

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

Original Application No. 20/273/2018

Date of CAV: 02.01.2019

Date of Pronouncement: 07.01.2019

Between:

Smt. T. Srivalli, W/o. late Turangula Krishna, Group C,
Aged 32 years, C/o. A. Pydathalli, D. No. 57-8-121,
Gowri Nagar, Kancharapalem, Visakhapatnam,
Andhra Pradesh – 530 008.

... Applicant

And

1. Union of India, Rep. by
The Chairman, Ministry of Railways,
Rail Bhavan, Railway Board, New Delhi.
2. The General Manager, Southern Railway,
Chennai-Thiruttani-Renigunta Highway,
NGO Annexe, George Town,
Chennai, Tamil Nadu – 600 003.
3. The General Manager,
North Central Railway Zone,
G-Block, Mandakini, Subedar Gang, Allahabad.
4. The General Manager (Personnel)
North Central Railway Zone,
G-Block, Mandakini, Subedar Gang, Allahabad.

... Respondents

Counsel for the Applicant	...	Mr. K.R.K.V. Prasad
Counsel for the Respondents	...	Mr. S.M. Patnaik, SC for Rlys

CORAM:

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

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

2. The OA is about the request of the applicant to provide compassionate recruitment due to the demise of her husband while in harness.

3. The background of the case is that the applicant's deceased husband joined the respondent organization as a Substitute Bungalow Lascar on 07.08.2013 after approval by the General Manager, Southern Railway. On rendering four months of continuous service, he was granted temporary status w.e.f. 07.12.2013. Usually Bungalow Peons are attached to the officers of the respondent organization and whenever the officer is transferred, Bungalow Peon accompanies the officer concerned. Accordingly, the applicant's husband accompanied the officer by name Sri K.V.V. Satyanarayana, Chief Electrical Engineer to Allahabad which comes under the jurisdiction of the North Central Railway, Allahabad. While working with the said officer at Allahabad, the applicant's husband went on leave to Visakhapatnam and unfortunately passed away on 23.11.2016 at Visakhapatnam. On the demise of her husband, the applicant sought compassionate appointment, but the same was rejected on the ground that the deceased employee was unscreened at the time of his death. Aggrieved over the same, the OA has been filed.

4. The contentions of the applicant are that primarily her request for compassionate appointment has to be considered by the General Manager. However, a subordinate authority to the General Manager has communicated the impugned order rejecting her request. The other important issue raised by the applicant is that her husband had completed three years of continuous service by 06.08.2016 and as per rules, he was to be screened on completion of three years of service. However, the respondents have not done the screening and therefore, rejecting her request on the ground that her husband was not screened is unfair. The applicant also pleads that she has two minor children and old in-laws to be taken care of. At

present, she is in indigent circumstances and is badly in need of compassionate recruitment.

5. The respondents, in their reply statement, have taken objection to the following:

- i) The deceased husband of the applicant was appointed in Southern Railway and therefore, this Tribunal has no jurisdiction;
- ii) Dependent family members of an unscreened employee would not be eligible for compassionate appointment.

Accordingly, the request of the applicant was rejected on 13.12.2017. Further, compassionate appointment can be granted only as per rules and regulations.

6. Heard learned counsel and perused the documents on record.

7A. Firstly, the aspect of jurisdiction of this Tribunal is to be discussed. Learned counsel for the respondents has raised this objection. In answering this question, we need to look into the respondents list. The 1st respondent is the Railway Board and the Railway Board has jurisdiction over all the Zones. Hence direction can be given to the Railway Board to examine the case of the applicant, if she is found to be eligible, which we will try to find out in the paras that follow. Moreover, it should not be lost sight of, that the applicant lives in Visakhapatnam and her husband has also passed away in Visakhapatnam. Cause of action thus lies at Visakhapatnam, which comes under the jurisdiction of this Tribunal. Hon'ble Supreme Court observations in regard to cause of action cited as under, are not only relevant but come to the rescue of the applicant:

- i) Eastern Coalfields Ltd. v. Kalyan Banerjee, (2008) 3 SCC 456, in Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd, (2006) 3 SCC 658 stating:

“26. In Kusum Ingots & Alloys Ltd. v. Union of India (2004) 4 SCC 254 a three-Judge Bench of this Court clearly held that with a view to determine the jurisdiction of one High Court vis-à-vis the other the facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be made and the facts which have nothing to do therewith cannot give rise to a cause of action to invoke the jurisdiction of a court. In that case it was clearly held that only because the High Court within whose jurisdiction a legislation is passed, it would not have the sole territorial jurisdiction but all the High Courts where cause of action arises, will have jurisdiction.”

ii) In Om Prakash Srivastava v. Union of India (2006) 6 SCC 207, the Apex Court held:

“12. The expression ‘cause of action’ has acquired a judicially settled meaning. In the restricted sense ‘cause of action’ means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in ‘cause of action’. (See Rajasthan High Court Advocates’ Assn. v. Union of India (2001) 2 SCC 294.)”

