

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE**

**ORIGINAL APPLICATION NO.170/00529/2018**

**DATED THIS THE 01<sup>st</sup> DAY OF NOVEMBER, 2019**

**HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER**

**HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Smt.Hyderbee, 59 years  
W/o.Sri.Bashasab Magare  
Occn: Waiting Room Attendant  
SS/O/UBL  
(Under orders of removal from service)  
Residing at Plot No.92  
Ahamad Plot, Near Royal Apartment  
Mantur Road, Hubballi: 580 020.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. General Manager  
South Western Railway  
Hubballi: 580 020  
For and on behalf of Union of India  
And also as an authority of SWR  
Hubballi.
2. Assistant Commercial Manager  
and Disciplinary Authority  
South Western Railway  
Divisional Office, Commercial Branch  
Gadag Road  
Hubballi: 580 020.
3. Divisional Commercial Manager  
and Appellate Authority  
South Western Railway  
Divisional Office, Commercial Branch  
Gadag Road  
Hubballi: 580 020.
4. Senior Divisional Commercial Manager  
and Revisionary Authority  
South Western Railway  
Divisional Office, Commercial Branch  
Gadag Road

Hubballi: 580 020.

....Respondents

(By Advocate Sri N.S.Prasad)

### O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that after the death of her husband Sri B.K.Shetty (who on conversion to Islam came to be known as Bashasab Magare) who worked as a Khalasi at Hubballi, on 9.4.1987, the applicant is given compassionate appointment on 6.10.1994. The 2<sup>nd</sup> respondent who is the Disciplinary Authority(DA) has initiated disciplinary proceedings against the applicant on 10.12.2015 by issuing major penalty charge memo dtd.10.2.2015 under Rule 9 of the Discipline and Appeal(D&A) Rules 1968(Annexure-A1) on the following articles of charge:

*"That the said Smt.Hyderbee working as Waiting Room Attendant(WRA) Hubballi has committed a serious misconduct in as much as;*

*Article of Charge No.I :- That, the said Smt.Hyderbee working as WRA has secured appointment on Railways on compassionate grounds w.e.f. 6.10.1994 by declaring false particulars of family, consequent to the death of Sri.Bhaskar K.Shetty, Khalasi working in Hubballi Railways under SSE/W/UBL. She was not eligible for CGA as per the rules.*

*Articles of Charge No.II :- That, the said Smt.Hyderbee while working as WRA/UBL has included the name of three children in Family Composition Certificate(FCC) and availed all the privileges and subsequently denied that they are her children. Thus, the said Smt.Hyderbee, WRA/UBL failed to maintain absolute integrity and acted in a manner unbecoming of a Railway Servant, thereby, contravened Rule 3(1)(i) and (iii) of the Railway Services (Conduct) Rules, 1966".*

2. The applicant has filed her written statement dtd.7.1.2016(Annexure-A2) denying both the charges. Then one Sri.H.H.Krishnananda Rao, CEI/SWR/UBL was appointed as Inquiry Officer(IO) who submits report dtd.6.7.2016(Annexure-A3) holding both the charges as proved. The report is furnished to the applicant by the administration under 2<sup>nd</sup> show cause notice dtd.20.7.2016(Annexure-A4).

Applicant submitted her representation dtd.4.8.2016(Annexure-A5) showing sufficient cause for non-acceptance of IO's report. The DA without considering the representation of the applicant passed an order dtd.23.8.2017 imposing punishment of removing the applicant from service with immediate effect with further direction to vacate the Railway Quarters occupied by her within one month(Annexure-A6). The applicant preferred appeal on 26.8.2017(Annexure-A7) against the punishment order. Appellate Authority(AA) namely Divisional Commercial Manager(R3) had passed order dtd.13.10.2017(Annexure-A8) confirming the punishment order of DA without taking into account the legal presumptions available in favour of the applicant in respect of her marriage with B.K.Shetty alias Bashasab Magare and also the circumstantial evidence on record fully supporting her case. Then the applicant submitted revision petition on 6.11.2017(Annexure-A9) under Rule 25 of D&A Rules 1968 to the Revisionary Authority(RA) namely the 4<sup>th</sup> respondent, Sr.Divl.Comm.Manager who vide order dtd.9.4.2018(Annexure-A10) had dismissed the revision petition. Aggrieved by the same, the applicant has filed the present OA on the following grounds:

- a. *Quash the order bearing No: H/CS/V/C/MJ/58/2015, dated: 23.08.2017, Annexure-A6, passed by Assistant Commercial Manager, Hubballi Respondent No.2 herein, No: H/CS/V/C/MJ/58/2015, dated:13.10.2017, Annexure-A8, passed by: Divisional Commercial Manager Hubballi, Respondent No.3 herein and No: H/CS/V/C/MJ/58/2015, dated:09.04.2018, Annexure-A10, passed by Senior Divisional Commercial Manager, SWR Hubballi Respondent No.4 herein.*
  - b. *Direct the respondent to reinstate the applicant in to service with continuity of service with all consequential benefits including the monetary benefits flowing there from and/or to extend the benefit of superannuation pension and terminal benefits as the case may be.*
  - c. *Pass any other order or direction that this Hon'ble Tribunal may deem it fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.*
3. Applicant submits that she is rightly given the compassionate appointment after proper investigation for a period of 7 years 5 months and 28 days. Because of

her having no issues through husband Sri B.K.Shetty alias Bashasab Magare, her husband married Mumtaz Begum who is also working as Helper in Railways at Hubballi and through her got three children. It is needless to point out that the children of her husband with Mumtaz Begum are also her stepchildren. Whereas the Administration's version is that Smt.Mumtaz Begum is the first wife of Sri B.K.Shetty alias Bashasab Magare and since Smt.Mumtaz Begum had no issues, he married another lady by name Hyderbee(applicant) during the subsistence of the first marriage and got three children from the said wedlock whose names are Mehaboobi, Fathima and Mohammed Rafi but the said Hyderbee is now denying this factual aspect and claiming that they are the children born to her husband through Smt.Mumtaz Begum. According to the respondents, there is no material on record about Sri B.K.Shetty alias Bashasab Magare's marrying Hyderbee, the applicant and about his conversion to Islam religion. Records reveal that with the death of Smt.Mumtaz Begum on 13.1.2012, Sri T.Subbarao, S&WI/UBL on 20.3.2012 submits a report to the administration(Annexure-A11) in the disciplinary proceedings against the applicant. Thereafter, Smt.Mumtaz Begum's son Mohammed Rafi has put forth his claim for compassionate appointment on account of the death of his mother while in service. Thereafter, the administration started investigation as to how the applicant was given Compassionate Ground Appointment(CGA) in the year 1994 after the death of Sri B.K.Shetty alias Bashasab Magare in the year 1987. At this stage, the three children of Smt.Mumtaz Begum filed OS.No.683/2013 before the IV Addl.Civil Judge at Hubballi seeking relief of declaration and mandatory injunction against the Railways and the said OS came to be decreed by the trial court on 5.11.2014 declaring that the children are the legal heirs of the deceased Mumtaz Begum with consequential direction to the Railway Administration to

make payment of the service benefits to the children arising out of the death of Mumtaz Begum(Annexure-A12). Railway Administration's first and second appeals against the above judgment are dismissed vide High Court's judgment dtd.6.8.2015 in RSA.100354/2015(Annexure-A13). Thus the issue relating to children's claim as LR's of the Mumtaz Begum has attained finality.

4. The applicant further submits that when Mohammed Rafi's CGA case as LR of Mumtaz Begum was not receiving right attention before the administration, Sri T.Subbarao who gave initial report at Annexure-A11 made a further statement on 28.2.2013(Annexure-A14) before the Vigilance in the matter of claim of Mohammed Rafi's CGA case maintaining what he has reported vide Annexure-A11. The stand taken by Sri T.Subbarao who is PW1 in the disciplinary proceedings against the applicant has become the basis primarily for IO's holding applicant guilty of two charges levelled against her and her punishment order. As on the date of recording the evidence of Sri T.Subbarao before the IO on 19.4.2016 in the disciplinary proceedings(Annexure-A16) which is also recorded before the Civil Court(Annexure-A15), there was already dismissal of the RSA on 6.8.2015 itself and in spite of that he sticks to his stand that the children are that of Hyderbee through Sri B.K.Shetty alias Bashasab Magare and not of Mumtaz Begum. The stand taken by him is keeping in mind the administration's orientation to deny the legitimate CGA claim of Mohammed Rafi. Then Sri Mohammed Rafi filed OA.No.961/2016 seeking direction for CGA appointment to the Railway administration. But the said OA was dismissed vide order dtd.17.10.2017(Annexure-A17) holding under a bonafide mistaken impression that there were already three CGA appointments in the family and Mohammed Rafi's claim is the fourth one. The fact is that the applicant's getting appointment

