

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01023/2017

Dated this the 20 day of September, 2019

PRESENT

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

C.Bhagyam
Rajiv Gandhi Nagar,
Kadambathur Post,
Tiruvelllore Taluk & District
6312013

....Applicant

By Advocate M/s Ratio Legis.

Vs

1. Union of India rep. By
The General Manager,
Southern Railway,
Park Town,Chennai
2. The Senior Divisional
Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town,
Chennai – 600 003.Respondents

By Advocate Dr. D. Simon

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 related to impugned order in no M/PB/CS/22/191/2005 dated 14.12.2015 passed by the 2nd respondent and the representation dated 18.03.2016 and to quash the same and further to direct the respondents to do the necessary to comply with the request of the applicant for compassionate ground appointment in terms of the mandatory provisions and to pass such other order(s) as this Hon'ble Tribunal may deem fit and proper and thus to render justice"

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

The applicant is the widow of late V. Chandran who died in harness on 18.08.2004. She had submitted a representation dated 05.11.2015 requesting compassionate appointment to her married daughter Smt Vimala which was rejected by the incompetent authority namely Senior Divisional Personnel Officer, Chennai vide order dated 14.12.2015. Thereafter she submitted a representation dated 18.03.2016 to the General Manager, the first respondent herein, stating that grant of compassionate appointment to married daughter is not a bar and requested to review the order of rejection passed by the Senior Divisional Personnel Officer. But the same did not elicit any response. Hence this original application is preferred for necessary intervention and justice.

3. The applicant has challenged the impugned order dated 14.12.2015 inter alia on the following grounds:-

- i. The action of the respondents in denying to adopt mandatory provision enshrined for the purposes of making compassionate ground appointment is arbitrary and an act coupled with colourable exercise of authority and against all canons of law which is untenable.
- ii. In as much as Master Circular No.16 which is a compendium on appointment on compassionate grounds issued under Railway Board's Letter No.E(NG)II/90/RC-I/117 dated 12.12.1990 which provides for compassionate ground appointments to the dependents of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated/decategorised, the impugned order rejecting the request of the applicant for compassionate ground appointment is inconsistent with Railway Board's letter No.E(NG)II/90/RC-I/117 dated 12.12.1990 and, therefore, liable to be quashed.
- iii. In so far as Para V(a) (ii) of the Master Circular 16 stipulates for relaxation of the period of five years normally fixed for making compassionate ground appointments, the impugned order rejecting the request for compassionate ground appointment is unsustainable in law.
- iv. In as much as Para V(b) stipulates that where death occurred more than 10 years back and also in cases where death took place between 5-10 years back but the conditions stipulated in para V (a) above are not fulfilled, a compassionate appointment is not within the competency of the General Manager except in the case of loss of life in course of duty or getting crippled

in the course of duty, the impugned order rejecting compassionate ground appointment is impermissible in law.

(v) In the wake of the Railway Board's letter No.E(NG)II/87/RC-1/57 dated 21.08.1987 which enunciates that in such cases, if compassionate appointment is otherwise admissible and if after careful examination of the case it is found that there are special features or circumstances justifying relaxation of time limit as also criteria, the cases could be considered by the Railway Administration for approaching the Railway Board for relaxation as a special case. Such a reference to the Railway Board should be made by the Railway Administration only with personal approval of the General Manager, the impugned order rejecting compassionate ground appointment is untenable in law.

vi. Inasmuch as Railway Board's letter no. E(NG)III/79RC-1/47 dated 29.11.1979 provides for the upper age limit to be freely relaxed on merits of the cases as well as the minimum age up to one year with the personal approval of the General Manager, impugned order rejecting compassionate ground appointment is unsustainable in law.

vii. In the wake of the fact that Railway Board's letter No.E(NG) II/80/RC-1/4(KW) dated 22.02.1989 prescribes for relaxation of educational qualifications prescribed for the post on merits of an individual case, such cases may be referred to the Ministry of Railways, the impugned rejection without reference to the Railway Board is non est in law.

viii. In as much as the scheme insinuate for '--- but in no case should there be more than one appointment against one death/medical incapacitation' which unequivocally pledges one appointment in the cases of death in harness, the impugned order rejecting appointment on compassionate grounds on the pretext of gainful employment that is susceptible is contrary to the mandatory scheme made under Rule 123 of the Indian Railway Establishment Code that is made under Proviso to Art. 309 of the Indian Constitution and hence liable to be set aside.

