

(2024) 04 CAT CK 0046

In the Central Administrative Tribunal

Case No : Original Application No. 775 Of 2016

Savitri Devi @ Sabbo Devi, W/o Late Raj Bahadur Singh &
Others

APPELLANT

Vs

Union Of India Through Its Secretary, Ministry Of Railways,
New Delhi. & Others

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution Of India, 1950 — Article 21, 39(a)

Citation : (2024) 04 CAT CK 0046

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Pradeep Kumar Mishra, Rajesh Kumar, Bablu Singh

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to set aside the impugned order dated 14.10.2015 served upon the applicant in February 2016, and to direct the respondents to appoint the applicant No. 2 under dying-in-harness rules in the place of his deceased father in concerned department and to award cost.

2. The fact of the applicant is that the husband of applicant No. 1, and father of applicant No. 2 late raj Bahadur Singh was Points-man Grade ?A? in the respondent department and he died on duty on 13.02.2000 leaving behind his widow, three minor sons and a minor daughter and another son from his first wife. Initially the applicant No. 1 was offered an appointment on compassionate ground on 12.10.2001 after due process, but she declined the offer vide letter dated 24.12.2001 on the assurance that the job will be given to one of her son on attaining majority. After that the applicant No. 1 applied for her eldest son Hemant Kumar for compassionate appointment on 18.05.2009 which was

received in the office on 22.05.2009, but no action was taken by the respondents on the said application. Another application was filed on 26.09.2014 by the applicant No. 1 to give compassionate appointment to her second son Dinesh Kumar and sent the same by registered post to the respondents. Reminders to the same were sent by applicants letter dated 13.10.2015, 31.10.2015, 06.11.2015 and as there was no action on the said applications, under RTI on 07.12.2015 the applicant asked for certain information. And not being satisfied with the reply they approach the RTI Appellate Authority on 08.01.2016. Thereafter, they received an envelope dispatched on 11.01.2016 from the PIO with a covering letter dated 08.01.2016 containing the order dated 14.10.2015 rejecting the claims of the applicants on the ground of delay, which is the order impugned.

3. The case of the applicant is they had been continuously trying the compassionate appointment, but they were not given the same, and the law is very clear that General Manager of the Zonal Railway is authorized to condone delay beyond five years for compassionate appointment and as the husband of applicant No. 1 died in harness, so her son has a right to get compassionate appointment, so their OA should be allowed and the reliefs claims should be granted.

4. The respondents have filed counter affidavit on notice, wherein the basic facts of the case are not denied, but the respondents insists that they have examined all the aspect of the case and as the applicant No. 1 had first submitted an application on 21.04.2000 for herself after her husband had died on 13.02.2000 for compassionate appointment. And concerned Welfare Inspector conducted a requisite inquiry and applicant was called for screening test on 28.09.2001 and found suitable and her case was sent to the concerning section for appointment, but applicant did not turn up nor she had submitted any refusal application for not accepting the job and had never informed unwillingness for not joining the duty. They also denied the averment that any assurance was given to her that after attaining majority any of her sons will be given job. They further say that the date of birth of Shri Vinod Kumar, who is the son of the deceased employee from his first wife is 09.09.1978 and he was class 9th passed and was eligible for appointment on compassionate ground at the time of the death of his father. And compassionate appointment is not a right to be exercised in future, it is for giving immediate employment to a family member to come over the economic destitution due to the death of the bread earner in the family. Hence, there is no merit in the case of the applicant and they came after long time and they cannot go on changing the beneficiary of the compassionate appointment, as first they applied for the mother and then for the eldest son and then for the second son. Hence, the OA should be dismissed.

5. The applicants have filed rejoinder affidavit wherein they vehemently reiterate the facts as in the OA and tried to controvert the contentions of the respondents in the counter affidavit. They also filed an alleged affidavit in the name of Vinod

Kumar, the son of deceased employee from his first wife that he had ?No objection? for the appointment of applicant No. 2.

6. Further, supplementary affidavit has been filed by the applicants wherein they show from Bahri's Railways Establishment Rules and Labour Laws some extract where they want to show sub-clarification dated 04.03.1999 which says that, "A period of 5 years from the date of occurrence of event is prescribed as period of eligibility of entitlement of appointments on compassionate ground which may be relaxed up to 20 years with the approval of General Manager". They further cite an order of Service Bench No. 645 of 2011 – Kamlesh Maurya vs. Union of India through its Secy. Ministry of Railways and others in their favour.

