



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3558]

TUESDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

WRIT PETITION NO: 9558/2019

Between:

1. BORA NARAYANAMMA, D/O LATE B.RAMULU AGED 39 YEARS
UNEMPLOYEE, RESIDENT OF THUMMAKAPALLI, VILLAGE AND
POST, KOTTAVALASA MANDALAM, VIZIANAGARAM DIST.AP PIN
535183

...PETITIONER

AND

1. UNION OF INDIA, REPRESENTED BY GENERAL MANAGER, EAST
COAST RAILWAY, 2ND FLOOR, SOUTH BLOCK,
CHANDRASEKHARPUR, BHUBANESWAR 751017, ODISHA.

2. CHIEF PERSONNEL OFFICER, EAST COAST RAILWAY, 2ND
FLOOR, SOUTH BLOCK, CHANDRASEKHARPUR, BHUBANESWAR
751017, ODISHA.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order, direction more particularly one in the nature of WRIT OF CERTIORARI by calling for the records pertaining to the order dated 27-12-2018 passed in Original Application No.1534/2014 on the file Central Administrative Tribunal Hyderabad Bench at Hyderabad and by setting aside and quashing the order dated 27-12-2018 passed in Original Application No.1534/2014 on the file of the Central Administrative Tribunal Hyderabad Bench, as illegal, arbitrary and violation article 14 and 21 of the

constitution of India and set aside the same and consequentially direct the 1st and 2nd Respondents to consider the case of the petitioner for employment on compassionate grounds in terms of Railway Board's orders in RBE No.106/2004 and to pass

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased suspend the operation of the order dated 27-12-2018 passed in Original Application No.1534/2014 on the file of the Central Administrative Tribunal Hyderabad Bench, at Hyderabad pending disposal of the writ petition pending disposal of the above writ petition and to pass

Counsel for the Petitioner:

1. RAMA MOHAN RAO BANDA

Counsel for the Respondent(S):

1. POLURI PRABHAKAR RAO

2. DEPUTY SOLICITOR GENERAL OF INDIA

The Court made the following:

THE HONOURABLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**&****THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA****WRIT PETITION NO: 9558/2019****ORDER:** *(Per Hon'ble Sri Justice Tuhin Kumar Gedela)*

Heard,

Learned counsel for the petitioner and learned Deputy Solicitor General of India for the respondents.

1. Embittered with the order passed by the Central Administrative Tribunal, Hyderabad Bench (hereinafter referred to as "the Tribunal"), in O.A.No.1534/2014 pronounced on 27.12.2018 rejecting the case of the petitioner, who was the applicant in the O.A. for compassionate appointment on the ground of delay, the present writ petition has been filed.

2. The parties are arrayed as in the present writ petition.

3. The contour of facts leading to the filing of the present writ petition are that, the petitioner/daughter of the deceased employee (B.Ramulu) states that on 03.12.1970, B.Ramulu joined as Gangaman in the Railways and he was subjected to medical examination and in pursuance of the said examination on 18.08.1999, he was medically de-categorized and as a consequence, he opted for voluntary retirement which was accepted on 22.03.2000 by the respondents herein. B.Ramulu rendered 30 years of service in the respondent organization. B.Ramulu, who opted for voluntary retirement, had three unmarried daughters, two sons and his wife and the pension fixed at Rs.1895/- in the year 2000 at the time of retirement. An amount of Rs.1,50,000/- was also released towards gratuity and PF.

