

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00038/2019****Dated 11th, the day of October, 2019****PRESENT****Hon'ble Mr. T. Jacob , Member (A)**

Smt. J. Samanthi
W/o Late A.Jayaraman,
No. 3/12, Gandhimedu Street,
Kakallur Post, Tiruvallur Taluk,
Tiruvallur District- 602003.

....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 Mr.K.Vijayaraghavan

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 relief:

"I. To call for the records related to request dated 17.04.2018 made by the applicant, the service particulars of the applicant's father and the order No.M/P.353/CC/OA.1576/2017 dated 14.12.2017 and further to direct the first respondent to consider the request of the applicant for compassionate 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 Railway employee who died in harness on 29.12.2007 and as such sought for compassionate appointment to her destitute daughter which was not responded and hence the daughter preferred O.A No.1576 of 2017 which was disposed of at the admission stage by order dated 11.10.2017 directing the competent authority to consider and pass a speaking order on her representations dated 15.10.2015 and 31.10.2015 respectively. In pursuance of the said order of this Tribunal, the respondents have rejected the claim of the applicant vide order dated 14.12.2017 on the pretext of marital status, financial indigence, dependants and limitation. Later the Railway Board has issued instructions No.42/2018 dated 21.03.2018. Pursuant thereto, the applicant submitted a representation dated 17.04.2018 but there was no response. Hence, the applicant has filed this OA seeking the above reliefs inter- alia on the following grounds:-

- i. The action of the respondents in denying to adopt mandatory provisions enshrined for the purposes of making appointment on compassionate ground 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 provides for compassionate ground appointment to the dependants 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 non consideration of appointment on compassionate ground is inconsistent with Railway Board's letter No.E(NG) II/90/RC-I/117 dated 12.12.1990 and therefore unsustainable in law.
- iii. The non consideration of appointment on compassionate ground to the applicant is contrary to the mandatory scheme made under Rule 123 of the Indian Railways Establishment Code that is made under Proviso to Art.309 of the Indian Constitution.
- iv. In the wake of RBE.No.70/2014 dated 08.07.2014 which postulates for consideration of the dependant divorced/widowed daughters for appointment as in the case of married daughters and non considering the request on the pretext of marriage would tantamount to gender discrimination and hence non consideration of the claim for compassionate appointment is contrary to the said Railway Board letter and hence is non est in law.
- v. There is no justification in not considering applicant's married daughter who is staying with the widowed mother to look after her. In the instant case, marital status should not be a disqualification for giving appointment on compassionate ground. Further, no financial indigence appears to be a relevant factor in considering appointments under the compassionate appointment scheme of the Railway as per Master Circular No.16 and hence any denial on

the pretext of marriage/ financial indigence is impermissible in law.

vi. No discrimination shall be made in the case of compassionate appointment between the sons and daughters of the deceased Government servant and whilst the marriage is not a bar in the case of sons for compassionate appointment, the same cannot be a bar in the case of daughters of the deceased Government servants and the inaction of the first respondent in considering compassionate appointment to the applicant under any pretext is in violation of Articles 14,15 and 16 of the Constitution and thus unsustainable in law.

vii. In so far as the daughters are first class legal heirs of the deceased and they are duty bound to take care of the parents' requirements as commanded by the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. As such there shall not be any characteristic distinction among sons and daughters while extending the benefits of compassionate appointment and hence non consideration of the request made by the applicant is unreasonable and thus impermissible in law.

viii. In as much as the dependency & financial indigence has to be restricted to the claim for compassionate appointment by persons other than widow, sons, and daughters in terms of Railway Board's letter dated 03.02.1981, 28.07.2000, and 06.01.2009, the act of the respondents in rejecting the claim on availability of dependants & financial indigence is non est in law.

ix. In the wake of the facts that claims for compassionate appointment could be considered up to a period of 25 years after the death of the railway employee as per Railway Board letter dated 31.05.2011, any attempt to deny consideration of the claim is untenable in law.

