

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

OA No.14/2019

Date of decision: 05.11.2019

Coram : R. Vijaykumar, Member (A).

1. Mrs. Jyoti Navmneet Waghmare
Aged about 38 years,
Presently residing at 52/258, PMC
Colony, Kusalkar Chowk,
Gokhale Nagar, Pune-411 016.

...Applicant.

(By Advocate Shri Ulhas Shinde).

Versus

1. The Union of India,
Through The General Manager,
Central Railway.
Mumbai CST, Mumbai-400 001.
2. The Divisional Railway Manager (P)
Central Railway,
Mumbai CST,
Mumbai-400 001.
3. The Sr. DEE (TRA),
Central Railway.
Kalva, Thane-400 605.

... Respondents.

(By Advocate Ms. Sangeeta Yadav).

O R D E R (O R A L)

Per : R. Vijaykumar, Member (Administrative)

1. When the case is called out, heard Shri

Ulhas Shinde, learned counsel for the applicant.

2. This OA has been filed on 11.12.2019 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. For the declaration that the applicant is entitled for the compassionate appointment and reconsider the case of the applicant by taking into consideration her continuing indigent position and provide her employment at the earliest available vacancy at the earliest after quashing impugned order dated 28.02.2018 and 15.06.2018 passed by the Respondent No.2 (Annexure A-1(i) and A-1(ii)).

b) Cost of this application be saddled on the Respondents.

c) Any other relief as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case."

3. The facts of the case are that the applicant is the sole child and the daughter of her parents. Her father, who is not stated to not be an employee of the respondents, deceased at some point in time in the past and her mother who was an employee of the respondents who was appointed on compassionate grounds on 08.04.1992 and was due to retire on 28.02.2019, passed away on 06.08.2017 leaving behind the applicant who was around 36 years of age at the time of her mother's death. The applicant had differences with her husband and was

living separately and she finally re-commenced living with her husband and with conjugal rights and they then had two children and this period of conjugal life commenced in 2010 and has been duly noted by the Hon'ble High Court of Bombay in Family Court Appeal No. 131/2007 dated 10.08.2010 when it was noted that the applicant had commenced living with her husband.

4. The learned counsel for the applicant was heard. His main ground is that the husband of the applicant is not earning enough and the family which includes husband's family is in indigent condition and the applicant is depending on him and his income which is quite meager. Therefore, her condition is one of the indigence and that entitled her for Compassionate Appointment by the respondents so that she can maintain her family which includes her two children and no doubt, her husband and his family.

5. The learned counsel for the applicant also contends by reference to Annexure R-1 which is a letter issued by the Railway Board no.RBE/17/2014 dated 08.07.2014. This is a clarification on employment on Compassionate Ground of married daughters who is the bread winner of the family of the railway servant. Learned counsel relies on the

following instructions.

"Existence of a number of instructions as well as the issue of specific clause of 'dependency on the ex-railway employee' have been engaging the attention of this office for sometime. Accordingly, the matter has been reviewed by the Board and it has been decided that it should be left to the discretion of the family concerned in case of death of ex-employee to request for a job to either spouse or any child {whether son or daughter (unmarried/married/divorced/widowed)} subject to the condition that the concerned child will be the breadwinner of the family concerned. Further, for this purpose instructions issued by this Ministry vide letter issued under RBE No.22/2014 dated 04.03.2014 be read in the same spirit."

6. The learned counsel for the applicant urges that the respondents while passing the impugned order rejecting her request for Compassionate Appointment against the death of her mother had not applied their minds properly nor did they receive inputs by way of an inspection by the Welfare Inspector to ascertain that her family was in indigent condition.

7. The learned counsel for the applicant also relies on the order of the judgment of the Hon'ble High Court of Allahabad (Civil) 60881/2015 dated 04.12.2015 of Smt. Vimla Shrivastava Vs. State of Uttar Pradesh and Another. In which the issue of

discrimination of a daughter between her married condition and unmarried condition was discussed in the context of absence of such a distinctions made for sons of the family and it was held that the exclusion of married daughters from the ambit of the expression "Family" was unconditional and the respondents were directed to consider the petitioner's claim for appointment excluding the grounds of marital status.

