 51/2015 alongwith the OA was heard.

4. In the counter filed by the respondents, the MA and the OA have been opposed mainly on the following grounds:-

- (i) The OA is barred by limitation, hence, it is liable to be dismissed.

(ii) The application for compassionate appointment was preferred after 7 years and 9 months after the applicant became a major on 11.8.2001, for which the GM is competent to consider it. It was observed by the competent authority that the wife was predeceased and the younger son was 24 year old and cannot be treated as a dependent. Hence, the application for the applicant's employment was rejected vide order dated 5.2.2009 (A/7).

(iii) The compassionate appointment cannot be claimed as a matter of right and it is meant for the family to tide over the sudden financial crisis. In the present case, the family of the deceased employee has survived so many years after death of the employee.

(iv) The applicant is married and attended majority long back, which shows that he has crossed the age of dependency. The circular No. 120/83 (Annexure-R/4) specifies a period of 5 years from the date of occurrence of the event for considering compassionate appointment. This period can be relaxed with approval of GM in deserving cases.

5. The judgments in the following cases have been cited in the counter filed by the respondents in support of their case:-

(i) Judgment of Hon'ble Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana, which was circulated vide the circular at Annexure-R/3.

(ii) Judgment of Hon'ble Apex Court in the case of State of Haryana & Ors. vs. Rani Devi & Anr.

(iii) Judgment of Hon'ble Apex Court in the case of National Institute of Technology vs. Miraj Kr. Singh, reported in (2007) 1 SCC 668.

(iv) Judgment of Hon'ble Apex Court in the case of Mohan Mahato vs. Central Coal Field, reported in (2007) 8 SCC 549.

(v) Judgment dated 19.6.2017 of Cuttack Bench of the Tribunal in the case of Sakuntala Sahoo & Anr. vs. Union of India.

6. The applicant filed Rejoinder, denying the averments in the counter and mentioning the following points of law to be decided in the case:-

- (a) Whether the present Original Application is maintainable?
- (b) Whether the General Manager, S.E.Railway, respondent NO.1 is to consider the case of the applicant for his employment assistance in Group D category post in Chakradharpur Division on compassionate ground taking into consideration his appeal in Annexure A/11 and reminder annexure A/12 keeping in view the circular for such compassionate appointment?

- (c) Whether the claim of the applicant is barred by limitation in view of the circular in annexure R/4 of the counter to the above Original Application?
- (d) Whether the scheme for compassionate appointment formulated by the Department to help the family in distress the employed died in harness and the demand for consideration of employment assistance on compassionate ground is the fundamental right in view of the annexure R/3 to the counter?

7. Learned counsels for both the parties reiterated the stand in their respective pleadings. For deciding this OA, the following relevant issues/questions are to be considered and answered:-

- (i) Whether the reasons furnished in the MA No. 51/2015 can be considered to be satisfactory for condoning the delay in filing the OA.
- (ii) Whether the decision of the respondents to reject the application for compassionate appointment of the applicant are legally sustainable in the light of the decision of Hon'ble Apex Court in the cases cited by the respondents.

8. Before proceeding further, the MA No. 51/2015 for condonation of delay needs to be considered. It is stated in the MA that the delay in filing the OA was not intentional as the application for compassionate appointment was turned down by the respondents and the appeal filed by the applicant before the GM against such rejection was still pending. After receiving the impugned rejection order dated 5.2.2009, the applicant appealed in letter dated 20.2.2009 and when no reply was received, then he filed another appeal dated 25.6.2010 (A/11) before the GM (respondent no.1) followed by a reminder dated 4.6.2012. It is stated in the MA that since no reply was received, the applicant went personally to the office of the GM on 14.7.2014. As he did not receive any reply, he filed the OA.

9. It is noted that this Tribunal vide the order dated 30.4.2015 in this OA, passed the following order :-

"2. Admit. Issue notice to the Respondents both on the OA as well as on M.A. No. 51/2015 for condonation of delay, returnable in four weeks. Counter to be filed within a further period of four weeks therefrom."

