

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

**MA/310/00539/2019 & MA/310/00540/2019 & MA/310/00541/2019 &
MA/310/00542/2019 in & O.A.No. 310/01832/2017**

Dated , the day of November, 2019

PRESENT

Hon'ble Mr. T. Jacob, Administrative Member

S.Kaliammal
W/o. M.Chockalingam,
Mel Nariappanur (PO)
Colony East Street,
Chinna Salem Taluk,
Villupuram District.
...Applicant/R1 in all MAs

By Advocate M/s L.Chandrakumar

Vs

1. Union of India,
Rep by its General Manager,
Southern Railway,
Park Town, Chennai – 600 003.

2. The Divisional Personnel Officer
Personnel Branch, Southern Railway,
Tiruchirappallli. R1 & 2 in the OA and R.2 &
3 in all MAs.

3. Mr.Kaliyan
S.o Late M.Chockalingam,
Ambedkar Street,
Aragalur Village & Post,
Attur Taluk, Salem District.R.3 in the OA and Applicant in all
the MAs

By Advocate Mr. D.Hariprasad (R1&2)
Mr. S.Govindaprasad (R3)

ORDER**(Pronounced by H'ble Mr. T. Jacob, Administrative Member)**

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 on the file of the 2nd respondent in Proceedings No. T/PC-85/4284 dated 06.03.2017, to quash the same and to consequently direct the official respondents 1st and 2nd to consider the claim of the applicant's Mr. Kumar for appointment to any eligible post on compassionate ground forthwith thereto, and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.”

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant is the second wife of Late Chockalingam. The applicant's husband was appointed in the Railway Department as Senior Gang Man on 31-05-1987 and died on 31-12-2000 while he was on duty. He married Pappa as his First Wife and out of the wedlock, they had two children named Prema and Kaliyan. The First Wife Pappa died in the year 1970 due to illness and subsequent to this, he married the applicant in the year 1971 as his second wife. Out of the wedlock they got three children namely Gunasundari, Kumar and Regina and Regina died in the year 1993. After his death there came up a dispute between his legal heirs as to who should apply for appointment on compassionate grounds and hence the applicant filed a Suit in O.S.No.143/05 before the District Civil Court, Attur praying to consider the appointment to her son Kumar on compassionate grounds but her Suit was dismissed on 24-03-2011. Then she filed an appeal which was also dismissed on 28-03-2013 with the observation that 5th respondent Kaliyan and the applicant's son Kumar are

entitled to get a job from the Railway Department on compassionate grounds as the legal heirs of the deceased Chokalingam and the Railway Department alone has the right either to select or to reject them. Based on the above decree and judgement the applicant submitted two representations dated 13-05-2013 and 04-12-2013 to the respondents requesting to appoint her son Kumar who is now possessing M.A Degree to any suitable post according to his qualification on compassionate grounds since her family has been suffering a lot due to financial crisis from the date of her husband's death. She also filed OA before this Tribunal to direct the respondent to appoint her son in the Railway Department according to his educational qualification on compassionate grounds and this Tribunal directed the respondent to consider the applicant's prayer for compassionate appointment on merits as per rules. However the second respondent rejected the request of the applicant for compassionate appointment to her son and hence the applicant is before this Tribunal challenging the impugned order dated 06-03-2017 issued by the second respondent inter alia on the following grounds:-

- i. The impugned order 06.03.2017 is against all cannons of law, violative of settled principles and therefore, liable to be quashed.
- ii. Before passing the impugned order, the respondents failed to take into account the directives and that of the statutory guidelines issued in Master Circular No. 16 dated 12.12.90 and RBE No.77/2011 dated 31.05.2011, wherein it has been directed that educational qualification shall be the prime criteria for consideration. Failure to consider the above in its proper

perspective has resulted in the impugned order suffering for want of application of mind.

iii. The directives issued in RBE No.70/2014 dated 08.07.2014 has also been omitted to be taken into account wherein it has been directed as to how the same was weighed with the respondent railways in regard to compassionate ground appointment.

