

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA 310/01460/2016Dated the 13th day of August Two Thousand Nineteen

P R E S E N T

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

N. Senthil Kumar
No. 5/7, Devar Street, Villivakkam
Chennai – 600 049.

... Applicant

By Advocate M/s. P.S. Ganesh

1. Union of India rep. by
The General Manager
Integral Coach Factory
Chennai – 600 038.

2. Chief Personnel Officer
Integral Coach Factory
Chennai – 600 038.

3. Dy. CPO
Integral Coach Factory
Chennai – 600 038.

... Respondents

By Advocate Dr. D. Simon



T.S

ORDER

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

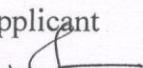
The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “i. To call for the records pertaining to the order of the 3rd respondent dated 07.06.2016 No. PB/CON/128/569230 and quash the same and
- ii. consequently direct the respondents to issue appointment based on the circular dated 03.08.1999 and pass such other order.
- iii. To pass such other order or orders”

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

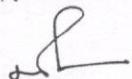
The applicant is the son of Late Nagaiah, who worked as Technician Grade I in Mechanical Shop 25 of ICF, and who died in harness on 30.04.2012. The father of the applicant left behind his Mother (N. Devika), Elder Brother (N. Devaraj), 2nd Brother (N. Sundaraj) (who later on died) and the applicant herein as his legal heirs. After death of the applicant's father, the applicant's mother sought compassionate appointment for the applicant's 2nd brother N. Sundaraj as the mother was uneducated), which was rejected.. Due to liver failure, the applicant's 2nd brother N. Sundaraj also died on 02.06.2013.

3. Subsequently, the applicant's mother, setting out the financial crisis which the family is undergoing, made a request to the respondent to consider the married son, the applicant herein, for appointment on compassionate ground based on the Railway Board Circular dated 03.08.1999. The applicant also made a representation for compassionate ground appointment without considering the clarification circular issued by Railway Board. The representation of the applicant



was rejected in an one line order. Hence the applicant filed OA 283/2016 before this Tribunal, which was disposed on 03.03.2016 with a direction to the respondents to reconsider the applicant for appointment on compassionate ground. However, by order 07.06.2016 the third respondent has rejected the request of the applicant. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:

- i. The act of the respondent in rejecting the representation of the applicant is arbitrary and illegal.
- ii. The 3rd respondent has not considered the clarification circular dated 30.07.1999/03.08.1999 No.PB/CON/128/569230 issued by the Railway Board.
- iii. The respondent failed to appreciate that under the scheme of compassionate appointment, there is no impediment for married son being considered for compassionate appointment, if he is otherwise eligible.
- iv. The respondent has rejected the representation of the applicant on the ground that compassionate appointment is not mandatory or automatic which is illegal and arbitrary.
- v. The respondent has not enquired as to financial status of the applicant or the nature of the work of the applicant was doing. During 2007 the applicant was then working as Call Taxi Driver and since 2009 the applicant could not continue his occupation. The respondent failed to appreciate that the Devaraj -Elder Brother of the applicant herein has set up a nuclear family and has not supported the mother of the applicant or other family members in whatsoever manner ever since his (Devaraj) marriage from 2007.



vi. The respondent failed to appreciate that the compassionate appointment was sought for N. Sundaraj the other elder brother of the applicant herein during 2012. However, subsequent to the demise of Sundaraj, the applicant has been seeking compassionate appointment. The respondent failed to appreciate that the father of the applicant has passed away while in service and the applicant is entitled for compassionate appointment.

vii. The respondent failed to appreciate that Devaraj elder brother of the applicant has completed apprentice training in ICF during the year 1997 and has been given appointment in regular course even while the applicant's father was in service. The respondent ought to have followed the Railway Board letter dated 03.08.1999 and given employment to the applicant.

viii. The respondents have not made any enquiry about the family condition of the applicant through the Welfare Officer or collected any relevant details to consider the case of the applicant before rejecting the representation of the applicant. The respondents have not formed any committee to place the representation of the applicant.

ix. The 2nd and 3rd respondents are not the competent authority to decide compassionate ground appointment.