on compassionate grounds as the wife of Sri B.K.Shetty is the one compassionate ground appointment extended to the family and other two appointments that of Mumtaz Begum as well as Sri B.K.Shetty are not compassionate ground appointments. After the death of Sri B.K.Shetty alias Bashasab Magare, the applicant was given CG appointment in 1994 and she has been paid all the pensionary benefits along with three children. Similarly the three children are also partly in receipt of pensionary benefits arising out of the death of Mumtaz Begum after dismissal of RSA case. Once the CGA claim of Mohammed Rafi came up before the Railway Administration after the death of Mumtaz Begum, they started digging the material as to how applicant got the CG appointment in the year 1994. The administration at the controlling level has made it clear that the old records pertaining to the same are not available since they are destroyed by confidential section during 2009 itself with the approval of the competent authority. They state that not only that of applicant's records, the records of all CGA cases of more than five years old have been destroyed with the approval of the competent authority during 2009. However, the Railway Vigilance on 27.8.2012 started recording statements including that of applicant(Annexure-A18). A report submitted by Asst.Personnel Officer in this regard on 9.6.2014 is produced at Annexure-A19. Further on 30.4.2015, Sr.DPO of Hubballi Division submits a report to the GM, SWR Hubballi(Annexure-A20) and thereafter the disciplinary proceedings is started against the applicant as per the memorandum of charges dtd.10.12.2015(Annexure-A1). According to the concluded Civil Court decree, the disciplinary proceedings initiated against the applicant at Annexure-A1 is neither sustainable in law nor on facts. When once the compassionate appointment was extended to the applicant after due verification, there is no scope under rules to re-open the case after a lapse of

more than 20 years. On the ground of delay also the disciplinary proceedings suffers from persecution angle of the applicant. In other words, it is not open for the administration to sit over its own actions and to take the applicant into task at the fag end of her service.

5. On the other hand, the respondents in their reply statement have submitted that the case of the applicant who had sought Compassionate Grounds Appointment(CGA) was not a straight one and in the OA.No.961/2016 all the facts leading to appointment of the applicant on CGA have been brought out. It was necessary that a detailed investigation had to be conducted and due to administrative transfers of Welfare Inspectors and other administrative reasons, the investigation had taken a long time. They submit that in the Civil Suit in OS.No.683/2013 filed before the Hon'ble 1<sup>st</sup> Addl.Civil Judge(Jr.Divn) Court, Hubli, it was held that the children declared in the Family Composition Certificate(FCC) by Late Sri B.K.Shetty were the children of Mumtaz Begum and not of the applicant. The Disciplinary Authority(DA) having considered the official records wherein Late Sri B.K.Shetty has nowhere declared the applicant as his wife and hence the order of the DA is completely based on the findings submitted by the Inquiry Officer(IO) and the applicant was given all opportunities by serving the copy of the findings. At this stage, the applicant cannot say that the order passed by DA was incorrect and erroneous. Applicant is admitting that Sri.B.K.Shetty had shown three children in the FCC as the children of Mumtaz Begum and that there was no misuse of pass which is totally false. The applicant has taken the passes in favour of all the children which are marked as exhibits PP-25(1-12) and that the applicant has taken 12 passes. The applicant was issued charge sheet and Article of charge-II was that the applicant included the

names of the three children in FCC and availed all the privileges and subsequently denied that the three children were not belonging to the applicant. In the cross-examination in respect to the Article of charge-II, the applicant admitted that she does not have any children and she has submitted FCC to the Station Superintendent, Hubballi thinking that they are her husband's children and incorporated their names in the FCC. Further, name of Mohammed Rafi Magare is appearing as son on both FCC declared by the applicant and also by Mumtaz Begum. In the departmental proceedings after examination/cross-examination of prosecution witnesses by either side, the IO finally came to the conclusion that the charge of misuse of privilege pass stands proved. Therefore, without alleging any procedural irregularities in the departmental proceedings, the applicant cannot invoke the jurisdiction of this Tribunal by merely stating that the applicant has not misused the passes, more so when there was an ample of evidence in the departmental proceedings proving that the applicant has misused the privileges. As held by the Hon'ble Apex Court in plethora of cases that the Courts shall not interfere in the departmental proceedings unless and until there are serious irregularities/procedural irregularities that too where adequate opportunities to the Charged Employee were not given. The applicant making this averment suppressing the law on the point and any amount of denial that the applicant has not misused the privileges will not rescue her case. The Divl.Commercial Manager(Appellate Authority) has carefully considered the findings of IO who conducted the proceedings in a fair and professional manner and all opportunities given to the applicant during the course of the proceedings and there is no iota of procedural irregularities in the inquiry. Therefore, there is nothing incorrect in law as to why DA shall not consider the findings of the IO in such facts and circumstances of the case and the penalty imposed by the DA is