3. The respondents have filed a detailed reply statement. It is stated therein that Shri. A. Jayaraman, Compound Gangman, died on 29.12.2007 due to natural cause leaving behind his wife Smt. J. Samanthi and a married daughter Smt J. Mary. After

his death, his wife Smt J. Samanthi requested for compassionate appointment in favour of her daughter Smt J. Mary stating that she has been deserted by her husband for 13 years and was living with them at the time of the death of the ex-employee. As such, she was dependant on the deceased employee. The matter has been investigated by the Railway thoroughly. During the investigation it was found that Smt. Mary had filed a suit for maintenance from her husband. But during the pendency of the case both the parties i.e., Smt Mary and her husband Shri. Jayaseelan agreed to live together. Therefore, the case for maintenance was closed before the Judicial Magistrate, Tiruvallur. In the course of investigation, it was also found that Shri S. Jayaleesan, husband of Smt. Mary is a Railway employee and is working as Welder in Loco Works/Perambur. He has declared Smt. Mary as his wife in the family declaration. Since Smt. Mary has agreed to live with her husband, who happens to be a Railway employee, she cannot be considered as dependant on her father late Jayaraman. Further, Smt Samanthi is in receipt of family pension and has also received settlement dues of nearly Rs.4 lakhs. She has no other dependant children to be taken care of. The applicant is also having an independent house to sustain herself and therefore, there is no financial hardship. The General Manager considered her case in the light of the factual details and came to a conclusion that she was not dependent on the deceased employee at the time of death and that there was no financial crisis available and rejected her request, which was communicated to her on 24.08.2009. The respondents would further submit that concealing the rejection in the year 2009, the applicant repeatedly represented to the General Manager and

subsequently, the applicant's daughter also obtained a divorce decree in the year 2011 on the ground of mutual consent and subsequently, the representation dated 31.10.2015 has been made. When there was no response from the respondents, the applicant filed OA.1576/2017 and this Tribunal by order dated 11.10.2017 directed the competent authority to pass a speaking order on her representations dated 15.10.2015 and 31.10.2015. In pursuance of the above directions of this Tribunal, the respondents vide speaking order No.M/P.353/CC/OA.1576/2017 dated 14.12.2017 rejected the representation mainly on the ground that the General Manager has considered the applicant's daughter's case in the year 2009 and subsequent events cannot be taken into consideration and also noticed that there was no dependency factor. Moreover the applicant has not challenged the rejection by the General Manager in the year 2009. Hence the respondents pray for the dismissal of the OA.

4. The respondents have also relied on the following judgements of the Hon'ble Supreme Court in support of their submissions:-

- i. Life Insurance Corporation of India Vs. Asha Ramachandra Ambekar and another [1994 SCC[L&S] 737].
- ii. The Director of Education (Secondary) and another Vs. Pushpendra Kumar and others(1998 SCC (L&S) 1302).
- iii. Umesh Kumar Nagpal Vs. State of Haryana [(1994) 4 SCC 138].
- iv. State of Himachal Pradesh & Anr. Vs Shashi Kumar Civil Appeal No. 988 of 2019(Arising out of SLP(C) No. 7079 of 2016).

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

6. Admittedly this is the second round of litigation before this Tribunal. The applicant's daughter Smt. Mary had earlier filed OA.1576/2017 before this Tribunal and in pursuance of the directions of this Tribunal the representations dated 15.10.2015 and 31.10.2015 were considered and rejected by the General Manager vide speaking order No.M/P.353/CC/OA 1576/2017 dated 14.12.2017 mainly on the ground that the representation of the applicant for appointment of her daughter for compassionate appointment had been rejected on 24.08.2009 as there was no dependency factor.

7. The whole object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little

emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate financial crisis due to loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. The object is not to give a member of such family a post much less a post held by the deceased. The case of the applicant's daughter was thoroughly considered by the General Manager in the year 2009. The case was rejected in the year 2009 and the divorce was obtained only in the year 2011. This divorce in the year 2011 cannot be the ground to reopen the closed case. Subsequent events cannot alter the position and the case cannot be reviewed due to subsequent developments like the obtaining of the divorce decree in the year 2011.

8. In the instant case, the employee died in the year 2007 and he had discharged his family obligations. According to the respondents, it is reported that the applicant's daughter was working in a company, the particulars of which the family was not willing to part with. At this distant date, in the year 2019, there is no justification for offering an appointment which was already rejected by the General Manager, who is the competent authority for considering the compassionate ground appointments in the case of married daughters. Further, the applicant has not challenged the rejection by the General Manager in the year 2009.

9. 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 on 24.08.2009 and again on a further representation, it was rejected on 01.07.2010. 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 15.10.2015 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 31.10.2015. 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.

10. When a cause of action had arisen in 29.12.2007 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 follows:-

"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."

11. 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.

12. 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.”

13. Telescoping the above decisions on the facts of the case it is clear that the parameters for grant of compassionate appointment are not fulfilled in the instant case and further the case was as early as in 2009 rejected by the administration against which no application has been filed.

14. 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. No costs.

(T. JACOB)
MEMBER (A)

-10-2019

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