7. Further, a supplementary affidavit filed on 27.07.2018 by the applicants. The second supplementary affidavit was filed on 26.02.2019 by the applicants with RBE No. 77/2011. Supplementary counter reply has been filed by the respondents with a letter dated 18.03.2024.

8. Written arguments have been filed by both the parties.

9. The case came up for final hearing on 24.04.2024. Shri Rajesh Kumar, learned counsel for the applicants and Shri Bablu Singh, learned counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions.

10. From the records and averments of both the parties the facts are not denied that the husband of applicant No. 1 and father of applicant No. 2 worked as Points-man Grade ?A? with the respondents department and died in harness on 13.02.2000 leaving his widow (applicant No. 1), three minor sons and one minor daughter and one son Vinod Kumar from his first wife. It is a fact that the applicant No. 1 first applied for compassionate appointment for herself vide letter dated 12.10.2001, and her case was inquired by the Welfare Inspector and she was called for screening test on 28.09.2001 and as her case was found suitable, she was offered appointment, but she did not turn up nor she submitted any refusal application for not accepting the job. And she had never informed her unwillingness for not joining duty. The said list of screening dated 28.09.2001 is filed before me, where at Sl. No. 244/2000 the case of deceased Shri Raj Bahadur and wife Smt. Savitri Devi of railway quarter No. 77 FFA, Railway Colony, Mathura was examined and her case was considered for Group ?D? appointment, to which the applicant in their rejoinder affidavit (para 8) replied in the following manner:-

"8. That the contents of paragraph no. 9 of the counter affidavit being matter of record are not disputed. It is false to allege that the applicant no. 1 did not inform her unwillingness to join the duty. By the application dated 24.2.2001 (Annexure No. 1 to Compilation No. II) she informed her unwillingness to join the duty for the reasons stated therein. The averment made in paragraph no. 4.4 of the application since are admitted by the respondent and there is no specific denial of the application dated 24.12.2001 and the contents therein para under

reply. The false averments are made to the extent that the applicant no. 1 did not inform the authority her unwillingness to join the duty are incorrect, false and as such denied. The averments made in paragraph 4.4 of the application are reiterated and reaffirmed to be correct.”

11. Simple reading of contents of this paragraph and contents of paragraph No. 9 of the counter affidavit and further averments of respondents at the time of argument etc., it is very clear that the applicant No. 1 had indeed applied for compassionate appointment and was considered and offered an appointment. The department says that she never informed anything, and the applicant says that vide letter dated 24.12.2001, which is annexed as Annexure No. 1 (compilation No. 2) of the OA, she had replied, as she would like her son to be a major to get the appointment. Although on record it is not substantiated if the applicant's refusal letter was received in the office of the respondents. But even if I believe such letter was indeed given, even there it does not in any way strengthen the case of the applicant, as to whether what she says is true or false or if such refusal created any special right for her son for public employment on a future date. If she was offered appointment and immediately she did not take it, the only inference would be that the family was not in indigence or destitution and it did not require any immediate help and financial support by way of compassionate appointment, which is an exception and in contraventions of the Constitutional Scheme of public employment given in exceptional cases for the families who are in indigence to come over the economic penury due to sudden death of the bread earner of the family.

12. The circumstances of this particular case speak for itself and it shows very clearly, and conclusively that the applicant and her family did not require any compassionate appointment at the time of death of her husband. And her conduct either of non-informing or even if she had informed authorities of her refusal, which is not substantiated. As we cannot find any acknowledgment and office endorsement of her letter dated 24.12.2001. This fact alone is sufficient to dismiss this OA in the light of the leading Hon'ble Apex Court judgment on compassionate appointment i.e. Umesh Kumar Nagpal vs. State of Haryana and others – JT 1994 (3) SC 525 decided on 04.05.1994.