fair, just and proper. The Revisionary Authority(Sr.Divl.Commercial Manager) after going through the IO's report has confirmed the penalty imposed by the DA and upheld by the AA. Hence, the penalty orders of the DA, AA and RA are fair, just and proper and also there are no procedural irregularities in the inquiry proceedings and applicant has not in any way challenged the inquiry. Applicant is trying to recommend a position not in line with enquiry records by making distorted averments and trying to mislead the Court and garner sympathy to which the applicant is not entitled. The Hon'ble Apex Court in the case of *Principal Secretary, Govt. Of AP vs. M.Adinaraya (2004 12 SCC 579)* has laid down the law that when there are no procedural irregularities in the inquiry, the parties cannot invoke the jurisdiction of the Courts/Tribunals to relook into the facts and re-appreciate the evidences submitted before the IO. If the applicant is not satisfied with the procedure adopted in the inquiry that the inquiry was biased, principles of natural justice was not followed, proper examination/cross examination was not done, proper notices were not given etc, then the Courts/Tribunal can remand the matter to the IO for re-appreciation of the evidence. The applicant at any stage has not objected to the proceedings before the IO and as an afterthought has approached the Tribunal without clean hands seeking relief. The applicant has not relied upon even a single exhibit marked in the inquiry to show that the documents marked therein are not legally correct and is trying to fabricate story which is not in any way consistent to the admissions made by the applicant in the inquiry. Mere bringing out a contradictory story will not help the applicant when nowhere she whispered about incorrect appreciation of evidence by IO. Hence, re-appreciation of the evidence is not maintainable in law and is also against the law laid down by the Hon'ble Apex Court.

6. The respondents submit that in due compliance with the judgment of the Hon'ble 1<sup>st</sup> Addl.Civil Judge, Hubli in OA.No.683/2013, the service benefits were disbursed to the children of Mumtaz Begum. Sri T.Subba Rao, Chief Staff & Welfare Inspector has furnished an Affidavit of Examination-in-Chief dtd.25.8.2014 duly stating the facts. However, in the cross examination, due to technicalities, his affidavit could not be sustained. Nothing more and nothing less is submitted by him before IO. After considering all the pleadings, the OA.961/2016 filed by Sri Mohammed Rafi seeking compassionate appointment was dismissed by this Tribunal. Therefore, the only remedy available to the applicant and Sri Mohammed Rafi is to file a Writ Petition challenging the dismissal of the OA.961/2016. Only when Sri Mohammed Rafi is successful in canvassing the order in OA.961/2016 is not as per law before the High Court, then he may be entitled to compassionate appointment. But it is a totally different issue and is not at all relevant to decide the applicant's case. The present OA is not sustainable in the eyes of law as the orders of DA, AA and RA are well within the frame work of rules and law and there is no violation of principles of natural justice. Therefore, the OA is liable to be dismissed.
7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue in this case revolves around two persons, the applicant and one Mumtaz Begum who are supposedly the wives of one Shri Bhaskar K.Shetty who worked as a Khalasi in the respondents' organisation. The said Bhaskar Shetty is supposed to have converted into Islam and therefore was not in violation of the conduct rules with regard to the second marriage while the first wife is still alive. The said Bhaskar Shetty dies in 1987 and the applicant claiming to be his legally wedded wife gets a compassionate

appointment as a Waiting Room Attendant in 1994. The other wife of the said Bhaskar Shetty, Smt.Mumtaz Begum was already employed in the Railways. The applicant had included the names of three children in the Family Composition Certificate and availed the privileges from the respondents' organisation. While claiming the settlements dues relating to Bhaskar Shetty in 1987, there was no mention of the other person Mumtaz Begum and the applicant had also declared three children as her children at the time of filling of the settlement claim. The other person Mumtaz Begum dies in the year 2012 and subsequent to her death, the applicant stopped including the names of the children for any of the privileges from the respondents' organisation. The same three children are also mentioned as the beneficiaries in the Family Composition Certificate(FCC) of the second person Mumtaz Begum. During the enquiry, the applicant submits that she had considered Mumtaz Begum's children as her own and being an illiterate was not aware of the rules of the respondents' organisation and included their names in the FCC. During the enquiry, she has not been able to produce any documentary evidence relating to the conversion of the said Bhaskar Shetty to Islam and confirmation about her being wedded to him. The respondents' organisation at this point of time has destroyed all the records relating to the compassionate ground appointment given to her in 1994 and therefore during the inquiry, they had to go by the various other facts relating to the case furnished along with the deposition of the witnesses including the explanation of the applicant. During the enquiry, the applicant states that she was the first wife of the said Bhaskar Shetty and since she had no children, the said Shetty having been converted to Islam, got three children from the second wife Smt.Mumtaz Begum. The Welfare Inspector deputed on behalf of the respondents' organisation reported that in fact Mumtaz Begum was the first wife and since she did not have any children, the