iv. The official respondent before passing the impugned order had failed to take into account the antecedents of the 3rd respondent and further knowing very well that the 3rd respondent's claim does not merit consideration due to various adverse past records, had not chosen to stake his claim because of the direction of the District Civil Court, Attur to consider the claim of all eligible legal heirs of the deceased. It is reliably understood that a belated application has been submitted as an afterthought and only with a view to deny and deprive the claim of the applicant's son that such an approach has been made. It is without reference to various factors which are to be considered before the claim falls for examination the respondent railway has chosen to arbitrarily exercise the power and therefore, the same is liable to be set aside.

v. In any event the claim of the applicant's son who is better qualified and also taking care of the family which is under the indigent circumstances has been inappropriately considered, thereby leading to issuance of the impugned order on extraneous consideration coupled with inbuilt malafides and therefore, the same is malice in law.

vi. When the direction of this Tribunal is to consider the claim on merits as per Rules the impugned order suffers for want of application of mind since the claim has not been considered in accordance with Rules there seems to be no application of Rules as required and therefore the same is liable to be set aside.

3. The respondents have filed a detailed reply statement in which they have stated that this Tribunal by order 18-04-2016 in OAs.1171/2014 and 1173/2014 has directed the official respondents to consider the applicant's representation for the release of retiral benefits in favour of the Legal Heirs of the deceased and the respondent department shall consider the prayer of the person concerned for giving compassionate appointment on merits as per rules. Accordingly the settlement benefits are under process as per the direction of the Court/ Attur by order in A.S.05/2011. But in this case, the applicant being the widow (aged 58 years) has not applied for compassionate ground appointment and requested for appointment of her son Shri. Kumar. But the 3rd respondent also applied for compassionate ground appointment being the elder son of the first wife of the deceased employee. The 3rd respondent (Shri. C. Kaliyan) is elder than the applicant's son (Shri. C. Kumar). The applicant is eligible for the receipt of family pension every month. But the 3rd respondent, the elder unmarried son of late M. Chokkalingam, aged 51 years, is not having any regular source of income. Being the elder son with poor financial condition, Shri. C. Kaliyan is being considered for appointment under compassionate ground. Hence there is no violation of settled principles in this matter as alleged by

the applicant. In every case of appointment under compassionate ground it would be offered only after thorough investigation of the Staff and Welfare Inspector regarding dependency with deceased employee, educational qualification, financial status, relationship with deceased employee and other factors like medical fitness etc., The applicant cannot question about the consideration of the applicant submitted by the 3rd respondent. Since no appointment was ordered in any one's favour, it is bounden duty of the official respondent's to verify and accept the genuine claim of who ever it may be. The claim of 3rd respondent cannot be termed as belated, since no one was offered appointment on account of the death of Chokkalingam. However, the process has been put on hold on account of this O.A. Hence the respondents pray for dismissal of the OA.

4. Having regard to the above facts and circumstances of the case, the short point for consideration in this OA is whether first wife's son C. Kaliyan or second wife's son C. Kumar is eligible to be considered for appointment on compassionate ground.

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

6. Admittedly the applicant's husband M. Chockalingam died in harness on 31.12.2000 leaving behind five legal heirs ie., his first wife's son C. Kaliyan, second wife Kaliammal, her daughter Gnanasundari and son Kumar, Prema first wife's daughter. It is also an undisputed fact that the deceased and Kaliammal gave birth to one Regina Mary who claims to have died in unmarried state after the death of M. Chockalingam. When a dispute arose in the family between the legal heirs as to who

should apply for appointment on compassionate grounds, the applicant filed O.S.No.143/2005 before the District Civil Court, Attur praying to consider appointment to her son Kumar but the same was dismissed by order dated 24.03.2011. The appeal preferred before the Subordinate Judge, Attur in A.S.No.5/2011 was also dismissed with the observation that first wife's son Kaliyan and the applicant's son Kumar are entitled to get a job from the Railway Department on compassionate grounds as the legal heirs of the deceased, Chockalingam and it is for the Railway department to select any one for the job for which they require them and the Railway Department alone has the right either to select or to reject them. Pursuant to the above, the applicant submitted representations dated 13.05.2013 and 04.12.2013 to consider appointment of her son Kumar on compassionate ground but the same did not elicit any response. Hence she filed OAs.1171 and 1173/2014 seeking similar relief and this Tribunal by order dated 18.04.2016 issued direction to the respondents, the relevant portion of which reads as follows:-

"The applicant is given liberty to furnish the documents sought for by the Respondent as in Annexure R1 along with the decrees of the Civil Court and the Respondent is directed to peruse the documents given by the applicant and whereupon it is for the Respondent to consider the release of the retiral benefit in favour of the Legal Heirs of the deceased and the respondent department shall also consider the prayer of the person concerned for giving compassionate appointment on merits as per rules..."

