

Central Administrative Tribunal

Madras Bench

OA/310/01129/2018Dated ~~Wednesday~~, the 21st day of August, Two Thousand Nineteen

P R E S E N T

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

Tmt. B. Gowri,
W/o. Late V.Babu,
No. 20/13C, West Mada Street,
Kumaran Nagar, Kaladipet,
Chennai 600019.

.. Applicant

By Advocate M/s. V.K.Rajagopalan

Vs.

1. Union of India Rep. By
The General Manager
Southern Railway
Chennai- 600033.
2. The Additional Divisional Railway Manager II
Chennai Division,
Southern Railway,
Chennai – 600003.

.. Respondents

By Advocate Dr. D.Simon

ORDER

(Pronounced by Honble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"To call for the records of the 2nd respondent herein vide their order No. M/P.353/CC/OA 566/2018 dated 17.07.2018 and to quash the same and consequently direct the respondents herein to appoint the applicant's son B. Sekar on compassionate ground in Southern Railways for the death of her husband Late V. Babu, Tech-II under ADME/W/TNPM, T.No.46 at Tondiarpet, Chennai."

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

The applicant's husband V. Babu while working as a Tech-II under ADME/W/TNPM at Tondiarpet died on 03.02.2006. After that the applicant applied for appointment on compassionate ground to her son B. Sekar. At that time the applicant's son did not pass 8th standard. So, the 2nd respondent directed the applicant to apply again after her son completes the 8th standard. Accordingly, the applicant's son B. Sekar completed his 8th standard examination in March, 2010. Thereafter the applicant approached the respondents in the year 2011, 2012, 2013, 2014, 2015, 2016, 2017 and also submitted representation dated 21.02.2018. But the said representation was rejected by the respondents vide order dated 17.07.2018. The applicant's son is married and is without employment and the family of the deceased Railway employee are suffering a lot. The family pension received by the applicant is insufficient to meet both ends. So the applicant's son may be considered for suitable employment on

compassionate ground. The applicant further states that the respondents wantonly refused to consider the main point that P. Radhakrishnan is not the applicant's son and she already gave adoption to her elder sister Rajeshwari and he was brought up by her sister Rajeshwari and her husband as their son. To support the same the applicant also enclosed the Xerox copy of the Ration Card and the Family Card along with her letter dated 8.6.2018 to the respondents. Non providing employment by the respondents is highly improper in the eye of law. Hence the applicant has filed this OA seeking the above relief on the following grounds:-

- a. The applicant's husband late V. Babu, Tech II under ADME/W/TNPM, T.No. 46 at Tondiarpet, Chennai died in services. So the applicant's son is entitled for employment on compassionate ground with the respondents herein.
- b. P. Radhakrishnan is not the applicant's son but was brought up by Prakash and Rajeswari as their son. So the 2nd respondent wrongly mentioned that he is the son of the applicant.
3. Per contra the respondents in their reply statement have stated that the request for appointment of the applicant's son B. Sekar on compassionate ground was rejected on the ground that he had studied only up to 5th Standard and married and did not possess the requisite educational qualification of 8th Standard and the second son of the applicant Radhakrishnan was working in Airport as a Line Inspector. The applicant submitted several representations

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which was considered and rejected in terms of the Railway Board's letter dated 15.06.2007 on the ground that the applicant did not possess the educational qualification at the time of submission of application for compassionate ground appointment. The applicant filed OA.566/2018 seeking compassionate ground appointment to the applicant's son B. Sekar wherein this Tribunal by order dated 27.04.2018, directed the respondents to reconsider Annexure A6 representation dated 21.2.2018 in accordance with law and the scheme for compassionate appointment. Pursuant to the above, a Staff and Welfare Inspector was deputed to verify the genuineness of the statement of the applicant and it was reported that Shri P. Radhakrishnan was the applicant's son and he was brought up by her elder sister Smt Rajeswari and further Shri P. Radhakrishnan has also given a representation dated 10.07.2018 admitting the fact that he was the second son born to the applicant and late V. Babu and he was brought up by his aunt Smt. Rajeswari and that he is working in BGR Systems and earning a salary of around Rs.23,000/- The respondents considered the request of the applicant in the above background but however, rejected the same by order dated 17.07.2018. Hence the respondents pray for dismissal of the OA.