4. The petitioner further contends that her elder brother namely Bora Srinu was suffering from mental ailment for which a lot of medical expenses are to be incurred and the entire family are dependents on their father's

pension. On 25.04.2003, the petitioner's sister by name Bora Ramalaxmi died in a mysterious circumstances in a road accident and thereafter her father, B.Ramulu died on 02.08.2018. The petitioner in her affidavit stated that her father; herself and other family members are not very much aware of the Railway Rules, regarding the compassionate appointment. On 21.02.2012, a representation was made by her father to the respondent authorities seeking appointment under compassionate grounds. Initially, the Divisional Railway Authorities recommended her case positively to the General Manager, East Coast Railway, Bhubaneswar. But the respondents 1 and 2 rejected her representation for compassionate appointment on the ground that the application is time barred vide letter No.ECoR/Pers/Wel/Staff Grievance – Diary No.148, dated 13.02.2013. Dissatisfied with the said rejection, the father of the petitioner moved the Central Administrative Tribunal by filing O.A.No.712 of 2013 to set aside the order passed by the authorities dated 13.02.2013 on the ground that it is not a reasoned order and the Tribunal on 11.04.2014 set aside the order dated 13.02.2013 on the ground that it is vitiated for want of cogent reasons. Thereafter, the 2nd respondent passed a speaking order on 28.08.2014 vide ECor/Pers/HQ/CC/DA-712/13/BR rejecting the case on the ground that the application for compassionate appointment is submitted beyond 5 years which is stipulated and also on the ground that the dependent has attained majority prior to the making of application and that her father was granted full benefits pursuant to his retirement from the railway service. Aggrieved by the order dated 28.08.2014 rejecting the case for compassionate appointment, the Original Application was filed before the Central Administrative Tribunal numbered as O.A.No.1534 of 2014 to declare the said proceedings rejecting the request as contrary to the Railway Board's Order issued vide No.E(NG)II/2000/RC-1/GEN.17, dated 06.03.2002 as illegal, arbitrary and bad in law.

5. On contra, refuting the said contentions, the respondents-railway authorities filed the reply affidavit contending that the compassionate appointment was rightly denied since the application is moved after a lapse of 5 years period from the date of medical de-categorization of the petitioner's father and that the deceased employee was sanctioned full benefits and on the ground of delay, particularly, the compassionate appointment was rejected.

6. Having considered the submissions of both the sides, the principal point to be addressed is:

"Whether in the present case there is a delay so as to deny the appointment under compassionate grounds if the same is explained and whether the Central Administrative Tribunal was right in rejecting the case for appointment under compassionate grounds?"

7. The facts are not in dispute regarding the making of the application under compassionate grounds by the petitioner and also the fact that the deceased employee has drawn the pensionary benefits and the prudent fact that the application for compassionate appointment was applied on 06.09.2006.

8. The facts germane to decide the issue is the de-categorization of the deceased employee was on 18.08.1999 and his voluntary retirement was on 22.03.2000. As per the policy of the Railways, the deceased employee was offered alternate appointment which he denied and opted for voluntary retirement and thus retired voluntarily on 22.03.2000. As indicated above, the application for compassionate appointment by the petitioner, who is the elder daughter of the deceased employee, was made on 06.09.2006 and the said application was processed on 12.09.2006. Immediately, the Central Divisional Personnel Officer, on 07.11.2006, after making enquiry regarding the financial

status of the family and other circumstances, has accorded approval for appointment in Group-D in terms of the Railway Board guidelines. The said approval was sent to the Zonal Head Quarters for obtaining personal approval of the General Manager in terms of RBE No.106 of 2004 and RBE No.78 of 2006. The application was not found in favour of the petitioner and the application was rejected. The said rejection on 28.08.2014 by the General Manager was questioned before the Central Administrative Tribunal on several grounds and the same was dismissed by the Tribunal on 27.12.2018 by taking into account the fact of delay and the competent authority is vested with the power to condone the delay.

Policy of Compassionate Appointment : The Rationale:

9. The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family. Support for such a provision has been derived from the provisions of Part IV of the Constitution of India, i.e. Article 39 of the Directive Principles of State Policy.

10. It is apposite to refer some decisions of the Hon'ble Supreme Court on the rationale behind a policy or a scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment:

(i) In the case of ***Sushma Gosain vs. Union of India***¹, the Hon'ble Supreme Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

(ii) In the case of ***Umesh Kumar Nagpal vs. State of Haryana***², the Hon'ble Supreme Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased, provided a scheme or rules provide for the same.

