

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 6 DAY OF JUNE, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/00262/2017

U. Nirmala Devi ,
W/o Late J. Udayamani,
No. 311/E/First Street
Pananthope Railway Colony
Ayyanavaram, Chennai - 600 023.

...Applicant

-versus-

1. Union of India rep by
The General Manager
Southern Railway, Chennai 600 003

2. The Senior Divisional Personnel Officer
Southern Railway
Chennai Division, Chennai - 600 003.

...Respondents

By Advocates:

M/s Ratio Legis, for the applicant.

Ms. R. Sathyabama, for the respondents.

ORDER

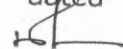
(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

The applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"To set aside the impugned order No. M/PB/CS/22/122/2015 dated 10.08.2016 (Annexure A-1, page-5) of the 2nd respondent, the Senior Divisional Personnel Officer, Chennai Division, Chennai and to direct the respondents to provide a suitable appointment in Railways on compassionate ground to the eldest son of the applicant due to total medical unfitness of the applicant's husband and thus render justice."

2. The brief facts of the case as stated by the applicant are as follows:

The applicant's husband (Late) J. Udayamani was an Ex.Tech.III (Fitter, DME/O/MS) of Chennai Division of Southern Railway and was declared medically unfit for all categories of service in Indian Railway w.e.f. 22.09.2015 vide CMS/MS letter dated 22.09.2015 and supernumerary post was created by the Sr. DPO/MAS, the 2nd respondent. Further he was advised that compassionate ground appointment would be considered to an eligible ward if he sought retirement on medical grounds. The applicant's husband had submitted a request for voluntary retirement with the prayer for compassionate appointment to his son vide his letter dated 28.10.2015. He was allowed to retire w.e.f 23.12.2015 voluntarily vide O.O. No. M(IM)/CW/283/2015 of Sr.DPO/MAS. The applicant's husband vide his representation dated 08.01.2016 had requested the Sr. DPO/MAS to grant compassionate ground appointment to his eldest son U. Prabhu followed by reminder dated 07.03.2016. The 2nd respondent, the Senior Divisional Personnel Officer, Chennai Division, Chennai has rejected the request of the applicant vide his Impugned Order No.M/PB/CS/22/122/2015 dated



10.08.2016 against his own advice given to the applicant and also against the instructions of the Railway Board letter dated 18.01.2000. Hence this OA.

3. The applicant has challenged the impugned order on the following among other grounds:

a. The applicant's husband expired on 12.07.2017 and he was paid very meagre amount as pension and other retirement benefits. The applicant is not having any other source of income and is not having own house or any property.

b. The applicant's eldest son U. Prabhu is not gainfully and permanently employed but he is doing casual nature of work and if he is appointed in Railways, the applicant will get physical, moral and financial support from her son.

c. The question of bread winner or financial status is applicable only in the case of compassionate appointment due to death of a railway servant and not in the case of total medical unfitness as mentioned in the Memo dated 27.10.2015 (Annexure A3) and also Railway Board's Circular RBE No.08/2000 dated 18.01.2000.

d. The claim of the applicant's husband for compassionate ground appointment to his son is on the basis of the circular dated 18.01.2000 only and not based on other instructions and hence the rejection of the claim of the applicant by the respondents is arbitrary and illegal and violative of Article 14, 15 & 21 of the Constitution of India.

4. Per contra the respondents in their reply statement have stated that the applicant's husband while working as Technician III/Fitter/Madras Egmore was

declared unfit for all services on 27.10.2015. He was due to retire on 31.12.2015 but was allowed to retire voluntarily w.e.f. 23.12.2015 on medical grounds, just 8 days before his normal date of superannuation. A representation dated 8.1.2016 was submitted for appointment of the eldest son of the applicant for compassionate ground. The representation of the applicant's husband was considered in terms of the Railway Board's Circular dated 18.1.2000 and rejected vide order dated 10.8.2016 on the ground that one son is living independently and one son is an earning member and there is no case of financial crisis. The respondents also relied on the decision of the Judgment of the Hon'ble Supreme Court in **V. Sivamoorthy Vs State of Andhra Pradesh (2009 (1) SCC L&S 335)** and the decision of this Bench in a similar claim in OA.No.512/2010 (T. Ayyavoo Vs UOI). Hence the respondents pray for dismissal of the OA.