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

5. The Scheme for compassionate appointment is to provide employment to one of the family members to tide over the immediate crisis in the family due to unexpected death of the lone bread winner. In Railways, this benevolence is

further extended to such case where at the time of demise of the Railway servant, the ward of the deceased is a minor and is prosecuting his studies, and the ward applies for compassionate appointment on attaining majority and also equipping with requisite qualifications. If at the time of demise of the Railway employee, the ward happens to be a major but prosecuting his higher studies, his case for compassionate appointment would be considered as and when he completes his higher studies. Barring the above, compassionate appointment is not automatic and even where it is permissible it is to be extended only in deserving cases based on the financial condition of the family and subject to fulfilment of other conditions stipulated in relevant rules issued by the Ministry of Railways from time to time.

6. Admittedly the applicant's father died while in service on 03.02.2006. At the time of his death, he had declared that his family consisted of Smt Gowri, the applicant herein, as his wife and Shri B.Sekar as his son. The applicant submitted an application dated 26.07.2006 requesting appointment on compassionate ground to her son B. Sekar. Certain prescriptions have been laid down in the scheme for grant of compassionate appointment. In so far as educational qualification is concerned, the Railway Board vide its letter No.E9NG-II/98/RR-1/107 dated 04.12.1998 had laid down that minimum educational qualification for recruitment to Group 'D' post is Class 8th pass in respect of any category or trade or department.

7. With regard to higher qualification required at the time of submission of

application, the Railway Board's letter No.E(NG)/II/2003/RC-1/Genl./IV dated 15.6.2007 reads as follows:-

"R.B.E.No.88/2007

Subject: Appointment on compassionate grounds –
Acquisition of higher qualification.

(i) If a candidate is major at the time of death/medical invalidation of the ex-employee and is already admitted to a course then he/she shall be allowed to complete that course provided he/she takes due permission of the Railway Administration. His/Her candidature for appointment would be considered according to the qualification so acquired.

(ii)
(iii)

2. The matter has been re-considered and in supersession of all the instructions on the above subject (except Board's letter E(NG)II/98/RC-1/139, dated 4.3.1999 (35, 1999 p.31 Bahri's 35/1999, p.31) and No.E(NG)-II/00/RC-1/Genl.8/JCM-DC dated 29.7.1999) (Bahri's 177/1999 p/175) it has now been decided by the Board that the educational qualification possessed by the ward/spouse of the ex-employee at the time of submission of application for compassionate ground appointment may be considered. However, the qualification for compassionate ground appointment should be submitted within the prescribed period as laid down in extant instructions."

8. Hence the request of the applicant's son for appointment on compassionate ground was rejected vide order dated 04.12.2006 mainly on the ground that the applicant's son had possessed only 5th standard qualification. After passing the 8th standard in March 2010, the applicant submitted representations dated 30.10.2013, 04.12.2014, 21.02.2018 and 08.06.2018. However, his claim was again to be rejected on the ground that he did not

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possess the requisite minimum educational qualification of 8th standard at the time of submission of his application for appointment on compassionate ground and the provisions of the above Railway Board letter are also not applicable to the applicant's son since he was not a minor at the time of the demise of the Railway employee. The applicant submitted yet another representation dated 08.07.2016 wherein the respondents by order dated 18.08.2016 informed the applicant that there was no dependency factor and that in terms of the Board's letter dated 15.06.2007, there was no provision to grant permission and also to reopen the closed cases. On similar lines, her subsequent representation dated 21.02.2018 submitted in pursuance of this Tribunal's order in OA.566/2018 dated 27.04.2018 was examined by the Chief Personnel Officer and as the norms prescribed for grant of compassionate appointment have not been fulfilled, the case was again rejected by order dated 26.04.2018.