ix. In as much as the scheme provides for more than one appointment against one death/medical incapacitation which unequivocally pledges one appointment in the cases of death in harness, the impugned order rejecting appointment on compassionate grounds on the pretext of receiving bountiful settlement dues and family pension is liable to be set aside.

x. The disagreement by the respondents in offering compassionate appointment stating that the applicant was not having any minor children is unfounded since one has to be taken care in the old age and any attempt to deny decent and dignified living is in gross violation of Art.21 of the Indian Constitution and the impugned order is liable to be quashed.

xi. In the wake of RBE No.70/2014 dated 08.07.2014 which postulates for consideration of the defendant divorced/widowed daughters for appointment as in the case of married daughters, it unequivocally ensures that ignoring daughters on the pretext of marriage would tantamount to discrimination and

hence the impugned order rejecting the claim for compassionate appointment for the reason of marriages taking place when the deceased employee was alive is contrary to the said Railway Board letter and hence is non est in law.

xii. In as much as the Master Circular 16 specifically provides for the compassionate appointment to be made by the General Manager, the impugned rejection by the 2nd respondent is an ultra vires act which is impermissible in law.

4. The respondents have filed reply statement stating that the Assistant Personnel Officer vide his report dated 13.11.2009 has informed that Smt. Vimala is married. Her husband Mr. Siva is running his own Tea Shop, a Public Telephone Booth with three connections situated close to the Kadambattur Railway Station and earning Rs.400/- per day, that they have a cycle-scooter parking stand close to Kadambattur Railway Station and getting approximately Rs.300/- per day. The family is getting around Rs.21,000/- per month apart from the family pension of Rs.5139/-. Thus, the Assistant Personnel Officer concluded that there was no justification for offering appointment on compassionate ground in favour of the married daughter Smt. Vimala. The competent authority namely the General Manager rejected the claim for compassionate appointment to the married daughter Smt. Vimala based on the financial status as well as the dependency criteria. The applicant was also informed on 09.03.2010 that her request was rejected by the competent authority. Till 2016, the applicant did not challenge the rejection. Subsequently on 14.12.2015 also, the applicant was informed by letter No.M/PB/CS/22/ 191/2005 dated 14.12.2015 that

her request was rejected based on the merits of the case. Hence the respondents pray for dismissal of the OA. The respondents have relied on the decision of this Tribunal in OA 565/2007 dt. 05.11.2007 in support of their submissions.

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

6. Admittedly the Railway employee died in harness on 18.08.2004 while working as Technician Grade III in the Office of the Senior Section Engineer/ EMU, Avadi, Chennai. The applicant is the widow of the deceased Railway employee. After death of the Railway employee, the applicant had requested for compassionate appointment to her married daughter Smt Vimala but the same was rejected by the second respondent by order dated 17.07.2008. Her representation dated 05.11.2015 was also rejected by the 2nd respondent on the ground that both daughters got married during the lifetime of the employee and no other dependent was left to be taken care of. The request of the applicant for considering her case for compassionate appointment was also rejected citing the same reason. The case for considering appointment of Smt Vimala was reviewed as requested by the applicant but the same was rejected by the General Manager. The applicant submitted another representation dated 18.03.2016 stating that her request for appointment on compassionate ground ought to have been considered by the 1st Respondent/General Manager whereas her request was considered and rejected by a lower authority and requested to reconsider in the light of the prevailing statutory provisions.

7. With regard to competency of the authority to issue order, the Railway Board has issued circular No.E(NG)II/78/RC-1/1 dated 07.04.1983, the relevant portion of which reads as follows:-

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.

8. Further as per Railway Board's Circular issued vide No.E(NG)III/78/RC-1/1 dated 30.04.1979], 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. Thus, under the delegated powers, the CPO has full competence to consider applications for compassionate appointment in consultation with the Heads of Departments concerned.

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

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.
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10. The Railway Board has also issued circular dated 03.08.1999 according to which it is clarified as follows:-

“It is clarified that the scheme for compassionate appointments had been introduced with the intention of relieving the immediate distress sustained by the family of an employee dying in harness. Under this scheme, the widow or an eligible ward can be considered for compassionate appointment. There is nothing in the rules which prohibits a married son being considered for compassionate appointment. In cases where the wife of the employee had died before the employee expired or in cases where the widow is not in a position to take up employment, a married son, if he is otherwise eligible can be considered for compassionate appointment. Similarly, a married daughter can also be considered for compassionate appointment subject to the condition that in such cases the General Manager should satisfy himself that the married daughter will be the bread winner for the bereaved family. On the other hand, if there are no other wards to be looked after then there would be no justification for considering a married daughter for compassionate appointment.”