After taking into account the grounds advanced in the MA No. 51/2015 and the reply in the Counter with regard to delay, I am of the considered opinion that in the interest of justice, the OA is required to be considered on merit. Hence, MA No. 51/2015 is allowed and the delay in filing the OA is condoned. Accordingly, the OA is maintainable and deserves to be considered on merit.

10. Regarding merit of the OA, it is noted that the legal principles relating to the issue of compassionate appointment are no longer res integra. Hon'ble

Apex Court in the case of **Umesh Kumar Nagpal vs. State of Haryana**, reported in (1994) 4 SCC 138, has held as under:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

11. The principles enunciated in the case of Umesh Kumar Nagpal have been reiterated by Hon'ble Apex Court in the case of **State of Haryana & Ors. vs. Rani Devi & Anr.** reported in AIR 1996 SC 2445, in which it was held as under:-

"The question of appointment of one of the dependants of an employee of the State or Central Government who dies while in service has of late assumed importance and subject matter of controversy before different courts. This Court in the case of [Smt. Sushma Gosain & Ors. vs. Union of India & Ors.](#), AIR 1989 SC 1976 = (1989) 4 SCC 468 after referring to the Government Memorandum under which the appointment on compassionate ground was being claimed observed that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. It cannot be on disputed that appointment on compassionate ground is an exception to the equality clause under [Article 14](#) and can be upheld if such appointees can be held to form a class by themselves, otherwise any such appointment merely on the ground that the person concerned happens to be a dependant of an ex-employee of the State Government or the Central Government shall be violative of Articles 14 and 16 of the Constitution. But this Court has held that if an employee dies while in

service then according to rule framed by the Central Government or the State Government to appoint one of the dependants shall not be violative of Articles 14 and 16 of the Constitution because it is to mitigate the hardship due to the death of the bread earner of the family and sudden misery faced by the members of the family of such employee who had served the Central Government or the State Government. It appears that this benefit has also been extended to the employees of the authorities which can be held to be a State within the meaning of Article 12 of the Constitution. But while framing any rule in respect of appointment on compassionate ground the authorities have to be conscious of the fact that this right which is being extended to a dependant of the deceased employee is an exception to the right granted to the citizen under Articles 14 and 16 of the Constitution. As such there should be a proper check and balance. Of late, it appears the right to be appointed on compassionate ground is being claimed as a right of inheritance irrespective of the nature of service rendered by the deceased employee. In many cases, applications for appointments on compassionate grounds are being made even after 10-15 years because on the date of the death of the employee the applicant was a minor and could not have been appointed. In the case of [Life Insurance Corporation of India vs. Asha Ramchandra Ambekar & Anr.](#), (1994) 2 SCC 718 this Court pointed out that the High Courts and the Administrative Tribunals cannot issue directions on sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. Any such right for appointment on compassionate ground flows on basis of rules, regulations or some administrative order issued in the form of resolution or office memorandum. In the case of [Umesh Kumar Nagpal vs. State of Haryana & Ors.](#), (1994) 4 SCC 138, it was impressed that as a rule, appointments in public services should be made strictly on basis of open invitation of applications and merit. The appointment on compassionate ground was an exception to the aforesaid rule taking into consideration the fact of the death of the employee while in service and leaving his family without any means of livelihood. In such cases, the object is to enable the family to tide over sudden crisis. However, such appointments on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. In the case of [State of Haryana vs. Naresh Kumar Bali](#), (1994) 4 SCC 448 on an appeal filed by State of Haryana, a 3-Judges Bench of this Court deprecated the direction given by the High Court to appoint the respondent of the said case against a post of an Inspector and it was observed that the High Court should have merely directed consideration of the claim of the said respondent in accordance with rules."

12. In the case of **National Institute of Technology vs. Miraj Kr. Singh**, Hon'ble Apex Court has held that the compassionate appointment has to be given strictly as per the scheme and such appointment can be cancelled after giving opportunity of hearing, if such appointment was obtained by furnishing wrong information. In this case the appointment was found to be wrongly given since the person who was appointed was not the son of the deceased employee and he was one year old at the time of death of the employee.