5. Learned counsel for the applicant submitted that the applicant's husband opted to take voluntary retirement and was retired on medical grounds. As per the instructions issued by the Railway Board, the applicant's son being a wholly dependent on his father at the time of his retirement on medical grounds, is entitled to be considered for appointment on compassionate ground. In this connection, the learned counsel drew the attention of the Tribunal to paragraph 3 of the Railway Boards circulars dated 18.1.2000. He has relied on the following Judgments in support of his submission:

- I. **OA.350/01720/2016 dated 20.07.2018 of Calcutta Bench of this Tribunal in the case of Sri Kartick Modak Vs UOI & Ors**
- ii. **WPCT No.412 of 2012 dated 18.01.2013 of Hon'ble High Court of Kolkata in the case of Tapabrata Chakraborty and Anr Vs Rajendra Chaturvedi.**

- iii. **Civil Appeal No.101 of 2005 dated 11.03.2011 of Hon'ble Supreme Court in the case of Bhawani Prasad Sonkar Vs UOI & Ors**
- iv. **Judgment in Civil Appeal No.12015 of 2018 dated 11.12.2018 of Hon'ble Supreme Court in the case of UOI and Anr Vs V.R. Tripathi.**
- v. **Judgment in Appeal (Civil) No.8 of 2008 dated. 04.01.2008 in the case of Bhagwan Dass & Anr Vs Punjab State Electricity Board of Hon'ble Supreme Court.**

6. Learned counsel for the respondents would submit that this is a case of creating employment by succession by continuing in service by the applicant's husband and then opting for retirement at the end of the career. By doing so the applicant's husband not only gets the benefit of the entire service with pensionary benefits but also an appointment to his son which is impermissible in law.

7. Heard the learned counsel for the respective parties and perused the pleadings and documents on record including the case laws cited by the parties.

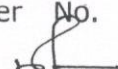
8. The point for consideration in this OA is whether the respondents have followed the instructions of the Railway Board before rejecting the application of the applicant's son for appointment on compassionate ground.

9. Admittedly, after voluntary retirement of the applicant's husband on being medically de-categorised applied for compassionate appointment for his eldest son. Compassionate appointment to the ward of a Government employee is considered to give immediate relief to the family suffering due to loss of the lone bread winner of the family. Relying on various circulars issued by the Railway Board, it is submitted that the applicant's son is entitled to compassionate appointment, and that the respondent- Railway authorities have acted arbitrarily and illegally in refusing to consider his request for providing

him appointment to a post on compassionate ground. In terms of the Railway Board Circular dated 18.01.2000, the representation dated 08.01.2016, has been considered by the respondents. The competent authority after making assessment of the family condition of the retired Government employee found that the family consisted of three sons, out of whom one was living independently and one was an earning member and therefore, it could not be said that the family had no bread winner and there was no case of financial crisis. On perusal of the records it is seen that the applicant has also not produced any documents to show that the family is in penurious condition. Therefore, the competent authority did not find sufficient justification for compassionate ground appointment and rejected the request of the applicant's husband vide impugned order dated 10.08.2016. Railway Board letter No.E[NG]/II/95/RC-1/94 dated 18.01.2000 stipulates as follows:

"3. The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases request for appointment on compassionate ground to an eligible ward may be considered."

