

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 20/494/2018

Date of Order: 04.03.2019

Between:

1. B. Latha, W/o. late B. Ramanjaneyulu (Group C),
(Ex/PWI/Mate, SSE/P.Way ATP),
Aged about 50 years, R/o. Door No. 4-79,
Sundar Singh Colony, Dhone, Andhra Pradesh.
2. B. Sudhamani Devi, W/o. Aged about 32 years,
Occ: Unemployed, R/o. Door No. 4-79,
Sundar Singh Colony, Dhone, Andhra Pradesh.

... Applicants

And

1. Union of India, rep. by its
General Manager, South Central Railway,
Rail Nilayam, III Floor,
Secunderabad – 500 071.
2. The Divisional Railway Manager,
Guntakal Division, South Central Railway,
Guntakal.
3. The Senior Divisional Personnel Officer,
Guntakal Division, South Central Railway,
Guntakal.

... Respondents

Counsel for the Applicants	...	Mr. N. Subba Rayudu
Counsel for the Respondents	...	Mr.N. Srinivasa Rao, SC for Rlys

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
---	-----	------------------------------

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed for not providing compassionate appointment to the applicant.
3. The first applicant is the wife of Sri B.Ramanjaneyulu who while working in the respondents organisation passed away on 7.7.1997. On the demise of her

husband, first applicant approached the respondents for settlement of terminal dues and provide compassionate appointment to her divorced daughter, the 2nd applicant in the present OA. Respondents informed that there was a rival claim for terminal dues from another contestant and hence advised the first applicant to obtain succession certificate from the competent Court. Accordingly on obtaining court orders, first applicant was granted 50 % of pension and terminal benefits after 11 years of the death of her husband. In the meanwhile, second applicant got married in 2001, but regrettably, it ended up in divorce vide OP 67/7 dt. 13.11.2007, forcing her and her two year baby to come back and live as a dependent on the first applicant. Series of representations were made on 4.3.2013, 11.1.2014 and 4.4.2015 seeking compassionate appointment as per CPO/Serial Circular No.142/2002 dt 12.8.2002 but the request was rejected on 29.12.2015 stating that the death of the ex-employee occurred on 7.7.1997 and the divorce of the 2nd applicant took place on 13.11.2007 implying that 2nd applicant was not dependent on the deceased employee at the time of his death. In response first applicant made a representation on 1.2.2016 informing that at the time of the death of her husband second applicant was unmarried and was observably depending on the deceased employee.

4. The contentions of the applicant are that the second applicant was eligible for compassionate appointment as per CPO/sl circular 142/2002 dt 12.8.2002 and Master Circular 16. The 2nd applicant was unmarried and dependent on the date of the death of the deceased employee. The skimpy settlement dues and pension of Rs.894/month received were inadequate to clear the debts raised for the medical treatment of the deceased employee. Representation of the applicant dt 1.2.2016 has not been disposed till date.

5. Respondents resist the contentions of the applicant by claiming that the applicant has not stated that the case was initially rejected on 29.10.2013. From this date of rejection there was a delay of more than 4 years in approaching the court and liable to be rejected on grounds of limitation. Coming to facts since there was a rival claim, settlement of pension and settlement dues were paid in 2009 based on the orders of Lok Adalat. Compassionate appointment for divorced daughter can be considered as per Railway Board instructions vide RBE No.224/2001 dt. 21.11.2001 provided she is wholly dependent on the ex-employee at the time of his death. As this proviso was not fulfilled the request for compassionate appointment was rejected on 29.12.2013. Besides, status of the first applicant as wife was established only on 16.12.2008 after the verdict of the Lok Adalat was pronounced and at that time the second applicant was married. The first applicant was informed appropriately on 29.10.2013, 3.2.2014 and 29.12.2015 in response to her representations. Further, as per Master Circular 16, dependent minor members of a deceased employee can be considered for compassionate appointment on becoming major. In the present case since the status of the first applicant as a wife was decided only in 2008 and by that time 2nd applicant was married, thereby making her ineligible for compassionate appointment. Further, compassionate appointment cannot be sought as a matter of right and to sustain their contentions respondents quoted Hon'ble Supreme Court judgment in Umesh Kumar Nagpal v State of Haryana and ors, 1994 SCC (4) 138, JT 1994 (3) 525.

6. Heard both the counsel. They furthered their arguments based on the written submissions submitted by them. Documents and material papers submitted were gone through in detail.