13. Coming to the point that even the son of first wife of the deceased employee Shri Vinod Kumar was a major on the said date and he was eligible for appointment on compassionate ground at the point of time and the applicants did not apply for him; that also goes to prove that the family did not need any type of help through compassionate appointment at the time of death of the bread earner, as it was not in indigence. The rules quoted by the applicants in their favour in page 8 of supplementary affidavit dated 17.08.2016 are some of the earlier rules and would not apply in the case of the applicant in the light of the Umesh Kumar Nagpal's (supra) ruling of the Hon'ble Apex Court. And once the applicant No. 1, wife of the deceased employee was offered employment and she has not taken any step to take it immediately the family essentially loses

their opportunity to get any compassionate appointment any time in future.

15. The power of relaxation of General Manager from 05 years to 20 years could have been in exceptional cases of indigence and economic penury of the family, but now after that order of appointment of mother and non availment of the same and observations in the case of Umesh Kumar Nagpal vs. State of Haryana and others – JT 1994 (3) SC 525 (supra) , this also could not be availed unless there is complete justification in terms of destitution and penury and immediate need of compassionate appointment which has to be examined from various angles including that being against the Constitutional scheme of public employment and being one of the exceptions, so in only deserving cases of emergent need and family destitution it can be given. From the averments, or any of the documents either in the OA, or in the rejoinder or supplementary affidavit, I do not find any convincing justification is provided by the applicants that their family is so deserving and in such destitution that it needed any compassionate appointment, and that also after the lapse of 24 years of the death of the deceased.

15. Further, I have examined the impugned order dated 14.10.2015 and I find that it gives ample details and is a speaking and reasoned order and it is as per law and procedure and it cannot be faulted and the applicants have not been able to make out any convincing ground for setting it aside. Further, if I see the documents of application for her eldest son, which is averred on 18.05.2009, I find that it is much delayed application after 9 years of the death of the deceased employee, and it is not substantiated if it was sent in time or indeed delivered. Then after a gap of 5 years on 26.09.2015 another application for her second son, the present applicant No. 2 is given and reminders are issued on various dates in 2015 and again after a delay of almost 14 to 15 years and delays are not at all explained and that also puts the case of the applicant unconvincing. The delay of decades shows conclusively that the family was in a comfortable economic situation, and was not in any penurious condition forcing them enough to apply immediately after the death of deceased for compassionate appointment.

16. Hence, the case of the applicants is not at all convincing. The citations of Hon?ble High Court?s judgments in Service Bench No. 645 of 2011 – Kamlesh Maurya vs. Union of India through its Secy. Ministry of Railways and others dated 27.04.2016 and other orders relied of the various Hon?ble High Courts like Madrai Bench of Hon?ble High Court dated 12.02.2018 – V. Vadivelan vs. The Director of Agriculture and others, and Hon?ble Madras High Court order dated 10.11.2016 – K. Sankar vs. The Commissioner & others, and order dated 29.06.2010 of Hon?ble Madras High Court – M. Uma vs. Chief Engineer (Personnel) & others and order dated 17.08.2011 of this Tribunal (Ernakulam Bench) – Greeshma vs. Union of India and others will not any way overrule the Hon?ble Apex Court judgment in the case of Umesh Kumar Nagpal vs. State of Haryana and others – JT 1994 (3) SC 525 which Hon?ble Supreme Court has laid down following important principle regarding compassionate appointment:-

“(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group ‘C’ and ‘D’ (formerly classes III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post, i.e., in the Group ‘A’ or Group ‘B’ category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad hoc basis”.

17. Simple reading of the above and applying it to the case in hand, I do not find that the object of granting compassionate appointment as mentioned therein, which is to enable the family tide over the sudden crisis and to release the family after the sudden death of bread earner, from financial destitution and help it get over the emergency exist for the particular family of the applicants, after two and half decades of the death of the deceased employee. And as observed by the Hon’ble Apex Court, the compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

18. Further, the Hon’ble Apex Court has also laid down that the compassionate appointment cannot wait for someone to become major then his claim as a right can survive because that goes against the grain in the case of Secretary, State Of Karnataka and Ors vs. Umadevi And Others – [(2006) 4 SCC 1]. In which the Hon’ble Supreme Court has observed as under:-

“.....Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the

Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.....”

19. Considering all the above facts of this particular case and existing Hon?ble Apex Court judgments and ruling relied earlier and the scheme of compassionate appointment, I do not find any ground to give any relief to the applicants. Hence, the OA lacks merit and the same is dismissed. Associated MAs, if any, shall stand disposed off. No costs.