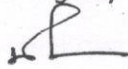
10. The Railway Board's letter dated 18.01.2000 directs only consideration for compassionate ground appointment. The term "consider" does not mean that the appointment has to be offered irrespective of the merits of the case. Further, the Railway Board has clarified whether compassionate ground appointment could be granted to an eligible spouse/ward of totally medically incapacitated employee, who seeks voluntary retirement with the benefits of compassionate ground appointment at a time when he/she has few days/months of service left and Railway Board vide its letter No.



E[NG]/II/2016/RC-1/SR-6 dated 29.3.2016 stated that the dependent of totally medically incapacitated staff might be considered for compassionate ground appointment at par with death cases, subject to the merits. This is as spelt out a clarificatory order to be applied to all pending cases and accordingly the same has been pressed into service in the case of the applicant and impugned order passed on 10.8.2016.

11. All that the Railway Board has allowed through its circular of 2000 read in conjunction with that of 29.3.2016 is that the case of voluntary retirement due to medical incapacitation would also be eligible for grant of compassionate appointment and for consideration for the same, the norms as prescribed for compassionate appointment in other cases of dying in harness would be applied. In the instant case the applicant's husband who was to superannuate on 31.12.2015 was on consideration of application dated 28.10.2015 for voluntary retirement was permitted to prematurely retire as on 23.12.2015. The concession of compassionate appointment is not without any fetter It has to be considered on grounds of penury, absence of other earning member, social responsibility of the Railway servant (example: unmarried daughters to be married) and other kindred aspects. When one son of the applicant is gainfully employed and the other son is living separately, (which confirms his financial independence) it cannot be said that there is financial crisis in the family. Thus, the spinal requirement of penurious condition is conspicuously absent in this case. A sacrifice of 8 days of service by the applicant's spouse cannot be demanded to be compensated by a back door entry into the services, of his son, against a permanent post meant for regular appointment.

12. The eldest son of the applicant's husband who retired voluntarily on 23.12.2015 just 8 days before his normal date of retirement on 31.12.2015 was considered for appointment on compassionate ground in terms of the Railway Board's letter dated 29.3.2016 which directs consideration only when there is dependency factor and financial crisis. The financial condition of the entire family has been considered and found that there is no financial crisis in the family. As such, the respondents after satisfying themselves on the basis of a balanced and objective assessment of the financial and other conditions of the family and after justifying that the family of the deceased Government employee is not in penurious condition have issued the impugned order rejecting the application of the applicant's son for appointment on compassionate ground. The respondents have followed the instructions and have rejected the application of the applicant's husband. The respondents have followed the instruction religiously and ensured that no unintended benefit is afforded to the applicant by grant of compassionate appointment when the conditions attached to the appointment remain unfulfilled in this case. Thus the rejection of the case of the applicant is fully justified. Further compassionate appointment itself is in violation of Article 14 and 16 of the Constitution of India and therefore, respondents are in the unenviable position of assessing the merits of each case before justifying the offer of appointment on compassionate grounds. Considering the case of the applicant and that too when the request was made at the fag end of the career, it was rightly rejected.



13. Hon'ble Supreme Court, on the subject of Compassionate ground appointment, in the case of **State Bank of India & Another Vs Rajkumar, (Civil Appeal No. 1641 of 2010)** has held as follows :

"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 to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for 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...."

14. In **LIC Vs. Asha Ramachandra Ambedkar (1994) 2 SCC 718**, the Hon'ble Supreme Court has stressed the need to examine the terms of the rules/scheme governing compassionate appointment and ensure that the claim satisfied the requirements before directing compassionate appointment. Similarly in **Food Corporation of India Vs Ram Kesh Yadav, 2007(9) SCC 531**, it has been observed by the Hon'ble Supreme Court that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointment, nor can compassionate appointment be directed de hors the policy. In consideration of all the above, the impugned decision of the Railway Authority cannot be said to be perverse, illegal and arbitrary.

15. In the light of the above discussions, I have no hesitation in holding that the OA is devoid of any merit and liable to be dismissed. Accordingly, the OA is dismissed. No costs.