

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00952/2017****Dated the day of December, 2019****PRESENT****Hon'ble Mr. T. Jacob , Member (A)**

Smt. P. Margaret,
W/o late A.Philomin Raj,
Plot No. 43, F1, Bright Corner,
1st Avenue, Pasumpon Nagar,
Kallikuppam, Ambattur,
Chennai – 600 053.

....Applicant

By Advocate M/s Ratio Legis

Vs

1. Union of India,
The General Manager,
Integral Coach Factory,
Chennai – 600 036.

...Respondent

(By Advocate Mr. P.Srinivasan)

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:

"....to call for the records related to impugned orders in No.PB/CON/128/828377 dated 03.08.2016 made by the respondent and to quash the same and further to direct the respondents to do the necessary to consider applicant's son for compassionate ground appointment 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. Philomin Raj who died in harness on 12.2.2014. She had requested for compassionate appointment to her son. Since the respondent did not consider her request, an Original Application No.310/00880/2015 was preferred in which a direction was made at the admission stage itself whereas the respondent reiterated the old reasons and once again rejected the claim for compassionate appointment in terms of the impugned order dated 03.08.2016 ignoring the principles postulated in the scheme. Aggrieved by the above, the applicant has filed this OA seeking the above relief, 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 appointments is arbitrary and an act coupled with colourable exercise of authority and against all canons of law which is untenable.

ii. The impugned orders rejecting compassionate ground appointments is in gross violation of Railway Board's letter No.E(NG)/III/78/RC-1/1 dated 07.04.1983. When offering appointment on compassionate ground to a widow, son, daughter, etc. it need not be checked whether another son, daughter etc. is already working, but in no case should there be more than one appointment against one death/medical incapacitation and therefore the impugned order dated 03.08.2016 is liable to be set aside.

iii. In as much as Master Circular No.16 which is a compendium on appointment on compassionate ground 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 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, de-categorized, the impugned order dated 03.08.2016 rejecting the claim of the applicant for compassionate ground appointment to her son is inconsistent with Railway Board's letter No.E (NG) II/90/RC-1/117 dated 12.12.1990 and therefore, liable to be quashed.

iv. In so far as the scheme does not enunciate for availability of surviving family members other than the person considered for compassionate ground appointment; the impugned order dated 03.08.2016 rejecting the request for compassionate ground appointment for want of non availability of more surviving family members is contrary to the principles of Good conscience, Equity, and Fairness and therefore unsustainable in law.

v. The disagreement by the respondent in offering compassionate appointment to the applicant's son stating that the applicant was not having no other family member to be looked after is unfounded since the applicant has to be taken care in her old age and her son has a duty to take care of herself and therefore, the impugned order dated 03.08.2016 is nothing but an attempt to deny decent and dignified living which is in gross violation of

Art.21 of the Indian Constitution and hence the impugned order is liable to be quashed.

vi. In the wake of the Railway Board's letter No. E(NG) II/87/RC-I/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 justifying relaxation of time limit as also criteria, 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, impugned order rejecting compassionate ground appointment is untenable in law.

vii. In the absence of any stipulation that restrains consideration of appointment on compassionate ground with reference to the pecuniary receipts by way of settlements, the impugned order dated 03.08.2016 in rejecting compassionate ground appointment on recapitulating the settlement dues received by the applicant is contrary to the legal principle and therefore liable to be nullified.

3. The respondents have filed a detailed reply statement wherein it is stated that Shri. A. Philominraj who was working as Technician Gr.-I died in harness on 12.02.2014. Thereafter the applicant made a request dated 07.03.2014 seeking appointment on compassionate ground in favour of her married son Shri. P. Robert Fernandaz. After examining the case in detail, the request was rejected on the ground that Shri.P. Robert Fernandaz is a married son, gainfully employed and there are no other wards to be looked after and these conditions are well defined under the extant instructions thus warranting rejection of the claim. The same was communicated to

the applicant vide letter dated 19.03.2014. The applicant and her married son have submitted further representation dated 25.08.2014 addressed to the General Manager and to the Chief Personnel officer for appointment on compassionate ground and it was rejected vide letter dated 05/06.09.2014 as there were no new facts brought out to merit a reconsideration. Subsequently, the applicant submitted another representation dated 12.01.2015 to the Chief Personnel Officer requesting for appointment on compassionate ground and the same was also rejected by order dated 04.02.2015. The applicant represented to the Railway Board vide representation dated 14.10.2014, seeking appointment to her married son which was forwarded to the Administration. The said representation was also examined in detail and a reply dated 17.03.2015 was given to the applicant which elucidated the reasons for rejecting the the claim of the applicant for compassionate ground appointment. Aggrieved by the above order, the applicant and her son filed O.A.No.310/00880/2015 before this Tribunal praying to call for the records relating to the impugned orders dated 05/06.09.2014, 04.02.2015 and 07.03.2015 made by the 2nd Respondent and to quash the same and further to direct the respondents to consider the 2nd applicant for compassionate appointment in terms of the mandatory provisions. This Tribunal in its order dated 08.04.2016 directed the respondent authority to reconsider the candidature of the second applicant for compassionate appointment based on objectivity and also the scheme. In pursuance thereto, the respondents have passed an impugned order rejecting the request of the applicant for appointment of her son on compassionate ground on the ground that all settlement benefits including family

pension was sanctioned to the applicant and her son is gainfully employed, married and settled and there is no other ward to be looked after. Hence, there is no justification for considering her son for compassionate appointment. The respondents pray for dismissal of the OA.