9. There was yet another controversy involved in this case. The applicant has two sons, the second one is by name P. Radhakrishnan, who has not been brought on record by the Railway employee. The applicant disputed that the said Radhakrishnan is not her son and he is the son of her elder sister Smt Rajeswari. On verification by the Staff and Welfare Inspector as to the genuineness of the statement of the applicant it was found that Shri Radhakrishnan is the son of the applicant but brought up by her elder sister Smt Rajeswari. Shri Radhakrishnan has also admitted in his letter dated 10.07.2018 that he is the second son born to the applicant and Late V. Babu and he was

brought up by her aunt Smt Rajeswari and working in BGR Systems and earning a salary of Rs.23,000/- per month. Of course, the name of Shri P. Radhakrishnan had not been entered in the personal records of the deceased employee. That cannot be taken authentication that the said Radhakrishnan is not the son of the applicant or had been given in adoption to her sister. The financial status of the applicant has to take into account the income earned by the second son Shri Radhakrishnan as well and as such financial condition of the family cannot be said to be in penury to justify grant of compassionate appointment. Added to the fact is that the applicant's son B. Sekar did not fulfil the requisite qualification at the time of application immediately after the demise of the applicant's husband. Thus, the application has been rightly rejected by the respondents.

10. In fact, the cause of action for the applicant's son arose at the time of demise of his father. As he was not in possession of the minimum qualification at the time when the cause of action arose first, his case was to be rejected, which the respondent rightly had carried out in their order of rejection. Cause of action on acquiring the qualification is the subsequent one and admittedly, the applicant had not sought permission to prosecute further studies nor is there any provision to consider the case again.

11. After death of the Railway servant on 03.02.2006, the applicant also received full terminal benefits and also enhanced family pension. As per the extant rules, at the time of considering such requests for

appointment on compassionate ground, the competent authority should satisfy himself on the basis of a balance 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 dependents, assets and liabilities left by the Railway employee, income of any member of the family as also his liability including the aspect whether the earning member is residing with the family of the deceased employee and whether he provides any support to other members of the family. Since the eldest son P. Radhakrishnan is working in BGR Systems and earning a salary of around Rs.23,000/- and as per the Railway Board's circular dated 15.06.2007 as contained in RBE No.88/2007, the applicant's son B. Sekar did not possess 8th standard pass at the time of submission of the application he is not entitled to claim appointment on compassionate ground.

12. The Hon'ble Supreme Court in the case of 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."

13. In as much 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 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 of her son on compassionate ground.

14. In Union of India (UOI) and Others Vs. Bhagwan Singh, reported in 1995(6) SCC 476, a Senior Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/1981, he sought appointment on compassionate grounds. The same was rejected. The authorities took the view that the application was beyond the period of limitation (five years) and that the case of the respondent was not covered by the relevant rules, at the time of the demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the order of rejection as unjustified and directed Union of India to reconsider the case of the respondent therein, if he was otherwise qualified. Testing the correctness of the order of the Central

Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies in harness, the Hon'ble Supreme Court, at paragraph No.8, held as follows:

"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed."

15. The Hon'be Supreme Court in the case of Local Administration Department v. M.Selvanayagam reported in 2011 AIR SCW 2198 had dealt with similar issue wherein an application was made by the son of the deceased after 7 years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5 years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his

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appointment on compassionate grounds. No action was taken on the application since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds afresh and to pass an order on his application within four months from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial

resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc., normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case, the Respondent was only 11 years at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months on his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

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 6.10.2017 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 view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and the Hon'ble High Court of Madras, this Tribunal is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by this Tribunal, so as to provide appointment on compassionate ground. That apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this OA deserve no further consideration.

18. Accordingly the OA stands dismissed. However, there shall be no order as to costs.