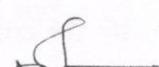
x. When this Tribunal directed the GM of ICF to reconsider the candidature of the applicant, then it is for the said competent authority to pursue the relevant papers and pass suitable orders after application of mind. However by the rejection letter 07.06.2016 it is seen that the request for the compassionate ground has been rejected by the 3rd respondent (who is not the competent authority to do so). Hence the same is illegal.



4. The respondents have filed their reply statement. It is stated in the reply that the applicant's mother has submitted an application requesting for appointment to the applicant on compassionate grounds. The averments of the applicant that the family is going through a financial crisis are not borne out of facts. The sound financial status of the family can be seen from the fact that all the sons are employed. On detailed examination, the request was rejected for the following reasons:

- “i. The death of the employee, Shri. Nagaiah, occurred just a month before his normal date of retirement. Entire settlement benefits sanctioned to the family of Late Nagaiah was disbursed to Smt. N. Devika, wife. Due to demise, the family received the death gratuity of Rs. 9.3 Lakhs whereas the employee would have received a retirement gratuity of 2.9 lakhs only at the time of his retirement.
- ii. Shri. N. Devaraj, elder son of Late Nagaiah was already working in Integral Coach Factory. The applicant, the candidate for compassionate ground appointment is gainfully employed and there are no other dependents to be taken care of, as both surviving sons are employed.
- iii. Moreover, a compassionate ground appointment is not automatic but just a welfare measure extended to the family to tide over the financial crisis of losing a bread winner of the family. But the instant case does not fall in the above category and hence appointment of the applicant on compassionate ground could not be considered.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.



6. The scheme for appointment on compassionate ground is with the intention of providing immediate relief to the family of an employee, who unexpectedly pass away. Compassionate ground appointment is not automatic and is to be extended in deserving cases, based on the financial condition of the family and relevant rules issued by the Ministry of Railways from time to time. Late Shri. M. Nagaiah, Employee No. 569230, Sr. Tech./Painter was to superannuate from service in normal course after attaining 60 years of age on 31.05.2012, but, unfortunately passed away on 30.04.2012 i.e. 30 days before his normal retirement. The family received full terminal benefits and there was no reduction in settlement benefits on account of the demise of the employee.

7. It is not known as to on what grounds the application of the mother for appointment under compassionate grounds for appointment of her second son Shri N. Sundaraj was rejected. The same was, however, not challenged, obviously, as the said Sundaraj unfortunately expired immediately thereafter. The applicant's mother thus applied for grant of compassionate appointment for her other son, who happened to be a married person. When this Tribunal directed the respondents to consider the case of the applicant, obviously, consideration should be as per the provisions of the Rules and regulations/guidelines on the subject and decision taken by the competent authority. Consideration for grant of compassionate appointment is one thing, grant of appointment (on compassionate ground) is another. It may be that on due consideration that the individual may not come within the merit for grant of appointment. But in that case also consideration by the competent authority to arrive at a definite conclusion on the basis of the attendant regulations is a must. The consideration has to be in accordance with the Rules/regulations as is done in the case of other candidates or there must be



justifiable reasons in not strictly following the rules. It is with the above aspect in mind that the case has to be considered.

8. First as to the grounds set out by the applicant. The first ground that the impugned order is arbitrary etc., is one of customary and conventional in character. If the decision is a logical conclusion, then there is no question of arbitrariness. To arrive at the same as to whether the decision is as a result of logical conclusion, the other grounds raised and the rebuttal by the respondents are to be considered. As regards others, though as many as nine more grounds have been set out, many of them are psittacism in character, and on winnowing and sieving, the following two grounds arise for consideration:-

- (i) that the respondents have not considered the clarification circular dated 30.07.1999/03.08.1999 No.PB/CON/128/569230; and
- (ii) Respondents No. 2 and 3 have no competence to decide the issue.

9. As regards the contention whether the Railway Board Clarification circular No. E(Ng)II/99/RC-1/ICF/4 dated 03.08.1999 the same holds that -

“There is nothing in the rules which prohibits a married son being considered for compassionate appointment.”

As a matter of fact, in respect of Married daughters a clarification has been given the following effect, vide Railway Board clarification order No. E (NG) III/78/RC-1/1 dated 03.02.1981 wherein it has been inter alia held as under:

2. Whether non-student sons above 21 years and/or married daughters can be considered for appointment on compassionate grounds.

