

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/01169/2017****Dated the day of December, Two Thousand Nineteen****CORAM : HON'BLE MR. T. JACOB, Member (A)**

Smt. M. Tamilarasi,
W/o late A. Murugesan,
Ex-Track Maintainer/SSE/P.Way,
TP Section/SA Division/Southern Railway,
No. 19/18, 1C, Sarathy Complex,
First Cross Street, Pasuvai, Karur.Applicant

By Advocate M/s. Ratio Legis

Vs

1. Union of India rep by,
The General Manager,
Southern Railway,
Park Town, Chennai 3.
2. The Divisional Personnel Officer,
Salem Division, Southern Railway,
Salem.Respondents

By Advocate Mrs. Meera Gnanasekar

ORDER

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

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

"To call for the records related to impugned order in No. S/P.CON/CGA/27/2015 dated 24.02.2017 passed by the 2nd respondent and to quash the same and further to direct the respondents to do the necessary to appoint M. Sathya, a married daughter of the applicant on compassionate ground in terms of the mandatory provisions and to pass such other order/orders 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 A. Murugesan who died in harness on 05.03.2015. She had requested for compassionate appointment to her married daughter and after repeated requisition, the 2nd respondent has made the impugned order dated 24.02.2017 rejecting her claim contrary to the mandatory provisions made in the Master Circular No. 16. Hence this original application is preferred for necessary intervention and justice 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 cannons 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-1/117 dated 12.12.1990 provides for

compassionate ground appointment 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 dated 24.02.2017 rejecting the claim for compassionate ground appointment is inconsistent with Railway Board's letter No.E (NG) II/90/RC-1/117 dated 12.12.1990 and therefor, 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 dated 24.02.2017 rejecting the claim for compassionate ground appointment is unsustainable in law and therefore liable to be set aside.

iv. In the wake of 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 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 the personal approval of the General Manager, the impugned order dated 24.02.2017 rejecting the claim for compassionate ground appointment to the married daughter of the applicant is untenable in law and therefore, liable to be set at naught.

v. In as much as the 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, the impugned order dated 24.02.2017 rejecting the claim for compassionate ground appointment to the married daughter of the applicant is unsustainable in law.

vi. 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 case of death in harness, the impugned non-consideration of the request for appointment on compassionate ground to the son/daughter of the applicant 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.

vii. 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 case of death in harness, the impugned order dated 24.02.2017 rejecting the claim for compassionate ground appointment to the married daughter of the applicant on the pretext of receiving bountiful settlement dues and family pension that is susceptible and therefore liable to be set aside.

viii. In as much as the scheme enshrined by the Railway Board does not postulate for the presence of multiples of surviving family members to be looked after by the compassionate ground appointees, the impugned order dated 24.02.2017 rejecting the claim for compassionate ground appointment to the married daughter of the applicant is illegal;

ix. In as much as the Master Circular 16 specifically provides for the compassionate appointment to be made by the General Manager, the impugned order dated 24.02.2017 rejecting the claim for compassionate ground appointment to the married daughter of the applicant by the 2nd respondent is an ultra virus act which is impermissible in law.

3. The respondents have filed reply in which it is stated that the applicant had submitted an application for compassionate ground appointment to her third

married daughter viz. Smt. M. Sathya on 12.06.2015. Her daughter got married on 29.04.2007 i.e., 9 years before the death of the Railway employee and the applicant has received settlement dues and also sanctioned family pension. Now as per 7th Pay Commission recommendations, family pension is revised to Rs.17,193/- Dearness Relief Rs.860/- with effect from 01.01.2016. An enquiry by Staff and Welfare Inspector was conducted during the month of June 2015 and based on the enquiry report, the dire necessity to offer compassionate ground appointment was not established and the representation of the applicant was rejected by the 2nd respondent vide letter No. SA/P CON/CGA/27/2015 dated 09.07.2015. On further representation by the applicant, once again an enquiry was conducted by the Assistant Personnel Officer to ascertain the dependency factor and financial conditions of the ex-employee's family and the married daughter of the applicant Smt. M. Sathya. As per the enquiry report dated 22.11.2017, all the children were married at the time of death of the employee including the applicant's 3rd daughter. There were no younger sons and daughter of the employee to be brought up and the dependency of the married daughter were also not established. The applicant's daughter Smt. Sathya was married to Shri. Rajendran on 29.04.2007 about 9 years before the death of the employee. Out of the legal wedlock, male child was born on 02.04.2008. The married daughter Smt. Sathya has filed HMOP 152/2016 on 18.07.2016 before the Court of the Additional Subordinate Judge, Karur for divorce and the Court ordered for dissolving the marriage ex parte for non-appearance of the

