

**Central Administrative Tribunal
Madras Bench**

OA/310/01338/2016

Dated the 30th day of August Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

G.P.Sree Devi
D/o late V.Gopi,
Karikadu Putheri Veedu,
Choozhal, Adaikkakuzhi Post,
Kanniyakumari District,
Tamil Nadu 629153. .. Applicant
By Advocate **M/s.J.Muthukumaran**

Vs.

1. Union of India, rep by the
General Manager,
Southern Railway,
Chennai 600 003.
2. The Chief Personal Officer,
Southern Railway,
Head Quarters Office,
Personal Branch,
Chennai 600 003.
3. The Divisional Personal Officer,
Confidential Section,
Southern Railway,
Tiruvandrum. .. Respondents

By Adovacte **Mr.P.Srinivasan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

“.....to call for the records of the third respondent relating to orders in No.V/2735/65/2013 dated 16.7.2014 and that of the second respondent relating to No.PB/CS/30/Court Case/Vol.V dated 16.2.2016, iii, Order No.PB/CS/30/Court Case/VOL VI dated 11.7.2016 of the second respondent to quash the same and issue consequential directions to the respondents to appoint the applicant on Compassionate Grounds in any suitable post consequent on the death of her father Mr.V.Gopi on 22.4.2013, while serving as Senior Trackman/NCJ, Southern Railway and pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of this case and thus render justice.”

2. The applicant is the daughter of late Shri M.Gopi who died while working as Trackman in Trivandrum Division on 22.4.13. He left behind his wife, applicant and two other daughters as his legal heirs.
3. Applicant's father was the sole bread winner of the family. Now the family is left with the meagre income from family pension and family is in indigent circumstances. The applicant's mother gave an application for compassionate appointment for applicant on 24.9.13 to the third respondent.
4. The applicant is a Post Graduate and B.Ed. Degree holder and is aged 36 years.
5. The 3rd respondent had rejected the request on 16.7.14 stating that “Shri V.Gopi, Sr. Trackman/NCJ died of natural causes at the age of 58 years in 2013 i.e. very close to his date of superannuation. He is survived by his wife and three

daughters. The three daughters are already married and the wife is entitled to family pension. While it may be true that the family is not economically well off, their hardships are not on account of the sudden death of the employee. Therefore, this does not appear to be a fit case for recommending to H.Qrts.” Though the applicant filed appeal, no reply was given. Then she filed OA (Dy.No.9925/15) and the Tribunal directed the respondents on 14.12.15 to dispose of appeal within 8 weeks. Accordingly, the respondents passed an order dated 16.2.16 rejecting the claim again stating that the applicant and two other daughters were all married and as per Railway Board Policy direction they have to consider whether the applicant can be the bread winner of the family of the deceased. The three daughters are married and the widow is receiving family pension. There is no possibility of the applicant acting as bread winner and she is not entitled to get compassionate appointment.

6. The respondents filed reply and had admitted the fact of late Gopi dying in harness and the applicant is one among the married daughters of the deceased employee. According to them, as per Railway Board letter No.E(NG)III/78/RC-1/1 dated 03.2.1981 “while considering the married daughter for compassionate appointment the criteria whether the married daughter will be the bread winner for the family and also whether there are any other wards in the family who are economically dependent on the family have to be examined. Thus being a married daughter of the deceased employees, she cannot act as a bread winner of the family of her father. Further, in terms of Railway Board's letter No.E(NG)II/99/RC-1/ICP/44 dated 30.7.1999/03.8.1999, if there are no other wards to be looked after, then there

would be no justification for considering the married daughter for Compassionate Appointment.”

7. The applicant is the married daughter of the deceased employee and she is living separately with her husband. There are no other dependants except the widow. The widow is being paid Rs.9000/- as family pension.

8. The counsel for the applicant would contend that the reason for denial of compassionate appointment is illegal. Now even married daughters are entitled to get compassionate appointment. Sons and daughters are equally liable to maintain the parents. The Hon'ble Madras High Court in *U.Arulmozhi vs. The Director of School Education, Chennai [reported in 2006 (2) Law Weekly 324]* had held as follows:-

“8. There is no dispute that the Government has made provision for appointment on compassionate grounds, obviously with a view to enable the family members of the deceased employee to tide over immediately the financial stringency of account of the death of the bread winner in the family.

It is of course true that as per the G.O.M.S.No.73, Employment Services dated 26.10.1993, only an unmarried daughter is eligible and not a married daughter. However, there is no requirement in the G.O that at the time of actual employment such unmarried daughter should continue to be unmarried nor there is any requirement that after an unmarried daughter get employment on the compassionate ground, she cannot marry in future. There is dispute that the present petitioner was eligible to make the application and she make an application as an unmarried daughter. The appropriate authority took about 3 to 4 years to finalise the matter. Merely because the unmarried daughter got married in the meantime and that too with a specific understanding that her husband would have no objection to her maintaining the members of the family of her father, it cannot be said that

such person had got employment by suppressing any material fact.”