While there is no ban according to rules, GMs should satisfy themselves that the married daughter will be the bread-winner of the bereaved family.



Thus, the applicant cannot be non-suited for consideration on the ground that he is married. But at the same time, the case reflects that the spirit behind the very scheme of compassionate appointment has to be followed in the true sense.

10. As regards the competent authority, the Railway Board circulars clarify as under:-

IX. Authority competent to make appointments on compassionate grounds:

The power to make compassionate appointments is vested in the General Manager. The General Manager may, however, redelegate this power to the Divisional Railway Manager and also to Heads of Extra Divisional Units, who are in Level-1 subject to such control, as he may like to impose on the exercise of power by those authorities.

[No. E (NG) II/78/RC-1/1 dated 07.04.1983]

In the cases of appointments of Group 'C' posts the powers may be exercised by the Chief Personnel Officer in consultation with the Heads of Departments concerned. In the cases of Group 'D' posts the powers to make such appointments should be delegated to the Divisional Railway Managers.

[No. E (NG) III/78/RC-1/1 dated 30.04.1979]

Thus, under the delegated powers, the CPO has full competence to consider applications for compassionate appointment in consultation with the Heads of Departments concerned. On perusal of the records, it could be seen that in pursuance of the Tribunal's directions all the relevant papers were placed before the General Manager for reconsideration of the candidature of the applicant. The orders of the competent authority was communicated to the applicant vide third respondent order dt. 07.06.2016 and as such there is no procedural irregularity in consideration of the case of the applicant.

11. As regards the rebuttal, the respondents contended as under:-

- (a) The applicant's father expired a month in advance of his normal superannuation and as per rules, the family was entitled to death gratuity, which incidentally is more than the normal retirement gratuity.
- (b) There are other earning members including the applicant who is gainfully employed. There is no other ward to look after.
- (c) The grant of compassionate appointment is just a welfare measure extended to the family to tide over the financial crisis of losing a bread winner of the family.

The above has not been as such refuted by the applicant, though feebly he had contended that he is eking out his living by way of working as a call taxi driver and that no proper verification has taken place. His brother is having a nuclear family and is living separately.

12. As per extant rules, it is reiterated that at the time of considering such requests for compassionate appointments, the competent authority should satisfy himself/herself on the basis of a balanced and objective assessment of the financial condition of the family that the grounds for compassionate appointment in each such case is justified, having regard to the number of dependants, assets and liabilities left by the Railway employee, income of any member of the family, as also his liability, including the aspect of whether the earning member is residing with the family of the deceased employee and whether he provides any support to other member of the family. Other provisions contained in Board's letter No. E(NG)-II/98/RC-1/64 dated 28.07.2000 has to be followed. This Tribunal is satisfied that the financial condition of the applicant and the family of the deceased, obviously is not that bad to justify compassionate appointment. The



reasoning afforded by the respondents in rejection of the application for compassionate appointment stands to reason and as such there is no arbitrariness.

It has been held in the case of Kumari Shrilekha Vidyarthi and others (supra) "Every state action must be informed by reason and it follows that an act uninformed by reason, is arbitrary." Thus, the ground of arbitrariness also fails.

13. The Hon'ble Supreme Court in Chief Commissioner, Central Excise & Customs, Lucknow and Ors. V. Prabhat Singh in CA No. 8635 of 2012 decided on 30.11.2012 had held that

"Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue direction for compassionate appointments, without reference to prescribed norms, Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the compassionate appointment, to all those who seek a Court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needed 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."

Inasmuch as there is no essential need of the family like marriage of a daughter or education of any minor child and the family of the deceased employee was not found to be in an indigent condition and the applicant's mother herein is in receipt of family pension, the applicant is not entitled for any relief from the respondents. There is also no procedural infirmity in the order rejecting the request of the applicant for appointment on compassionate ground.

14. In the conspectus of the above facts and circumstances of the case and in view of the Judgement of the Hon'ble Supreme Court referred to supra, I do not



find any merit in the claim of the applicant for grant of the relief as prayed for by him in this OA.

15. In the result, the OA is liable to be dismissed and is accordingly dismissed as devoid of merit, however with no order as to costs.