

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRS BENCH

DATED THIS THE 26th DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

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

OA/310/00238/2017

Smt. Ragamma
No. 22, 4th Street
ABM Church, Palanipet
Arakkonam, Vellore Dist.

...Applicant

-versus-

1. Union of India rep by
The General Manager
Southern Railway
Park Town, Chennai 600 003

2. The Senior Divisional Personnel Officer
Chennai Division, Southern Railway
Park Town, Chennai - 600 003.

...Respondents

By Advocates:

M/s Ratio Legis, for the applicant.

Ms. R. Sathyabama , for the respondents.



ORDER

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

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

"To call for the records related to the impugned order No.M/PB/C3/220r.D dated 29.04.2005 and to quash the same and consequently direct the respondents to appoint the applicant's son on compassionate grounds and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

2. The applicant is the widow of Late B. Masthan who died on 26.12.2003 and settlement dues were extended to the applicant. It is stated that due to her illness, she did not submit any application for appointment but sought appointment to her son on compassionate grounds in 2004 but the said request was rejected vide impugned order dated 29.04.2005 on the ground that her son did not possess necessary educational qualification. According to the applicant, the rejection was not in terms of the mandatory instructions. The applicant's son subsequently qualified in 8th std but after that the respondents did not reply. The applicant obtained information under the RTI Act on 29.04.2016 that the educational qualification possessed by her son at the time of applying for the job is only taken into account as per the existing orders. Hence this OA seeking the above reliefs.

3. The grounds on which the applicant has based her prayer for relief are as follows:-

(a) Denial of appointment on compassionate grounds on the pretext of deficient qualification is arbitrary to the statutory provisions;



(b) Master Circular No.16 on compassionate grounds issued under Board's letter No.E(NG)II/90/RC1/117 dated 12.12.1990 provides for compassionate ground appointments to the wards 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 delay in considering the requisition by the applicant for compassionate ground appointment is inconsistent with Railway Board's letter dated 12.12.1990 and therefore, the impugned order is liable to be quashed.

(c) The act of the respondents in rejecting the request on the pretext that her son did not possess necessary academic qualification is contrary to the mandatory provision postulated in Para VI (b) of the Railway Board's letter dated 12.12.1990.

(d) The impugned order of rejection of the claim for appointment on compassionate grounds even after acquiring the prescribed educational qualification is contrary to the statutory instructions made in Railway Board's letter dated 22.2.1989.

4. Per contra, the respondents in their reply statement have stated that the applicant's husband was working as Safaiwala Grade II and after his death on 26.12.2003, the applicant was paid all the settlement benefits and the family pension was also granted to her. She submitted a representation dated 29.06.2004 requesting the respondents to consider her eldest son M Srinivasan for appointment on compassionate ground. She had declared that his son had studied upto 6th std. Thereafter vide letter dated 11.7.2004 she had stated that her son had passed 6th std and sought for further time to join a private



institution for appearing in 8th std and producing the certificate. As on 9.3.2005, the applicant's son had not finished the ESLC examination. The applicant was informed vide letter dated 29.4.2005 that since the applicant was not in possession of the minimum qualification of 8th std on the date of death of his father ie., on 26.12.2003, the request for compassionate appointment was rejected. The applicant has not challenged the order dated 29.4.2005 and after a lapse of more than 13 years from the date of death of the Railway employee submitted representations dated 8.8.2016 and 14.4.2016 which was rejected. The applicant's son after completing 8th std in 2010 requested for appointment on compassionate ground. As per Railway Board's letter dated 15.6.2017 the applicant's son should possess the required educational qualification at the time of submission of application for compassionate ground appointment. Since the applicant's son did not possess the required educational qualification at the time of applying for appointment, the request of the applicant was rejected. Hence the respondents pray for dismissal of the OA.

5. The respondents have relied upon the following Judgements in support of their case:-

- (1) Director of Education (Secondary) & Anr. vs. Pushpendra Kumar & Ors., (1998 SCC (L&S) 1302;
- (2) Umesh Kumar Nagpal vs. State of Haryana (1994) 4 SCC 138
- (3) Union Bank of India & Ors., vs. M.T. Latheesh (2006 (7) SCC 350)

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



7. The short point for consideration in this OA is whether the applicant's son possessed the required educational qualification on the date of submission of application as prescribed in the Railway Board's letter dated 15.6.2007 for appointment on compassionate ground.

8. The Railway Board's letter No.E(NG)/II/2003/RC-1/Genl./IV dated 15.6.2007 reads as follows:-

"R.B.E.No.88/2007

Subject: Appointment on compassionate grounds – Acquisition of higher qualification.


(i) If a candidate is major at the time of death/medical invalidation of the ex-employee and is already admitted to a course then he/she shall be allowed to complete that course provided he/she takes due permission of the Railway Administration. His/Her candidature for appointment would be considered according to the qualification so acquired.

(ii)

(iii)

2. The matter has been re-considered and in supersession of all the instructions on the above subject (except Board's letter E(NG)II/98/RC-1/139, dated 4.3.1999 (35, 1999 p.31 Bahri's 35/1999, p.31) and No.E(NG)-II/00/RC-1/Genl.8/JCM-DC dated 29.7.1999) (Bahri's 177/1999 p/175) it has now been decided by the Board that the educational qualification possessed by the ward/spouse of the ex-employee at the time of submission of application for compassionate ground appointment may be considered. However, the qualification for compassionate ground appointment should be submitted within the prescribed period as laid down in extant instructions."