4. The respondents have relied on the decision of the Hon'ble Supreme Court in the case of General Manager, State Bank of India & others Vs Anju Jain (Civil Appeal No. 5224 of 2008) in support of their submission.

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

6. Admittedly, this is the second round of litigation before this Tribunal. The applicant had earlier filed OA.880/2015 before this Tribunal seeking the above relief wherein this Tribunal vide order dated 8.4.2016 disposed of the said OA to reconsider the candidature of the applicant for compassionate appointment based on objectivity and also the scheme. In pursuance thereto, the respondents have considered the issue but however, rejected the claim of the applicant for appointment of her son on compassionate ground.

7. The scheme for appointment on compassionate ground is with the intention of providing immediate relief to the family of an employee, who unexpectedly passes away. Compassionate ground appointment is not automatic and is to be extended in deserving cases, based on the financial condition of the family and relevant rules issued by the Ministry of Railways from time to time.

8. As per the family composition furnished, the following are the dependents of the late employee:

Sl No.	Name Shri/Smt	Relationship
1	P.Margaret	Wife
2	P. Robert Fernandez	Son

9. The details of the settlement benefits disbursed to the wife of the deceased employee are as follows:

DCRG : Rs. 8,43,553/-

Enhanced family Pension :Rs.7,525/- + relief from 13.2.2014 to 12.2.2024

Ordinary Family Pension : Rs.4,515/- + relief from 13.2.2024

Group Insurance : Rs.59,430/-

Leave Salary : Rs. 2,85,950/-

(Relief as on 01.01.2016 i.e. 125%)

10. As per the Railway Board's letter dated 03.08.1999, there is nothing in the rules which prohibits a married son being considered for compassionate ground appointment, if he is otherwise eligible. On the other hand, if there are no other wards to be looked after, then there would be no justification for considering for Compassionate ground appointment. This is an enabling clause for extending the benefit of Compassionate Ground appointment even for a married son in absolutely deserving cases, so that immediate relief is provided to the family of the deceased employee.

11. In the present case, all settlement benefits including family pension was sanctioned, her son is gainfully employed, married and is settled and there is no other

ward to be looked after. Hence, there is no justification for considering the applicant's son for compassionate ground appointment.

12. The Hon'ble Supreme Court in a similar issue in the case of General Manager, State Bank of India & others -Vs- Anju Jain (Civil Appeal No. 5224 of 2008) has held as follows:-

"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, 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 dependents of 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 sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment".

13. Further, in the case of Steel Authority Of India -vs- Madhusudhan Das and others, the Hon'ble Apex Court has held that "this Court in large number of decisions has held that appointment on compassionate ground cannot be claimed as a matter of right".

14. The Hon'ble Court has also held that "appointment on compassionate ground offered to the dependent of the deceased employee is an exception to the said rule. It is a concession, not a right".

15. As regards the competent authority, the Railway Board circulars clarify as under:-

Authority competent to make appointments on compassionate grounds:

The power to make compassionate appointments is vested in the General Manager. The General Manager may, however, re-delegate this power to the Divisional Railway Manager and also to Heads of Extra Divisional Units, who are in Level-1 subject to such control, as he may like to impose on the exercise of power by those authorities.

[No. E (NG) II/78/RC-1/1 dated 07.04.1983]

In the cases of appointments of Group 'C' posts, the powers may be exercised by the Chief Personnel Officer in consultation with the Heads of Departments concerned. In the cases of Group 'D' posts the powers to make such appointments should be delegated to the Divisional Railway Managers.

[No. E (NG) III/78/RC-1/1 dated 30.04.1979]

16. Thus, under the delegated powers, the CPO has full competence to consider applications for compassionate appointment in consultation with the Heads of Departments concerned. On perusal of the records, it could be seen that in pursuance of the Tribunal's directions all the relevant papers were placed before the General Manager for reconsideration of the candidature of the applicant and the same was rejected by the competent authority on the following grounds:-

- (a) The applicant's father died in advance of his normal superannuation and as per rules, the family was entitled to death gratuity, which incidentally is more than the normal retirement gratuity.
- (b) The applicant's son is gainfully employed. There is no other ward to be looked after.

The orders of the competent authority was communicated to the applicant and as such there is no procedural irregularity in consideration of the claim of the applicant.

17. As laid down by the Hon'ble Supreme Court in the case of State Bank of India & Anr. v. Raj Kumar, reported in 2011 (1) SCC (L&S) 150, the fact remains that :

"the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family.

.....

Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable."

18. 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 dependants, 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.

19. It has been held in the case of Kumari Shrilekha Vidyarthi and others vs State of U.P and others “Every state action must be informed by reason and it follows that an act uninformed by reason, is arbitrary.” Thus, the ground of arbitrariness also fails.

20. The Hon'ble Supreme Court in 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.”

21. 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's mother herein is in receipt of family pension, the applicant is not entitled for any relief from the respondents. The terminal benefits are also sizeable. There is also no procedural

infirmity in the order rejecting the request of the applicant for appointment on compassionate ground.

22. In the conspectus of the above facts and circumstances of the case and in view of the Judgements 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.

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

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(T.JACOB)
MEMBER(A)
-12-2019