8. Further, the learned counsel also relies on the judgment of the Hon'ble Apex Court in case of Vijaya Ukarda Athor (Athawale) Vs. State of Maharashtra and Others in Civil Appeal No.409-10 of 2015 decided on 14.01.2015. This judgment notes that as per subsequent policy orders, married daughters are also entitled for Compassionate Appointment subject to certain conditions and the case of the petitioners was remitted back to the concerned Hon'ble High Court for passing orders.

9. In particular, the learned counsel for the applicant has invited this Tribunal's attention to the conclusion of the Hon'ble High Court of Allahabad which are extracted below:

" In conclusion, we hold that the exclusion of married daughters from the ambit of the expression "family" in Rule 2 (c) of the Dying-in-Harness

Rules is illegal and unconstitutional, being violative of Articles 14 and 15 of the Constitution.

We, accordingly, strike down the word 'unmarried' in Rule 2 (c) (iii) of the Dying-in-Harness Rules.

In consequence, we direct that the claim of the petitioners for compassionate appointment shall be reconsidered. We clarify that the competent authority would be at liberty to consider the claim for compassionate appointment on the basis of all the relevant facts and circumstances and the petitioners shall not be excluded from consideration only on the ground of their marital status.

The writ petitions shall, accordingly, stand allowed. There shall be no order as to costs."

10. The learned counsel for the respondents argues with reference to (Annexure R-1) which is an RBE No.224/2001 (Supplementary Circular no.1 to Master Circular no.16) which records the following instructions:

"2. After due consideration, the Board have decided that the cases of dependent divorced/widowed daughter should also be considered for appointment on compassionate ground, as in the case of married daughters. Such cases are to be considered in terms of para 2 of Board's letter cited above. Such applicant should have been wholly dependent on the ex-employee at the time of the letter's death/medical invalidation."

11. She argues that the applicant was staying with her husband after recommencing married life

even from the year 2010 whereas the mother who was the employee of the respondents expired only in the year 2017.

12. Pleadings have been carefully examined and oral submissions of the parties have been considered.

13. We have given full consideration to the facts of the matter with reference to the citations relied upon by the learned counsel for the applicant. The Hon'ble High Court of Allahabad specifically held that the claim of Compassionate Appointment should be considered on the basis of all relevant facts and circumstances and only excluded the aspect of marital status from becoming a basis for denial of a claim of the applicant. The Hon'ble Apex Court has also endorsed this decision in its rulings. This position has also been reflected in RBE No.224/2001 which has applied the eligibility provided for married daughter to dependent divorced and widowed daughters but subject to their being fully dependent on the ex-employee at the time of the latter's death or medical decategorization RBE No.70/2014 relied upon by the applicant, also reflect this condition that the concerned child should be the bread winner of the family concerned

and in the previous para to this, the orders records that the married daughters should be the breadwinner of the family of the Railway servant concerned. This para reads as below:

"Further, in terms of para 2 of letter No.E(NG)III-78/RC1/1 dated 03.02.81, General Managers can consider for employment of married daughters, if they satisfy themselves that the married daughter will be the breadwinner of the family of the Railway servant concerned. It has also been stipulated vide instructions issued under RBE No.224/2001 dated 21.11.2001 that the cases of dependent divorced/widowed daughters should also be considered for such appointment as in the case of married daughters subject to the condition that former should have been wholly dependent on the ex-employee at the time of the death/medical invalidation of the latter."

14. In the present case, there is no family left of the employee of the respondents except the applicant who is herself dependent on her husband. It is the admitted case of the applicant, that her family, namely her husband and her two sons and her husband's family, are in indigent condition and they require such support. However, such a submission does not fall within the criteria set out by the respondents for grant of Compassionate Appointment to a family member of an ex-railway employee. The scheme of Compassionate Appointment is a departure

from the provisions of the constitutional scheme to meet the emergent need of the family of the railway employee and cannot become a source of employment to support the collateral and downstream families in the manner that the applicant has sought in the present application. The request of the applicant falls outside the scope of the scheme.

15. In view of the above, the OA is devoid of merits and is, accordingly dismissed without any order as to costs.

(R. Vijaykumar)
Member (A)

V.