9. Admittedly the applicant's son was a major at the time of submission of application for appointment on compassionate ground and did not possess the required educational qualification of 8th std pass at the relevant time. 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 sole bread



winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the parameters of the scheme.

10. In fact, the cause of action for the applicant's son arose only with effect from the date he acquired the qualification of 8th std. The claim of the applicant's son for appointment on compassionate ground was rejected by the respondents vide order dated 29.4.2005. As on the date of death of the Railway employee on 26.12.2003, the applicant's son was only in possession of 6th std certificate. As on 9.3.2005 ie., on the date of submission of application, the applicant's son had not finished the ESLC examination. As per Railway Board's letter dated 2.4.2004, time can be granted to complete the course only if the applicant is admitted to a course and taken due permission from the Railway Administration for completing the course. But if the applicant is not pursuing any course, at the time of death/medical invalidation, then appointment on compassionate ground would be considered in the light of the qualification the applicant possessed at the time of attaining majority. In the instant case, the applicant's son was not pursuing any course on the date of death of the Railway employee. The Railway Board vide its letter No.E9NG)-II/98/RR-1/107 dated 4.12.1998 has laid down that minimum educational qualification for recruitment to Group 'D' post is Class 8 pass in respect of any category or trade or department. Hence the request of the applicant for appointment on compassionate ground was rejected vide order dated



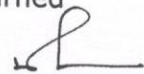
29.4.2005 in view of his not possessing the minimum educational qualification. The applicant has not challenged the order dated 29.4.2005. After completing his 8th std in 2010, he submitted representations dated 14.4.2016, 8.8.2016 after lapse of more than 13 years from the date of death of the deceased Railway employee seeking appointment on compassionate ground.

11. In Union of India (UOI) and Others Vs. Bhagwan Singh, reported in 1995(6) SCC 476, a Senior Clerk in Railways died on September 12, 1972, leaving behind his wife, two major sons and the respondent (before the Hon'ble Supreme Court), who was a minor, aged about 12 years. He passed Higher Secondary Examination in 1983. Stating that he had attained majority only in 1980/1981, he sought appointment on compassionate grounds. The same was rejected. The authorities took the view that the application was beyond the period of limitation (five years) and that the case of the respondent was not covered by the relevant rules, at the time of the demise of Ram Singh. Besides, there were two other major sons of the deceased, who did not seek for employment and that the family was not in financial distress. The Central Administrative Tribunal, held that the order of rejection as unjustified and directed Union of India to reconsider the case of the respondent therein, if he was otherwise qualified. Testing the correctness of the order of the Central Administrative Tribunal and taking note of the object behind the grant of special concession of employment assistance on compassionate grounds to provide immediate financial assistance to the family of a Government Servant who dies in harness, the Hon'ble Supreme Court, at paragraph No.8, held as follows:



"8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on September 12, 1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated February 22, 1993. The appeal is allowed."

12. The Hon'ble Supreme Court in the case of Local Administration Department v. M.Selvanayagam reported in 2011 AIR SCW 2198 had dealt with similar issue wherein an application was made by the son of the deceased after 7 years, from the date of death of his father, who died as a Watchman in Karaikal Municipality on 22.11.1988, leaving behind, his wife and two sons, including the respondent therein. At the time of his death, the respondent therein was aged 11 years. After about 5 years from the date of his father's death, the respondent therein passed S.S.L.C. examination in April, 1993. Thereafter, for the first time on July, 29, 1993, the respondent's mother therein made an application for his appointment on compassionate grounds. No action was taken on the application, since the respondent therein was still a minor. A learned Single Judge directed the authorities to consider his claim for appointment on compassionate grounds afresh and to pass an order on his application within four months from the date of passing of the order. As the same was not complied with, a contempt proceeding was initiated. The Municipality rejected the respondent's claim therein, for compassionate appointment. Once again, a writ petition was filed and this time, a learned

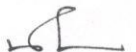


Single Judge rejected the same. The Hon'ble Division Bench, which considered the correctness of the said order, allowed the writ appeal and that the same was challenged before the Hon'ble Apex Court. After considering the scheme of employment assistance on compassionate grounds, at Paragraphs 7 to 9, the Hon'ble Apex Court, held as follows:

"7. We think that the explanation given for the wife of the deceased not asking for employment is an after-thought and completely unacceptable. A person suffering from anemia and low blood pressure will always greatly prefer the security and certainty of a regular job in the municipality which would be far more lucrative and far less taxing than doing menial work from house to house in an unorganized way. But, apart from this, there is a far more basic flaw in the view taken by the Division Bench in that it is completely divorced from the object and purpose of the scheme of compassionate appointments. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succor to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

8. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc., normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

9. In this case, the Respondent was only 11 years at the time of the death of his father. The first application for his appointment was made on July 2, 1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months on



his father's death. In such a case, the appointment cannot be said to sub-serve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service. In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments."

13. 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 6.10.2017 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."

14. In view of the discussions made above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court of India and the Hon'ble High Court of Madras, this Tribunal is of the opinion that the scope of compassionate appointment is to be restricted to the terms and conditions of scheme itself and the same cannot be stretched by this Tribunal, so as to provide appointment on compassionate ground. That apart, the delay is also a vital factor. The scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court of India in respect of the scheme, the grounds raised in this OA deserve no further consideration.



15. Accordingly the OA stands dismissed. However, there shall be no order as to costs.