respondent Navulraj alias Rajendran. Smt. Sathya is residing at Door No.19/18, IC Sarathy Complex, Ist Cross, West Street, Pasupathypalayam, Karur. During the enquiry conducted in November 2017 with her neighbour Smt. Durgadevi a resident of Door No.94 in the same building it came to light that Smt. Sathya is residing in the present address with her husband and her son for the past two years. Further an enquiry was also conducted at Vivekananda Matriculation Higher Secondary School, Karur where her son Master Kabilan is studying. In the hand book supplied to Master Kabilan, son of Smt. Sathya & Shri. Rajendran, it is seen that Shri. Rajendran had affixed his signature in the handbook of his son at regular intervals viz. 17.08.2017, 21.08.2017, 22.08.2017, 30.08.2017, 31.08.2017 and 06.10.2017. From the above, it is evident that Shri. Rajendran is residing with his wife Smt. Sathya and his son Master Kabilan. The applicant Smt. Tamilarasi is residing at Door No.502/2, South Street, S. Vellallapatti, Sanapratty, Karur for the past six months. Earlier she was resident at Door No. 86/2, South Street S. Vellallapatti, Sanapratty, Karur. It is established through enquiry with Smt. Ammayakka a neighbour of the applicant Smt. M. Tamilarasi and with the documentary proof of supply of LPG cylinder delivered to the applicant in the month of November 2017. The respondent would further submit that during the enquiry, it is established that the applicant's daughter Sathya is residing with her husband Shri.Rajendran even after legal divorce from the Hon'ble Court. The applicant Smt. M.Tamilarasi is residing seperately without depending on her daughter's assistance. It is

submitted that they have given false declaration and misleading statement to the Railway administration for getting appointment on compassionate ground. Hence, the respondent pray for the dismissal of OA.

4. The respondent relied on the following decisions of the Hon'ble Apex Court in support of their submissions:

- i. Umesh Kumar Nagpal Vs State of Haryana (1994) 4 SCC 138;
- ii. Jagdish Prasad Vs State of Bihar (1996) 1 SCC 301
- iii. S.Mohan Vs Government of T.N (1998) 9 SCC 485

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

6. The short point for consideration in this OA is whether the third daughter of the applicant Smt M. Sathya is entitled for grant of compassionate ground appointment.

7. Undisputedly, the applicant's husband A.Murugesan died in harness on 05.03.2015 while working as Track Maintainer in the Office of the Senior Section Engineer /Permanent Way/ Tiruchirappalli Fort Section in Salem Division of the Southern Railway. The applicant submitted a representation dated 31.01.2017 to consider appointment of her married third daughter on compassionate ground. The applicant has three daughters and all the daughters got married even before the death of the Government employee. After their marriage, the Government employee had declared self and wife alone in the family composition before his death during the year 2014. After his death, the

applicant was disbursed with the following settlement dues:-

(1) Death-cum-Retirement Gratuity	Rs. 8,54,970/-
(2) Group Insurance Scheme	Rs. 56,387/-
(3) Social Security Scheme	Rs. 60,000/-
(4) Provident Fund	Rs. 12,498/-

The applicant was sanctioned with family pension of Rs.6690/- and 113% Dearness Relief per month w.e.f. 06.03.2015. As per the 7th CPC recommendation, the family pension was revised to Rs.,17,193/- per month plus Dearness Relief of Rs.860/- w.e.f. 01.01.2016.

8. It is not that without due enquiry the case of the applicant was turned down. Two enquiries were conducted and during the enquiry the fact of the applicant leading her life independent of her third married daughter who though got a legal divorce from her husband has been living with her husband, as confirmed by the neighbours. The extent of terminal benefits already disbursed, coupled with the monthly family pension confirms that there is no financial crisis in the family of the deceased, nor is there any dependency factor there being no minor son/daughters to be married, and hence the contention of the applicant that the General Manager can consider employment of a married daughter if he is satisfied that the married daughter will be the bread winner of the family of the deceased Railway employee, cannot be accepted.

9. The 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 crisis due to the 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.

10. As per extant rules, it is reiterated that at the time of considering such requests for compassionate appointments, the competent authority should satisfy himself / herself on the basis of a balanced 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 of whether the earning member is residing with the family of the deceased employee and whether he provides any support to other member of the family. Other provisions contained in Board's letter No. E(NG)-II/98/RC-1/64 dated 28.07.2000 has to be followed. This Tribunal is satisfied that the financial condition of the applicant and the family of the deceased, obviously is not that bad to justify compassionate appointment. The reasoning afforded by the respondents in rejection of the application for compassionate appointment stands to reason and as such there is no arbitrariness.

11. 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.”

12. Inasmuch 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 indigent condition and the applicant is in receipt of the family pension, she 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 on compassionate ground of the third daughter.

13. In the conspectus of the above facts and circumstances of the case and in view of the Judgement of the Hon'ble Supreme Court referred to supra, I do not find any merit in the claim of the applicant for grant of the relief as prayed for by her in this OA.

14. In the result, the OA is liable to be dismissed and is accordingly dismissed as devoid of merit, however with no order as to costs.

(T. Jacob)
Member (A)
.12.2019

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