

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/01828/2016

DATED THIS

8th THE

DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

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

A.Zakhir Hussain,
S/o Late Ameer Jan,
(Dy. CAO/C&P Chennai)
Residing at:
No.8/10, Subhramanya Bharathiya Street,
Naravaarikuppam,
Red Hills,
Chennai 600 052.

... Applicant

By Advocate Ms.N.Jayabharathi

Vs

1. The Union of India,
Rep by General Manager,
Southern Railway,
1st Floor, NGO Main Building,
Park Town,
Chennai 600 003.

2. The Chief Personal Officer,
Chennai Division, Southern Railway,
Chennai 600 003.

3. The Senior Divisional Personal Officer,
Chennai Division, Southern Railway,
Chennai 600 003.

..... Respondents.

By Advocate Mr. P. Srinivasan



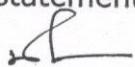
O R D E R

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

"...to direct the respondents especially the Union of India rep., by General Manager, Southern Railway, Park Town, Chennai-3 to grant appointment on compassionate grounds to the applicant vide first representation dated 25.04.2016 and the 2nd representation dated 26.09.2016 on the basis of the deceased father of the applicant viz., Ameer Jan who was working in the Railway Department..."

2. The brief facts of the case, according to the applicant, are that the applicant is the son of Late Ameer Jan who while working as Head Shroff in the Cash Office of the Revenue Section under Dy.CAO/C&P, Chennai retired on VRS in the year 2012 after serving the Railways for more than 31 years. He died on 20.7.2014. The applicant is a B.Sc graduate and the handicapped son of the deceased Railway employee. After death of his father, the applicant is the only bread winner of his family. The applicant's mother is receiving family pension. After death of his father, the applicant submitted representations dated 25.4.2016 and 26.09.2016 for appointment on compassionate grounds but there was no reply from the respondents. Hence he has filed this OA seeking the above relief.

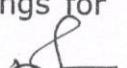
3. *Per contra*, the respondents have filed a detailed reply statement



stating that the object of the Scheme is to grant appointment on Compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical ground thereby leaving his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The deceased Railway employee did not go on voluntary retirement. While in service he was taken up on disciplinary proceedings and for misappropriation of Railway cash and imposed with the penalty of compulsory retirement w.e.f, 26.11.2012 vide order dated 7.10.2012. The learned counsel for the respondents would submit that the scope of compassionate appointment is to be restricted to the terms and conditions of the scheme itself and the same cannot be stretched by the Courts so as to provide appointment on compassionate grounds. As per the terms and conditions stipulated in the Scheme, the applicant is not entitled for appointment on compassionate grounds. Hence he prayed for dismissal of the OA.

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

5. The contention of the applicant that his father retired on voluntary retirement is not borne by any records. Instead, as per the records, while in service, he was proceeded against disciplinary proceedings for



misappropriation of Railway cash and was imposed with a penalty of compulsory retirement w.e.f. 26.11.2012 vide order dated 7.10.2012.

6. The categories of cases which are covered under the compassionate appointment scheme have been defined and confined.

These are as under:-

- (i) When Railway servants lose their lives in the course of duty or get so crippled that they cannot do any work;
- (ii) When Railway employees die in harness while in service, before retirement;
- (iii) When an employee's whereabouts are not known for a period of seven years and the settlement dues of the employees are or are not paid to the family on this account. This limit of seven years may be relaxed to three years on the merits of each case with the approval of the General Manager, subject to the condition that the services of the person appointed on compassionate grounds would be terminated in case the missing employee is traced subsequently;
- (iv) When Railway employees become crippled while in service or develop serious ailments like heart disease, cancer, etc, or otherwise medically decategorised for the job they are holding and the alternative job of the same emoluments can be offered to them.
- (v) Where on being medically decategorised, a Railway employee is offered alternative employment on the same emoluments, but chooses to retire and requests for compassionate appointment.