said Bhaskar Shetty had relationship with the applicant and the three children were actually hers. However, the inquiry report could not establish the fact of the applicant being the first or second wife or the fact of the children being hers or that of the Mumtaz Begum. In a separate set of proceedings before the Additional Civil Judge at Hubballi, the children have legally obtained rights as the legal heirs of Mumtaz Begum. In other words, from the same family, one person gets the benefit of compassionate ground appointment in the year 1994 claiming to be legally wedded wife of the deceased Govt. Employee. But as per the records of the respondents, the said Bhaskar Shetty continued to remain as a Hindu till his death. It is baffling to note that despite the respondents and the applicant not having any documentary proof relating to the conversion of Bhaskar Shetty to Islam, the respondents' organisation had in fact given the appointment to the applicant. On the basis of the documents etc., nothing could be found since all the records are stated to be destroyed. The applicant even at the present juncture is not able to show any kind of documentary evidence relating to the fact of her being the legally wedded wife of the said Bhaskar Shetty. In fact, the respondents are not even able to establish whether the said Bhaskar Shetty and the person named as the father of the three children is one and the same since finally the said Bhaskar Shetty continued to remain as a Hindu in their records. However, the fact remains that the applicant had mentioned the very same three children of Mumtaz Begum as her own children and also had got the benefit of the settlement dues of these three minor children to herself at the time of death of Shri Bhaskar Shetty, her claim at present that she was illiterate etc., cannot be accepted since after the death of Mumtaz Begum, there is a change in the story and the records were also created to that effect. We would not like to go into the merits of this case anymore except to state that the applicant has been

given all the opportunities to defend her case and confirm as to why she had not done any misconduct by securing the compassionate ground appointment on the death of said Bhaskar Shetty. It is also a fact that she had included the names of the three children in her Family Composition Certificate and availed all the benefits from the respondents till the death of the other person Mumtaz Begum in 2012. The respondents have rightly concluded that the charges are proved and her further representations to the Appellate Authority and the Revisionary Authority have elicited the same result. We find no infirmity in the orders passed by the respondents and in fact they have only removed the applicant from service from the date of their order.

8. The OA therefore lacks merit and is accordingly dismissed. No costs.

(C.V.SANKAR)  
MEMBER (A)

(DR.K.B.SURESH)  
MEMBER (J)

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**Annexures referred by the applicant in OA.No.170/00529/2018**

- Annexure-A1: Copy of the charge memo dtd.10.12.2015
- Annexure-A2: Copy of the written statement of defence dtd.7.1.2016
- Annexure-A3: Copy of the inquiry report dtd.6.7.2016
- Annexure-A4: Copy of the second show cause notice dtd.20.7.2016
- Annexure-A5: Copy of the representation dtd.4.8.2016
- Annexure-A6: Copy of the DA's order dtd.23.8.2017
- Annexure-A7: Copy of the memorandum of appeal dtd.26.8.2017
- Annexure-A8: Copy of the AA's order dtd.13.10.2017
- Annexure-A9: Copy of the revision petition dtd.6.11.2017
- Annexure-A10: Copy of the RA's order dtd.9.4.2018
- Annexure-A11: Copy of the report dtd.13.1.2012 relating to the death of Mumtaz Begum
- Annexure-A12: Copy of the judgment dtd.5.11.2014 in OS.683/2013
- Annexure-A13: Copy of the RSA order dtd.6.8.2015

- Annexure-A14: Copy of Sri.T.Subbarao's statement dtd.28.2.2013 regarding CGA claim of Sri.Mohammed Rafi
- Annexure-A15: Copy of the deposition of Sri T.Subbarao in OS.683/2013
- Annexure-A16: Copy of the T.Subbarao's deposition in the disciplinary proceedings
- Annexure-A17: Copy of the CAT BG order dtd.17.10.2017 in OA.961/2016
- Annexure-A18: Copy of the statement dtd.27.8.2012 of the applicant recorded before the Vigilance Branch
- Annexure-A19: Copy of the APO Hubballi division report of enquiry dtd.10.6.2014
- Annexure-A20: Copy of the report dtd.30.4.2015 from Senior DPO DRM's office Hubballi to Zonal Headquarters Hubballi

**Annexures with reply statement:**

-NIL-

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