B. The second aspect which the learned counsel for the respondents pointed out was that the Railway Board does not decide the compassionate appointment. However, this is too sweeping to state, since the Railway Board is the policy forming body and it has all powers in regard to all matters. In fact, powers of the Railway Board are delegated to subordinate authorities. Delegation of authority would not mean that the Railway Board cannot exercise such powers which it has delegated. Therefore, on this count, the objection of the learned counsel for the respondents cannot be sustained. The third objection made in the reply is that the applicant’s deceased husband was not screened, therefore, he is not eligible.

C. It is true from the facts that the deceased employee was not screened. However, it should not be lost sight of the fact that he has rendered three years of service as Bungalow Peon and therefore, he was eligible. Between the date of eligibility and the date of his demise, had the respondents screened him, then he would have attained a lien against Group D post. It cannot also be stated that the respondents are responsible for not undertaking the screening. The respondents organization is a humongous organization and it employs lakhs of people and while dealing with such large group of employees it takes some time, here and there, to complete the formalities of career growth of the employees. Unfortunately, here is a case where because he could not be screened in time, his status of having a lien against Group D post could not mature. On this count, it is not fair on the part of the respondents to deny compassionate appointment to the applicant. For a moment if you presume that if the deceased employee was screened, then the applicant would have been eligible for compassionate appointment. It would not be fair for the respondents mistake to recoil on the applicant's deceased husband for no fault of his. Hon'ble Supreme Court in regard to the same has observed as under:

(ii) In the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 the Apex Court has held *“The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”*

(i) The Apex Court in a recent case decided on 14.12.2007 (*Union of India vs. Sadhana Khanna, C.A. No.8208/01*) held that the mistake of the department cannot be permitted to recoil on employees. In yet another recent case of *M.V. Thimmaiah vs. UPSC, in C.A. No. 5883-5991*

of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

D. In addition, para xi of the Master Circular No. 16 issued by the Railway Board on the subject reads as under:

“XI Compassionate appointments of the ward/ widow of casual labour:

- a. The General Managers have powers to consider and decide requests for appointment on compassionate grounds of the wards/ widow of a casual labour who dies due to accident while on duty provided the casual labourer concerned is eligible for compensations under the Workmen’s Compensation Act, 1923. Such appointments should be as casual labour (fresh face) or substitute.
- b. Similar consideration may also be shown to a ward/ widow of a casual labourer with temporary status at the discretion of the General Manager. “

E. Learned counsel for the applicant has also relied on the observations of the Hon’ble High Court of Andhra Pradesh in WP No. 10837/2001, dt. 23.06.2003 which reads as *under*:

“Once he is given temporary status that means that he has been absorbed in the department.”

F. He also cited the order of the Hon’ble Ernakulam Bench of this Tribunal in similar cases vide OA Nos. 723/2012 & batch, dt. 02.11.2012, which were allowed following the judgment of the Hon’ble Supreme Court cited *supra*.

G. On a careful perusal of the above facts and law cited, this Tribunal is of the opinion that the applicant’s case deserves consideration by the respondents.

H. Before parting, it is also to be mentioned that the learned counsel for the respondents has also quoted the judgment of the Hon’ble High Court of

Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W.P. No. 13371/2013, in which it was observed that compassionate appointment should not be considered on grounds of sympathy, dehors the prescribed procedure.

I. In the present case, it is the question of eligibility which has been contested. As seen from the above facts and based on the observations of the Hon'ble Supreme Court, a case has been made out by the applicant on two basic grounds – one is in regard to the eligibility and the other is about indigent circumstances. Compassionate recruitment is provided basically to enable the dependents of the deceased family to overcome the indigent circumstances that they have to face due to the sudden demise of the bread-winner of the family. The case stands strongly on these two points. Besides, the observations of the Hon'ble Supreme Court & Hon'ble High Court supra tilt the balance in favour of the applicant. The impugned order dt.13.12.2017 is set aside. Accordingly, the 1st respondent is directed to examine and consider the case of the applicant for compassionate appointment as per rules and regulations on the subject prevailing in the respondent organization. Besides, the 1st respondent to extend any consequential benefits thereof. This order has to be implemented in a period of three months from the date of receipt of this order.

J. With the above directions, the OA is allowed. There shall be no order as to costs.

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

Dated, the 7th day of January, 2019

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