7. There is no provision in the establishment rules to extend the benefit of compassionate ground appointment to the wards of the



Railway employees who have been taken up under disciplinary proceedings and imposed with the penalty of compulsory retirement. There is also no provision under rules for nominating the wards of those imposed with compulsory retirement for appointment on compassionate grounds. The applicant did not fall under any of the categories for considering appointment on compassionate grounds. Compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme and no discretion as such is left with any authority to make compassionate appointment *de hors* the scheme.

8. Apart from the above, in the case of State Bank of India vs. Anju Jain (2008) 8 SCC 475, the Apex Court has held as under:-

"27. As observed earlier, the writ petitioner approached the High Court relying on the scheme for compassionate appointment of 1979 as amended with effect from 1-1-1998. It was submitted by her that her husband was an employee of the Bank, departmental proceedings were initiated and he was punished. It was, thereafter, not open to the appellant Bank to refuse appointment to her on compassionate ground as she could not be punished for misdeeds alleged to have been committed by her husband.

28. The submission weighed with the learned Single Judge who allowed the petition and observed:

"I have heard learned counsel for the parties at length and looked into the record of the case as well as the authorities cited by the learned counsel for the petitioner and I find that at the time when the petitioner applied for compassionate appointment on the death of her deceased husband, the earlier scheme was applicable to the petitioner's case and



the amended scheme came into force from May 2002. I am of the view that the inapplicable provisions of the clauses of the amended scheme could not be taken resort to by the respondents as a ground to deprive/scuttle the rightful benefits that accrued to the petitioner only due to some charges of misconduct of the deceased husband of the petitioner for which he had already been penalised. No past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate ground, as it is not a benefit provided to the deceased employee but for providing immediate succour to his dependants to survive. The decision of the respondents is impermissible in the eye of the law being in violation of the principles of natural justice.”

29. The Single Judge, hence, issued the following directions:

In the result, the petition succeeds and is allowed and the impugned orders dated 21-5-2001 and 16-7-2001 (Annexures 2 and 4 to the writ petition) are hereby quashed. Accordingly, the respondent Bank is directed to provide an appointment to the petitioner on compassionate ground on account of the death of her husband, in accordance with law and in terms of the earlier scheme, which was in force at that time within one month from the date a certified copy of this order is placed before the authority concerned, the respondent Bank. There will be no order as to costs.”

30. When the appeal was filed by State Bank against the order passed by the Single Judge, the Division Bench held that the learned Single Judge was right in issuing necessary directions and there was no infirmity. The Division Bench observed:

“From the record, it is evident that after the death of the said employee, the present appellants have also changed the scheme and introduced Clause (1) to appointment on compassionate ground. Past misconduct of an employee who dies in harness should also be taken into consideration while considering the application for compassionate employment of his dependant. However, the said amendment in the policy does not operate retrospectively and the learned Single Judge has rightly held that past act of misconduct of the said employee could not have been taken into consideration.”



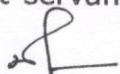
31. We are of the view that both the courts were wrong in granting relief to the writ petitioner. Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, the State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.

32. In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges levelled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to a dependant of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment.

33. Compassionate appointment is really a concession in favour of dependants of a deceased employee. If during his career, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependants cannot claim right to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of the principles of natural justice.

34. To us, the observation of the learned Single Judge that "no past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate ground" is not in consonance with law. Past conduct of an employee is undoubtedly an important consideration. We are also of the view that State Bank was right in rejecting the prayer of the wife of the deceased employee vide its letter dated 29-1-2001 observing therein that "unblemished service record is implicit".

9. Thus, in view of the absence of the specific provisions for grant of compassionate appointment to the ward of a Government servant who



have blemished records and who was compulsorily retired in the wake of a proved misconduct coupled with the dictum by the Apex Court in the case of Anju Jain (supra), the OA lacks merit and is dismissed. No costs.