

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00362/2017

Wednesday this the 19th day of December, 2018

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

1. Kavitha P.S.,
W/o late S.Vijayakumar,
Chackalackal House, Mahatma Nagar,
Ambadimala, Thiruvankulam PO - 682 305.
2. Liji Vijayakumar,
D/o late S.Vijayakumar,
Chackalackal House, Mahatma Nagar,
Ambadimala, Thiruvankulam PO - 682 305.Applicants

(By Advocate Mr.P.Ramakrishnan)

V e r s u s

1. The Senior Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram Division,
Divisional Office, Thycaud, Thiruvananthapuram – 695 001.
2. The Union of India,
represented by the Secretary,
Ministry of Railways, New Delhi – 110 001. ...Respondents

(By Advocate Mr.V.A.Shaji, ACGSC)

This application having been heard on 5th December, 2018, the Tribunal on 19th December, 2018 delivered the following :

ORDER

O.A.No.180/362/2017 is filed by Smt.Kavitha.P.S and Ms.Liji Vijayakumar, widow and daughter of late Shri.Vijayakumar, railway employee who expired on 7.6.2016 while in service. The first applicant, the mother of

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the second applicant, had submitted an application before the first respondent requesting appointment on compassionate grounds for the second applicant. A copy of the application dated 17.8.2016 is available at Annexure A-1. The first respondent on receipt of the said application had got an inquiry conducted through its competent officer at Ernakulam and a report had been filed. The said report, a copy of which is at Annexure A-2, according to information furnished under the Right to Information Act, recommended that request for appointment on compassionate grounds submitted by the first applicant may be considered sympathetically. However, ignoring the recommendation in the inquiry report, the first respondent by order dated 19.12.2016 rejected the request submitted by the first applicant (Annexure A-3).

2. The applicants maintain that the rejection of the first applicant's application is illegal and unsustainable. Receipt of various pensionary benefits from the employer institution and the fact that the first applicant is working in a Government educational institution are no bar for considering a case for compassionate ground appointment. The first applicant filed a detailed representation citing all the facts on 23.1.2017 (Annexure A-4). Regrettably this representation also came to be rejected by the impugned order at Annexure A-5, citing the very same reason. As grounds, the applicants claim that the family had been heavily indebted and the paltry sum received under various benefits had been already spent for clearing

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loans and other advances. The fact of the first applicant being employed in a State Government educational institution should not stand in the way of a sympathetic consideration of the case. The fact finding inquiry as per Annexure A-2 report had clearly recommended compassionate appointment to the unmarried daughter of the deceased employee. The rejection by the authorities also did not take into account the liabilities incurred by the widow for the marriage of the elder daughter and the medical expenses of the deceased employee when he was alive. The finding of the first respondent that the applicants are living in their own house, which along with its land, is worth Rs.50 lakhs is baseless. The Government fixed value for the land is only Rs.2.5 lakhs per Are and the applicant had only 2.5 Ares of land in their possession.

3. Respondents have filed reply statement wherein they have disputed the claims made in the O.A. It is maintained in the said statement that Compassionate Employment Scheme is meant to alleviate the suffering of the most deserving. The deceased employee had only a few months left for normal retirement. Citing **Umesh Kumar Nagpal v. State of Haryana & Ors. (JT 1994 [3] 525)** the respondents state that in terms of destitution and financial difficulties, there are many other cases which are more deserving. The family was granted retirement benefits of a sum of Rs.15,08,599/-. The first applicant was granted pension of Rs.8,825/- plus DA per month which after 7th Pay Commission has been increased to Rs.22,680/- plus DA per

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month. She is working as a Principal in a Kerala Government Higher Secondary School and earns more than Rs.50,000/- per month and hence the family cannot be said to be in absolute penury. Further the second applicant, though 27 years old and well qualified having B.Com and MBA degrees, has chosen not to work which implies that her family condition does not require her employment for their survival. The respondents relied upon **Mohan Mahto v. Central Coal Field Ltd. (2007) 7 SCC 549** which had laid down that appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. Further, in the case of **National Institute of Technology v. Niraj Kumar Singh (2007) 2 SCALE 525** the Hon'ble Supreme Court has observed :

“16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit there under.”

4. Heard Shri.P.Ramakrishnan, learned counsel for the applicant and Shri.Shaji.V.A., learned ACGSC for the respondents. The reason discernible from the impugned order at Annexure A-5 is that the first applicant is disqualified on account of four factors :

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(i) She has got final settlement benefits amounting to Rs.12,81,799/-.

(ii) The elder daughter is married and was not dependent on the late employee.

(iii) That the first applicant has a job under the State Government.

(iv) And that Shri.Vijayakumar has only ten months service left for normal superannuation.

5. In so far as the first objection of the respondents is concerned, the Hon'ble Supreme Court in **Canara Bank & Anr. v. M.Mahesh Kumar (2015) 7 SCC 412** had ruled *“grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance”*. The fact of the elder daughter being married and living separately does not weaken the case of the applicants; on the contrary it strengthens the same nor is the fact of the first applicant being employed in a Government sector a bar to the consideration of her application for second applicant's employment. The eligibility norms of the Scheme required that all factors relating to the financial condition should be properly assessed. In the inquiry report which is available at Annexure A-2 the concerned officer appears to have looked at the case in a very different light and has unhesitatingly recommended it.

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6. In view of these facts which has come out during the hearing and the records on offer, I allow this O.A to the extent that the case of the applicants should be evaluated afresh taking into account all the factors which have been adduced in the O.A. The Committee authorised to do so should look at the case afresh and take a considered view on the application within a period of sixty days from the date of receipt of a copy of this order. No costs.

(Dated this the 19th of December 2018)

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00362/2017

1. **Annexure A1** – True copy of the application dated 17.08.2016 submitted by the applicants.

 2. **Annexure A2** – True copy of the enquiry report along with the covering letter dated 19.01.2017 received under the Right to Information Act from the 1st respondent.

 3. **Annexure A3** – True copy of the Order dated 19.12.2016 of the 1st respondent.

 4. **Annexure A4** – True copy of the representation dated 23.01.2017 submitted by the 1st applicant before the 1st respondent.

 5. **Annexure A5** – True copy of the Order dated 22.02.2017 of the 1st respondent.
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