7. Preliminary objection raised by the respondents is that there is more than 4 years delay in filing the OA and hence barred by limitation. This is not true since the first applicant has made a representation on 1.2.2016 which has not been disposed by the respondents and from this date the delay in filing the OA has been condoned vide MA 310/2018. Now focussing attention on to the facts of the case, as per Master Circular 16 minor dependents of the deceased employee can be considered after becoming major. The second applicant was unmarried and dependent as on the date of death (7.7.1997) of the deceased employee. However, respondents claim that the status of the first applicant as wife of the deceased employee was finalised only in 2008 based on the judgment of the Lok Adalat. Therefore there was no room to consider the case for compassionate appointment till 2008. Albeit they are in a way correct because of the legal procedures that have to be gone through, yet the fact remains that she is the wife of the deceased employee. It took some time for the same to be legally established in view of a rival claim. After the decision of the Lok Adalat on the subject, it is difficult to appreciate that the representation made by the applicant dt 4.4.2015 and subsequently on 1.2.2016 could not be considered favourably by the respondents in the context of issue of Railway Board orders RBE No 70/2014 dt 8.7.2014. Para 3 of the cited Railway Board order which *de facto* supersedes the order dt. 21.11.2001, heavily banked upon by the respondents to discard the plea for compassionate appointment, reads as under:

“Accordingly, the matter has been reviewed by the Board and it has been decided that it should be left to the discretion of the family concerned in case of death of ex-employee to request for job to either spouse or any child, whether son or daughter (married/unmarried/divorced/widowed) subject to the condition the concerned child will be the bread winner of the family concerned.”

The first applicant has nominated 2nd applicant, the divorced daughter for compassionate recruitment. As per the clause referred to above, 2nd applicant is entitled to be considered for compassionate appointment. Being the only child of the deceased employee, she would be the bread-winner provided she is given compassionate appointment. Hence, the 2nd applicant is entitled to be considered for compassionate appointment based on the latest Railway Board order. The earlier orders issued by the respondents based on the lr dt. 21.11.2001 rejecting the claim of the applicant, stand invalid in view of the said order having been superseded by the Railway Board order cited supra. The learned applicant counsel has submitted judgments of this Tribunal in OA 114/2017, 1223/2014 and that of the Hon'ble Ernakulam Bench of this Tribunal in OA 92/2016, which squarely cover the case of the applicant. Respondents have cited Hon'ble Supreme Court judgment in Umesh Kumar Nagpal v State of Haryana and ors, in support of their contentions. A close look of the said judgment would reveal that compassionate recruitment can be provided in case the family of the deceased employee is living in penurious conditions. In the present case, first applicant has been granted a family pension of Rs.894/month and 50% of the terminal benefits granted to her have been mostly used for medical treatment of her deceased husband. A pension of Rs.894/month even if it has been hiked later, is definitely too miniscule an amount to eke out a living, more so considering the prevalent inflationary trend. Besides, they had to go through a torturous period of 11 years without any support from anywhere till the decision of the Lok Adalat in 2008 in regard to the rival claim. One can understand the struggle and trauma the family would have gone through this tumultuous period. Of course, the respondents are no way responsible for the same. Nevertheless, this period would have subjected the family to undoubtedly undergo further financial stress. Learned counsel for

the applicants informed that they are eking out their living by doing seasonal menial jobs which do not suffice to meet both ends, particularly with the additional burden of a child to be looked after. Therefore their quality of living is dismal. Sometimes they starve for lack of seasonal jobs. These are factors which require empathy. There can be no further evidence about the penurious conditions in which the applicants are living given the meagre pension received and the submissions of the learned counsel. Further, it needs to be adduced that the respondents have rejected the request for compassionate appointment on the spinal ground that the 2nd applicant was not dependent on the deceased employee at the time of his death citing letter dt.21.11.2001, which, in fact, has been annulled by Railway Board order vide RBE No.70/2014 dt.8.7.2014. As seen from the documents on record, request for compassionate appointment was not rejected on the ground that the family was not living in a penurious state. Therefore, the Hon'ble Supreme Court judgment quoted by the respondents does come to the rescue of the applicants in view of the despicable financial background of the applicants.

8. To sum up, rules, legal principle stipulated by the Hon'ble Supreme Court cited supra and the judgments of this Tribunal as well as that of coordinate Bench at Ernakulam are in favour of the applicant. Hence the OA fully succeeds. The action of the respondent is against rules, illegal and arbitrary. The impugned order dt.29.12.2015 issued by the 3rd respondent is quashed. Consequently the respondents are directed to consider as under:

- i) To consider the request of the first applicant for providing compassionate appointment to her divorced daughter who is the second applicant in the OA

- ii) Time permitted to implement the order is 3 months from the date of receipt of this order.
- iii) OA is accordingly allowed. There shall be order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 4th day of March, 2019

evr