

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

Original Application No.21/1065/2017

Reserved on: 05.12.2018

Order pronounced on: 06.12.2018

Between:

1. Smt. Syedha Fathima Begum, Aged 48 years,
W/o. late Syed Afza, Ex. Canteen Cleaner,
S.C. Railways, R/o. H. No. 1-6-72, Jubilee Market, Kazipet, TS.
 2. Sri Syed Parveez, aged 21 years,
S/o. late Syed Afzal, Ex. Canteen Cleaner,
S.C. Railway, R/o. H. No. 1-6-72, Jubilee Market, Kazipet, TS.
- ...Applicants

And

UOI, Rep. by its

1. The General Manager,
S. C. Railway, 3rd Floor,
Rail Nilayam, Secunderabad.
 2. The Chief Personnel Officer,
4th Floor, Rail Nilayam, S.C. Railway,
Secunderabad.
 3. The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad Division,
S.C. Railway, Secunderabad.
 4. The Sr. Divisional Personnel Officer,
Sanchalan Bhavan, Secunderabad Division,
S.C. Railway, Secunderabad.
- ...Respondents

Counsel for the Applicants	...	Mr. G. Pavana Murthy, Advocate for Mr. G.S. Rao, Advocate
Counsel for the Respondents	...	Mr.T.Hanumantha Reddy, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar	...	Member (Admn.)
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ORDER

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

The OA is filed for rejecting the request of the 1st applicant to provide compassionate appointment to her son i.e. the 2nd applicant vide 4th respondent's letter No. SCR/P-SC/122/ACG/163/2002 dated 01.09.2017.

2. The 1st applicant is the wife of late Syed Afzal, who was Cleaner in the Railway Canteen of respondent organization. The deceased employee Syed Afzal died in harness on 25.04.2002 after putting in more than 11 years of service in the respondent organization. The 4th respondent directed the 1st applicant to submit documents for considering her case for appointment on compassionate grounds. The post offered was Helper II, but on medical examination, it was found that the applicant had defective vision and therefore, she was not found fit to be taken into service. Hence, the 1st applicant represented on 14.06.2004 to consider providing compassionate appointment to her elder daughter Kum. Reshma as and when she attains age of majority. When the 1st applicant sought compassionate appointment to her elder daughter after attaining 18 years of age, the 1st applicant was questioned by the respondents as to why she did not appear for re-medical examination with glasses after getting her defective vision rectified. The 1st applicant represented to the 3rd respondent on 11.06.2008 that due to poor health condition, she was unable to take up job offered. Therefore, she once again made a request to consider appointment to her elder daughter Kum. Reshma. This request was rejected vide letter dated 08.10.2008 by the respondents. Aggrieved, when the 1st applicant represented to the 3rd respondent, the Divisional Personnel officer of the respondent organization advised the 1st

applicant to submit necessary medical certificates about her sickness of suffering from paralysis. The 1st applicant claims that she has submitted relevant medical certificates along with her letter dated 09.07.2009 (Annexure A-9) addressing to the DRM (P) of South Central Railway. The respondents vide letter dated 06.10.2009 have intimated to appear for the medical examination along with all the documents and medical certificates so that her request for compassionate appointment of her daughter could be examined accordingly. The 1st applicant claims that as there was no response she made representation to the 3rd respondent on 02.08.2014, followed by a representation to the 1st respondent on 12.07.2016 to consider appointing her son Syed Parveez i.e. the 2nd applicant herein, on compassionate grounds as he has become major and has 10th class qualification. Besides, he has also completed ITI course. As there was no action on the representations made by the applicant vide letters dated 02.08.2014 and 12.07.2016, the applicant moved this Tribunal in OA No.238/2017 wherein this Tribunal, vide order dt. 23.06.2017 directed the respondents to dispose of the representations of the applicant by passing a reasoned and speaking order. Accordingly, the respondents considered her case and rejected vide letter dt. 01.09.2017. Challenging the same, the present OA has been filed.

3. The contentions of the applicants are that as per the Railway Board Scheme of compassionate appointment elaborated in Serial Circular No. 24/1997 the respondents should consider illiterate widows as per para 7 of the said letter which is extracted herein below:

“..to accommodate illiterate widows of the deceased Railway employees posts of waiting room bearers may be exclusively reserved for them.”