7. Pursuant to the above direction of this Tribunal, the respondents have examined the request of the applicant and by order dated 06.03.2017 disposed of her representations, the relevant portion of which reads as follows:-

"Regarding compassionate ground appointment an enquiry was made regarding your claim for compassionate ground appointment in favour of your son Shri Kumar. It is ascertained from the enquiry that the first wife's son Shri Kaliyan who is also one of the respondents in the above OA was not present during the enquiry and the reasons stated by your family is where abouts of Shri Kaliyan is not known. In the mean time Shri Kaliyan has applied for compassionate ground appointment with all relevant documents. The documents submitted by him are under examination and further enquiry and decision will be taken in accordance with rules.

In view of his claim for compassionate ground appointment, your representation for appointment on compassionate grounds in favour of Shri Kumar is unable to be considered and you are advised accordingly".

Challenging the above order, the applicant is before us in the second round of litigation.

8. The matter has been considered. It is settled law that 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. Specific guidelines are provided for in a scheme in this regard and the emphasis is that the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. However, 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. From recruitment point of view, the concept of compassionate appointment has been recognized 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 distress and to get over the immediate crisis due to the loss of the sole bread winner. It is, therefore, incumbent on the part of the person appointed on compassionate grounds to look after the other family members who were wholly dependent on the deceased employee for their maintenance. Therefore, any person, being considered for appointment on compassionate ground, should give an undertaking in writing that he/she will maintain properly the other family members who have been dependent on the railway employee and in tune with the above, a word of caution has been administered that in case if it is proved subsequently that the family members were being neglected or are not being properly maintained, his/her appointment may be terminated forthwith, In the instant case, as per the widowed mother/applicant, whereabouts of Shri Kaliyan are not known, which means that the said Kaliyan is not residing in that accommodation where the widow is residing. Nor is it the desire of the mother that compassionate appointment be given to the said Shri Kaliyan. It thus appears that compassionate appointment, even if other parameters are fulfilled, if granted to the said Kaliyan, would not be serving the purpose of scheme i.e. to maintain the family of the deceased to lead a dignified life. A declaration, of course, was made by the 3rd respondent on 06.02.2017 with the application form. Para VIII of the Master Circular

clearly states that the final offer of appointment will, however be subject to the availability of vacancies, passing of medical examination, production of necessary certificates etc.

9. It is the contention of the respondents that the elder son Shri Kaliyan has passed Xth standard. He has submitted a copy of the ration card No.07/Y/316242 as proof of record for the residential address and his request for appointment on compassionate ground is under process. Any appointment on compassionate ground would be offered only after thorough investigation of the Staff and Welfare Inspector regarding dependency with the deceased employee, educational qualification, financial status, relationship with deceased employee and other factors like medical fitness, genuineness of educational qualification etc. The matter needs deep consideration by the Railways.

10. In view of the above facts and circumstances of the case and the rival claims on the issue, the impugned order dated 06.03.2017 is hereby set aside and quashed. Ends of justice would be met if an order is passed giving suitable directions to the extent that the respondents are directed to :-

- (a) First, evaluate on the basis of merit and in accordance with the prescribed guidelines as to whether the family deserves compassionate appointment to any of the members of the family.
- (b) If on merit, the family deserves grant of compassionate appointment to any of the family members, an inter-se comparison between the applicant and the third respondent, qua the qualifications and other attributes attendant to the grant of such

appointment be made and the deserving among the two and whose services would be more beneficial to the Railways be offered the same. The observation made by the Subordinate Judge, Arthur in A.S.No.5/2011 dated 28.03.2013 shall also be kept in view while arriving at a just conclusion.

11. The OA is disposed of accordingly. Consequently, the MAs are also disposed of. No costs.

(T. JACOB)
MEMBER (A)
-11-2019

/kam/