

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/21/1190/2018

Dated:10/07/2019

Between

G. Chinna Swamy,
S/o. G. Narasaiah,
Aged about 38 years,
Occ: unemployee, (Group -C)
R/o.Penchikalapadu Village,
Chandupatla (Post), Bhongiri (M),
Nalgonda Dist., 580 116.

... Applicant

AND

The Union of India rep. by

1. The General Manager,
South Central Railways,
Rail Nilayam,
Secunderabad.
2. The Sr. Divisional Personnel Officer,
South Central Railway,
Guntakal Division,
Guntakal.

... Respondents

Counsel for the Applicant : Mr. K. Siva Reddy
Counsel for the Respondents : Mr. V.V.N. Narasimham,
SC for Railways

CORAM :

Hon'ble Mr. B.V. Sudhakar, Admn. Member

ORAL ORDER
[B.V. Sudhakar, Admn. Member]

2. The present O.A. has been filed for not considering the case of the applicant for compassionate appointment.

3. The brief facts of the case are that the applicant's father died on 20.02.2005. Thereupon, the applicant applied for compassionate appointment on 6.3.2009. The same was rejected on 21.4.2010. Consequently, the applicant represented to the Hon'ble President of India on 8.10.2015. The representation was forwarded to the Railway Board on 13.11.2015. The representation was examined and was rejected on 3.8.2016. Once again, the applicant represented to the respondents on 12.12.2017. Despite such representations the request of the applicant being not considered for compassionate appointment, has led to the filing of the present O.A.

4. The contentions of the applicant are that the order of rejection issued by the respondents in regard to the request made for compassionate appointment is against Articles 14, 16 & 21 of the Constitution of India. The respondents need to have verified as to whether he was dependent on the earnings of his father after his death. Respondents have grossly erred in rejecting his representation on the ground that the applicant is major and married.

5. Respondents were given ample opportunities to file the reply statement. However, they did not avail the same. In order not to further delay the issue, O.A. was heard in the presence of the learned counsel for the applicant and the respondents.

6. The respondents vide their impugned order dated 3.8.2016, have stated as under:

öThe case of Sri G. Chinna Swamy, S/o. late Narsaiah for appointment on compassionate grounds has been rejected by competent authority i.e. the Divisional Railway Manager/ Guntakal Division on the ground that all the three children of deceased employee are major and married at the time of death of the employee as per MROs certificate.

The candidate was replied accordingly on 21.4.2010.ö

The impugned order has been issued after the O.A. No.1237/2014 was adjudicated by this Tribunal with the following observations:

ö 10. The issue whether married son is entitled to seek engagement as GDS on compassionate grounds is no more res integra in view of the judgement of the Hon'ble Supreme Court in Shreejith G. v Director of Education 2012(7) SCC 248, wherein the Hon'ble Supreme Court held that a marriage by itself cannot disqualify a person concerned from seeking compassionate appointment. As per the circular instructions issued by the department, a married daughter is made eligible to make a representation to claim appointment on compassionate grounds. The clarifications issued by the Department reads as hereunder:

ö12.

13. Whether a married son can be considered for compassionate appointment? ö No, a married son is not considered dependent on a Govt. servant

11. A similar issue as to the claim of a married son for appointment on compassionate grounds came to be adjudicated by the High Court of Calcutta in Usha Singh v. State of West Bengal 2003 (2) LLN 554 and it is observed as under:

ö7. No authority need be cited for the proposition that right to marry is a necessary concomitant of right to life guaranteed under Article 21 of the Constitution. Right to

life includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition.ö (See in this regard Sr. X v. Hospital Z (1998) 8 SCC 296)

12. If a married daughter can act as a bread winner, there is no logic in depriving a married son to act as a bread winner when such son was dependent upon his father before his death on 11.4.2011. As such, there is no rationale in depriving a married son to act as a bread winner for the family of the deceased. If the object sought to be achieved is to provide succour to the family in financial distress by giving employment to one of its dependents, depriving a married son while considering the claim of the married daughter, there is no reasonable nexus between the qualification and the object sought to be achieved. Since the married son is also eligible to claim engagement on compassionate grounds as GDS provided he is dependent on the deceased GDS, the second ground on which the representation of the applicant is rejected cannot be sustained. Once the married son is able to prove that he was a dependent on the deceased GDS, the merit points are to be re-calculated, in which case, there is likelihood of increase of merit points.ö

Thus the order of the Tribunal was to re-consider the claim of the applicant.

7. The applicant has referred to the judgement of this Tribunal in O.A.1237/2014 wherein it was observed as under:

ö13. In view of the above discussion, the impugned order dated 27.8.2014 is set aside remanding the matter back to the respondents directing them to reconsider the claim of the applicant for engagement as GDS MC/ MD on compassionate grounds in accordance with the Circulars / instructions issued by the Postal Directorate within eight weeks from the date of receipt of a copy of the order. Accordingly, this O.A. is disposed of. No order as to costs.ö

Therefore, the observations of the Tribunal in the cited O.A. squarely apply to the case of the applicant in the present O.A. The respondents, rejecting the request of the applicant on the grounds that he is major and married, is thus invalid. Besides, DOPT O.Ms dated 25.02.2015 &

05.09.2016 also envisage that a married son can also be considered for compassionate appointment.

The learned counsel for the respondents refuted the contention of the learned counsel for the applicant by stating that the applicant's father died on 22.5.2005 and his mother died on 11.2.2006. The case of the applicant was rejected on 21.4.2010. Therefore, the question of the applicant being dependent upon his parents does not arise. While considering the submissions made by the learned counsel for the respondents, it needs to be stated that the impugned order does not provide any details as stated by the learned counsel for the respondents. Besides, the ground on which the case of the applicant was rejected vide the impugned order was that he was major and married at the time of death of the employee. Both these contentions are invalid since they are against the rules and the observations of this Tribunal in the cited O.A. Therefore, keeping the aforesaid in view, the respondents are directed to re-consider the case of the applicant as per extant rules and regulations and issue a speaking and well reasoned order, within a period of three months from the date of receipt of this order.

With the above directions, the O.A. is allowed. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

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