However, the 1st applicant was offered the post of Helper II in Mechanical Department which she could not take up. This is one another reason for her in not taking up compassionate appointment offered. The applicant claims that her son is eligible to be considered for appointment on compassionate grounds as per para 2 of the Serial Circular No. 24/1997 dt. 10.02.1997. The 1st applicant is getting a family pension of Rs.1480/- per month and received retiral benefits Rs.56,856/- which were not adequate enough to maintain her four minor children. Among them, three were daughters, who were aged 11, 10 & 8 and only son was aged 7 years. The applicants do have neither any house nor any movable nor immoveable assets. At present, the applicant has two unmarried daughters and one unemployed son aged 20 years. Her daughter Kum. Reshma being now married, the applicant is now requesting for appointment on compassionate grounds for her son. The applicants have also cited the Railway Board Serial Circular No. 77/2011, dated 31.05.2011 wherein which it was stated that the General Managers may consider and decide the time barred cases of compassionate appointment which are up to twenty five years old from the date of death/ medical unfitness of the ex-employee. The General Manager is only competent to decide such cases. The applicant claimed that the citations made by the respondents are not relevant to their case. The applicants point out that the citation quoted by the respondents in regard to the Hon'ble Jharkhand High Court in the case of Union of India Vs. Basanth Devi, it was relating to appointment of wards of the second wife, which was rejected. Therefore, the said citation does not apply to her case. In regard to the Hon'ble Supreme Court judgment in the State Bank of India Vs. Raj Kumar, reported in 2010 (11) SCC 661, the applicants claim that the scheme of compassionate

appointment prevailed in the banking sector is different from the scheme in Railways. In banking sector there is provision of compensation in lieu of compassionate appointments. However, no such provision is available in the Railways. Therefore, the said judgment does not apply to her case. The 1st applicant quoted the judgment of the Hon'ble Jaipur Bench of this Tribunal in OA 299/2001 in support of her case.

4. The respondents in their reply statement stated that on receiving the requisition from the 1st applicant on 29.10.2002 the case for appointment on compassionate grounds in her favour was investigated and considered by the DRM by passing orders dated 20.09.2003. The applicant was given the post of Khalasi in Mechanical (C&W) Department. She was advised for pre-employment medical examination. As she was found to be having defective vision, the applicant was advised to appear for re-medical examination with glasses after getting the defective vision rectified. However, the applicant did not turn up thereafter. When the 1st applicant was asked to explain as to why she did not appear for re-medical examination, it was informed by her vide letter dated 01.07.2008 that it was because of her poor health, she could not appear. Thereafter, she made an application on 14.04.2008 requesting to appoint her eldest daughter Kum. Syed Reshma Begum on compassionate grounds. The 3rd respondent considered the same and rejected her request. Consequently, the 1st applicant filed OA No. 242/2017 before this Tribunal seeking directions to consider compassionate appointment in favour of her son Syed Parveez and as per the directions of this Tribunal, the applicant's request was considered and after detailed examination of the request of the applicant, it was rejected.

The respondents cited the judgment of the Hon'ble Jharkhand High Court in Union of India Vs. Basanthi Devi in support of their rejection of the request of the applicant for compassionate recruitment. The respondents also stated that as per the judgment of the Hon'ble Supreme Court circulated under Serial Circular No. 66/1995 of the respondent organization, "*the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.*" The respondents claim that the employee died 13 years ago and the lone daughter is married. The widow is in receipt of family pension and there are no dependents to be looked after. Therefore, the basic objective or relevant of compassionate appointment is long gone. The respondents also quoted the judgment of the Hon'ble Supreme Court dated 04.05.1994 wherein it stated that "*the whole object of granting compassionate employment is to enable the family to tide over the sudden crises... mere death of an employee in harness does not entitle his family to such source of livelihood. The Government of 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. It must be remembered that as against the destitute family of the deceased, there are millions of other families which are equally, if not more destitute...*"

Based on the above, the respondents pray that the OA be dismissed.

5. Heard learned counsel and perused the documents placed on record.
6. Both the counsel made submissions in wavelength with the written submissions submitted by them.

7. The order of rejection for compassionate appointment issued by the 4th respondent is elaborate and contains the grounds for rejecting the request of the applicant for compassionate appointment. The main grounds are that the case for compassionate appointment is belated for consideration. Besides, the public authority has to examine the financial condition of the family of the deceased and if satisfied, to provide employment to meet the crisis that arose because of the death of the breadwinner. The main ground which justify compassionate appointment is penurious condition of the family. The 4th respondent has also referred to the judgment of the Hon'ble Jharkhand High Court (supra) wherein it was stated that the Hon'ble Supreme Court held that *“the claim of compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.”*

8. In this regard, when the facts of the case are filtered it is seen that the applicant is an illiterate widow. At the time when her husband was murdered when he was only 33 years old, of course, he was not on duty. However, she had three daughters and sons and all of them were minors at that juncture of time. The respondents have been very fair in offering employment to her on compassionate grounds as Helper II in Mechanical wing of the respondent organization. As she was having defective vision, she was asked to appear for re-medical examination after wearing glasses to rectify the defective vision noticed. The applicant did not appear, but made a request to consider the case of her eldest daughter which was examined and rejected by stating as under:

“The widow of the deceased employee did not bother to re-appear for the medical examination when advised, nor did she approach the Railway

administration of the reasons for her inability to do so. The reasons given by her now also do not appear strong enough for us to revise her case. In all likelihood, she may be engaging herself in some gainful employment elsewhere. In any case, this cannot be considered for compassionate grounds appointment at this belated stage.” The Serial Circular 24/97 also states that “*appointments on compassionate grounds can also be made in the case of staff who die in harness but in such cases it should be restricted to a son/ daughter/ widow of the employee. 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. Such cases should be kept pending only for 5 years after which the claim will lapse. However, in cases coming under priority (4)(i) below, if an appointment could not be made within five years due to the son/ daughter being minor, the GM may personally authorise relaxation of the 5 years limit in deserving cases.”* The 1st applicant because of her illiteracy and lack of proper guidance could not have approached the respondents. The respondents cannot be found fault on this grounds. They have acted as per the norms. However, the 1st applicant has been repeatedly requesting to provide compassionate appointment to her daughter and thereafter her son, the 2nd applicant herein. This only shows that the applicant is still not financially secured nor economically stabilised. A poor illiterate widow has to necessarily look to the organization which gave support to her family when her husband was alive. In the present day society it may not be possible for her to go to anyone else seeking help in the most difficult circumstance she has been placed in. The ground that the case is belated may not hold because the applicant has been representing for help and the process has been taking time. Therefore, the grievance continues to be

alive. Moreover, she had minor children and therefore, the necessity to seek employment to her children. Serial Circular No.77/2011 dt. 15.06.2011 has delegated the power to the General Managers for consideration of time barred cases of compassionate appointment which are up to 25 years old from the date of death/ medical unfitness of the ex-employee. Such cases are to be considered and decided by the General Managers at their personal level and are not to be delegated further. Thus, though belated, yet there is scope for the 1st respondent to consider the case of the 1st applicant for appointing the 2nd applicant on compassionate grounds given the struggle and turmoil through which the family is going through. The respondents in OA 448/2016 have considered almost a similar case on sympathetic grounds and provided employment to the ward of the widow. The applicant is requesting to show such compassion in her case too. The para which is relevant is extracted as under:

“9. It is to be appreciated that the respondents have offered appointment to the applicant on compassionate grounds in 1996 i.e. one year after death of the deceased employee. The reason given by the applicant for non-joining the said post appeared to be plausible as a young woman with 3 minor children, who suddenly becomes a widow, under such tragic circumstances is bound to go into depression as also the fact that the practical difficulty she would have naturally been confronted with had she taken up the offer of compassionate appointment would be as to where and in whose custody she would leave 3 minor children when she was away for duty for 8 hours a day. The only option for women who find themselves in such pressing circumstances is to go back to their parental home or their in-laws, where they would have been taken care of and that is how they would have somehow managed to survive all these years.”

Moreover, the Hon’ble Supreme Court in Govind Prakash Verma Vs. Life Insurance Corporation of India, 2005 SCC (L&S) 590, has held that *“compassionate appointment cannot be refused on the ground that any member of family had received benefits on the death of the employee.”*

9. In the present case, the 1st applicant is getting a meagre sum which may not be adequate given the present inflationary trends. The object of the compassionate appointment is to enable the family members of the deceased employee to tide over the crisis that would arise after the demise of the breadwinner. Generally it is observed that while claiming for compassionate appointment considerable time is consumed. During such period of time, prospective applicants are forced to take up sundry jobs to eke out living. By the time the case of the prospective applicant is considered, it would generally appear that since the applicant could eke out living for quite a few years, there may not be any need for compassionate appointment. It is the system delay which is coming in the way of providing help to the applicant when needed. Nevertheless, the applicants keep struggling and applying with the hope that someday their requests would be considered. Such hope after due verification needs to be considered. The case of the applicant in the present OA belongs to such a category. Serial Circular No. 24/97 dt.10.2.1997 provides for consideration of son/ daughter/ widow of the employee for compassionate appointment till the son or daughter till the son or daughter becomes major. Even, in this regard, General Manager has been empowered to relax the 5 years limit in deserving cases. The circular cited provides a leeway for the respondents to consider the request of the applicant for compassionate appointment. Scheme envisaged by the respondents is quite liberal and is supportive of the employees when they are in distress. The scheme *per se* provides scope to the family members of the deceased employee with they are in dire stage. Here is the case where a widow has been approaching the respondents and the Tribunal on quite a few occasions to bail her out from the difficulties she is facing after the unfortunate demise of her husband. The

respondents have been examining the case and rejecting the same on certain grounds. The Tribunal would like to interject and suggest that the family condition of the applicants has to be studied. In the rejection order dt. 01.09.2017 of the 3rd respondent, there is no such mention. Probably, by deputing a Welfare Inspector of the respondent organization, a true picture about the financial status of the applicant can be arrived at. As the struggle of the applicant has been continuing for few years, the case got procrastinated. The General Manager having been empowered to consider the cases of nearly 25 years duration, it would be in the interest of justice that the claim of the applicant may be placed before the 1st respondent for consideration after due investigation and verification of the present financial and social status of the applicants in order to determine as to whether the 2nd applicant i.e. the son of the 1st applicant could be offered compassionate appointment.

10. Therefore, based on the facts stated above, the respondents are directed as under:

- i) To consider the case of the 2nd applicant for compassionate appointment after making a detailed investigation about the socio-economic status of the applicants family;
- ii) Time allowed is three months from the date of receipt of copy of this order.

11. In the result, the OA is allowed as above. No order as to costs.

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

Dated, the 6th day of December, 2018

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