11. While considering the case of the applicant the above condition shall have to be kept in view. From the records, it is seen that there is no other ward of the deceased employee dependent upon him during his life or upon the widow after his demise. The other daughter too had already got married. In that event, if the above condition that if there are no other wards to be looked after, then there would be no justification for considering a married daughter for compassionate appointment. The reason is obvious. The widow is afforded necessary Family pension. Other terminal benefits too have been paid to her. There being no liability, the financial condition of the widow cannot be said to be of penury in character.

12. As per Railway Board Circular No.09/2009 dated 30.01.2009, the competent

authority should satisfy himself on the basis of a balanced and objective assessment of the financial condition of the family that the ground for compassionate appointment in each case is justified having regard to the number of dependents, assets, liabilities, income of any earning member of the family. In the instant case, the applicant's daughters got married while the Railway employee was in service and there were no other dependent factor to be considered. With regard to the financial condition of the family the Assistant Personnel Officer assessed the situation and submitted a report dated 13.11.2009 that the applicant is staying along with her daughter Smt. Vimala. Smt. Vimala is married to Mr. Siva and they are running a Tea Shop, a Public Telephone Booth with three connections situated close to the Kadambattur Railway Station and earning Rs.400/- per day. They also have a cycle-scooter parking stand close to Kadambattur Railway Station and getting approximately Rs.300/- per day. The family is earning around Rs.21,000/- per month apart from the family pension of Rs.5139/-. The General Manager after considering the above aspects rejected the claim of the applicant for compassionate appointment to her married daughter based on financial status as well as the dependency criteria.

13. Yet another aspect to be kept in mind is that the case of the applicant for compassionate appointment of her daughter was initially considered and rejected in on 17-07-2008 and again on a further representation, it was rejected on 09-03-2010. Had the applicant been aggrieved by the same, she ought to have approached the Tribunal at the material point of time, which she chose not to. It was after a long period of five years that her married daughter applied for compassionate appointment

in 2015 which clearly signals that it was for the purpose of circumventing the limitation that the later representation had been issued so that rejection of the case would give rise to a fresh cause of action. Here again, she did not immediately approach the Tribunal but preferred another representation in 2016. It is settled law that repeated unsuccessful representations do not elongate the period of Limitation (Paragraphs 20 and 21 in the judgment **S.S. Rathore vs State of MP (1989) 4 SCC 582**). Again, in the case of C.Jacob vs Director of Geology and Mining (2008) 10 SCC 115, the Apex Court has held as under:-

10. Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the Department, the reply may be only to inform that the matter did not concern the Department or to inform the appropriate Department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

14. When a cause of action had arisen in 2004 if an individual approaches the judicial forum at his/her own leisure hours after a hibernation of years, the case could be easily rejected on account of inordinate and unexplained delay. The Apex Court has in the case of *Chennai Metropolitan Water Supply & Sewerage Board vs T.T. Murali Babu*, (2014) 4 SCC 108 has held as under:-

17. In the case at hand, though there has been four years' delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinise whether such enormous delay is to be ignored without any justification. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On

the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others' ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons — who compete with "Kumbhakarna" or for that matter "Rip Van Winkle". In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold."

15. The Hon'ble Supreme Court in the case of Chief Commissioner, Central Excise & Customs, Lucknow vs. V. Prabhat Singh (C.A.8635/2012) has held that Courts and Tribunal should not fall pray to any sympathy syndrome so as to issue direction for compassionate appointment without reference to the 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 the court's intervention. Courts and Tribunals must understand that every such act of sympathy, compassion and discretion wherein direction 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.

16. The Hon'ble High Court of Madras in the case of G. Rajbabu vs. Tamilnadu Electricity Generation and Distribution Corporation Ltd. (TANGEDCO) in W.P.3882/2014 dated 06.10.2017 after dealing with various Supreme Court Judgements on the subject has held as follows:-

"28. In view of the fact that the father of the writ petitioner died in the year 1996 and now after a lapse of 23 years, the question of

providing compassionate appointment to the writ petitioner does not arise at all.”

17. In the conspectus of the above facts and circumstances of the case and the Judgements of the Hon'ble Supreme Court and High Court, I do not see any justification to allow the OA in favour of the applicant. Resultantly the OA is liable to be dismissed and is accordingly dismissed.

18. No costs.

(T. JACOB)
MEMBER (A)

-09-2019

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