The attention of the Tribunal is also drawn to the decision in ***W.P.(MD) No.8686/2011 dated 2.7.12 of the Hon'ble Madras High Court, Madurai Bench*** wherein it is held as follows:

“As stated above if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of daughter also. At this juncture, it is relevant to take note of the statute, namely the Maintenance and Welfare of parents and Senior Citizens Act, 2007 which places equal duty on both the son and daughter to take care of the parents at the old age. Therefore, in the case of death of the parents, there cannot be any unequal treatment among the children based on sex.”

9. So, according to the applicant, the order passed by the respondents is illegal and is liable to be quashed.

10. On the other side, counsel for the respondents would contend that compassionate appointment is not a vested right and it very much depends on the policy of the government and the relevant guidelines issued by the department. They would contend that the decisions cited by the applicant relates to the compassionate appointment under Tamilnadu government. As regards the applicant is concerned, she can get compassionate appointment on the basis of the guidelines and scheme in vogue in the Railways. According to the respondents, as per the instructions issued by the Railway Board letter No.E(NG)III/78/RC-1/1 dated 03.2.1981 it is specifically made clear that “while considering the married daughter for compassionate ground appointment, the criteria whether the married daughter will be the bread winner for the family and also whether there are any other wards in the family” have to be

examined. As per Railway Board letter No.E(NG)II/99/RC-1/ICP/44 dated 3.7.99/03/8/99, it was made clear that “if there are no wards to be looked after them and there would be no justification for considering married daughter for compassionate appointment.” The respondents also invited our attention to the decisions of the Hon'ble Supreme Court in ***State Bank of India & Anr. v. Rajkumar (CA No.1641/2010)*** wherein it was held that -

“it is now well settled that appointment on Compassionate Grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit by an open invitation providing equal opportunity to all eligible persons participate in the selection process. The dependents of employees, who die in harness do not have any special claim or right to employment, except by way of concession that may be extended by the employer. Under the rules or by a separate scheme, to enable the family of the deceased to tide over the sudden financial crisis.”

They also invited our attention to the decision of the Hon'ble Supreme Court in ***Chief Commissioner, Central Excise & Customs, Lucknow & Others v. Prabhat Singh (CA 8635/2012)*** wherein the purpose of compassionate appointment and how it affects the others is explained. They also cited the decision of Hon'ble Supreme Court in ***Umesh Kumar Nagpal v. State of Haryana Laws [1994 SCC (4) 138]***.

11. We have heard both sides and perused the pleadings and documents filed. The respondents in this case has rejected the claim on the basis of two Railway Board Circulars cited earlier. According to them, as per their policy there is no objection in considering married daughters for compassionate appointment. There is no discrimination between man and woman here. It is seen from the policy of the

Railway Board, there are two conditions attached in the case of married daughters. The competent authority has to consider whether the married daughter will be bread winner to the family of the deceased employees family and whether there exist any more wards to be looked after in the family.

12. In this case the applicant and two of her sisters were already married and according to the respondents, they are living separately. There remains only the widow in the family and she is being paid family pension for her livelihood. There is no other minor children to be looked after in the family. The railways scheme of compassionate appointment requires these conditions to be satisfied. The decisions cited by the applicant mainly relates to non-grant of compassionate appointment to married daughters as such and it mainly relates to the scheme of compassionate appointment of the State Government. Compassionate appointment being not a vested right, it mainly depends upon the scheme of the concerned establishment. In this case, railways insist on getting satisfied that the applicant should be a bread winner for the family of the deceased employee. In this case there is no case put forward to show that the applicant's husband has no income of his own and she has to depend on her own income. Only the widow of late Gopi remains in the family and no purpose will be served by giving employment to the applicant who is living separately. Compassionate appointment is a help given to tide over the financial insecurity caused to the family due to the death of a bread winner. The observation of the Hon'ble Supreme Court in ***Chief Commissioner, Central Excise & Customs, Lucknow & Others v. Prabhat Singh*** that -

“the courts and tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. The courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a court's intervention. The courts and tribunals must understand that every such act of sympathy, compassion and discretion wherein directions are issued for appointment, on compassionate grounds could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverished family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.”

In view of the above discussion, we do not find any infirmity in the impugned order dated 11.7.16 passed by the respondents.

13. The OA is devoid of merits and it will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

30.08.2019

/G/