13. In the case of **Mohan Mahato vs. Central Coal Field**, Hon'ble Apex Court has held that compassionate appointment has to be considered as per the provisions of the rules governing such appointment. If the rules provide for the situation when the dependent is a minor at the time of death of the employee, then it has to be followed while considering the case of compassionate appointment. In the case of **Sakuntala Sahoo & Anr. vs. Union of India**, Cuttack Bench of the Tribunal considered the case where the application for compassionate appointment was filed after a delay and it was held as under:-

"7.The Scheme for compassionate appointment is not a normal method of recruitment. It is a special scheme formulated by the department to help family in distress where the employee has died in harness. Compassionate Appointment Scheme does not confer any right to any applicant. Therefore, the argument of the Respondents that this belated prayer for extending a second round of compassionate appointment to the applicant is without any justification, appears to be correct in my opinion. It is further required to add here that the prayer made in application appears to be contrary to the spirit of the Compassionate Appointment Scheme formulated by the Respondents."

14. Delay in submission of the application for compassionate appointment was considered by Hon'ble Apex Court in the case of **State of J&K and others vs. Sajad Ahmed Mir reported in (2006) 5 Supreme Court Cases 766**, and it was held as under:-

"In [Umesh Kumar Nagpal v. State of Haryana & Ors.](#) [(1994) 4 SCC 138], it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned. In [Smt. Sushma Gosain & Ors. v. Union of India & Ors.](#) [(1989) 4 SCC 468], it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. Recently, in [Commissioner of Public Instructions & Ors. v. K.R. Vishwanath](#), [(2005) 7 SCC 206], one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated.

In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal. For the foregoing reasons, the appeal deserves to be allowed and it is accordingly allowed....."

15. In the case of **Bhawani Prasad Sonkar vs. Union of India and others reported in (2011) 4 SCC 209**, it was held by Hon'ble Apex Court as under:-

"19. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

16. When the case of the present applicant is considered in accordance with the principles laid down by Hon'ble Apex Court in different cases as discussed above, it is seen that there is no denial of the applicant on record to the respondents' averment in para 5C of the counter that the application for compassionate appointment was submitted by him for the first time on 18.11.2008 after more than 7 years 9 months of the death of the deceased employee (father of the applicant who expired on 2.2.2001), although the applicant became a major on 11.8.2001. The impugned order dated 5.2.2009 (A/7) referred to the letter dated 18.11.2008 by which the applicant's elder brother had requested for compassionate appointment of the applicant. The applicant, as stated in the OA, has submitted an application for compassionate appointment on 12.12.2008 (A/8) in which it was stated that due to delay in processing the court certificates, the matter could not be processed earlier and that there was no ulterior motive. There is another letter of the applicant's elder brother in which it is stated that the respondents advised them to obtain succession certificate, which took a long time. There is nothing on record to prove such a contention. It is seen from the Legal Heir certificate enclosed at Annexure-A/4, that it was issued on 12.6.2001 and the caste certificate (Annexure-A/5) was issued on 26.5.2001. It is seen that the Legal Heir certificate (A/4) was for the purpose of the gratuity and other claims relating to the deceased employee's service. It is not explained why the Succession certificate was required. Also, the date on which the succession certificate was issued has not been mentioned in the OA or in the letter dated 12.12.2008 (A/8). Nothing prevented the applicant to move the authorities for compassionate appointment with the legal heir certificate dated 12.6.2001 immediately after he became a major.

17. It is also seen that the benefits payable to the family on account of death of the father of the applicant was sanctioned and paid on 11.8.2009 i.e. about more than 8 years of the death of the deceased employee. There is nothing on record furnished by the applicant to prove that the family of the deceased employee faced acute financial stress after death of the applicant's father in harness and the family continued to be in distress when the application for compassionate appointment was submitted in the year 2008.

18. In view of the factual circumstances and the case laws as discussed above, I do not find the grounds mentioned in the OA sufficient enough to warrant any interference of the Tribunal in the matter. Accordingly, the OA, is devoid of merit and hence, it is dismissed. No order as to costs.

(GOKUL CHANDRA PATI)

MEMBER (A)

I.Nath