(iii) In the case of ***Haryana State Electricity Board vs. Hakim Singh***³, the Hon'ble Supreme Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. The Hon'ble Supreme Court also reiterated that the compassionate appointment should not be treated as though it is a matter of inheritance based on a line of succession.

(iv) Further in the case of ***State of Jammu and Kashmir vs. Sajad Ahmed Mir***⁴, the Hon'ble Supreme Court observed as follows:

"The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The

¹ (1989) 4 SCC 468

² (1994) 4 SCC 138

³ (1997) 8 SCC 85

⁴ AIR 2006 SC 2743

writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compensation after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment."

11. This Court is conscious of the fact that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee, but the sense of immediacy will be evidently lost by the delay on the part of the dependent in seeking compassionate appointment.

12. Diligently, the petitioner has made application for compassionate appointment in the year 2006 and the reason for not making the application to the competent authority at the time of her father's medical de-categorization was stated in the affidavit that her father and herself are not aware of the instructions issued by the railway department. More so, another clinching aspect in the present case is that the application filed for compassionate appointment was actively considered by the initial authority i.e., the Senior Divisional Personnel Officer on 07.11.2006, wherein he has recommended the case after conducting enquiry, clearly indicating the financial distress of the family and the other circumstances in the note sheet. One of the contentions raised by the petitioner is that as per Master Circular No.16, which deals with the time limit for making the compassionate appointment wherein it states that the General Manager should consider the application rejecting or approving with valid reasons. Her main contention in the writ petition as well as before the Tribunal was that the Managing Director did not consider the case for appointment under compassionate grounds in the proper perspective and simply denied on the ground of delay without considering the financial distress.

13. The respondents rejected the consideration for appointment on compassionate grounds without proper application of mind on 28.08.2004. The order reads as follows:

“.....
In terms of Railway Board's Letter No.E(NG)III-78/RC/1/1 dated 07-04-83 (Estt.Srl.No.120/83) request for appointment of a ward of a medically de-categorized employee on compassionate grounds can be considered, if such application is made within 5 years of medical de-categorization. However if the ward is minor he can be given relaxation till he attains majority, subject to the application having been made within 5 years from the date of medical de-categorization. In the instant case, your daughter in whose favour the compassionate appointment is sought for, had attained majority on 05-02-1997, well before your medical de-categorization, but you have not applied for compassionate appointment within the stipulated time of 5 years. Hence the case is to be treated as a time barred one only.

The other points brought out in the representation for reconsidering reviewing the case do not stand testimony and as such cannot be considered on merits, as seeking compassionate appointment is not a vested right which can be exercised at any time in future. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. In the instant case, there is neither any sudden crisis as the employee had retired with full benefits and by the time he retired from Railway service, his daughter had already attained majority. Moreover there was no application from the employee within the stipulated time of 5 years as mentioned supra. In view of the above your case for compassionate appointment to your daughter has been correctly dealt with in accordance with rules and rightly regretted.”

14. In the order of the Managing Director, the enquiry conducted by the initial authority finds no place and is not referred at all which indicates that there is no application of mind and rejects the case on the ground of delay. Even the reply filed before the Tribunal does not give any valid reason except stating that the application is belated and to that effect, the judgment of the Hon'ble Supreme Court reported in **AIR 2009 SC 2568** was relied on.

15. Basing on the observation made in the case of **The State of West Bengal vs. Debabrata Tiwari and Others**⁵, wherein the Hon'ble Supreme Court at paragraph No.7.5 held as follows:

"7.5. ...In a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source."

16. Keeping in view the above observation, this Court has queried the writ petitioner as to what is the status as on today regarding her employment and financial condition, the writ petitioner stated that she is doing household maid duties in surrounding houses.

17. The ratio laid down is not disputed. But the compassionate appointment may not be a matter of right, but the other circumstances, such as the financial distress and the application made, to be strictly taken note by the General Manager. For better understanding, it is deemed appropriate to refer the RBE No.106 of 2004 instructions, which reads as follows:

"Subject : Compassionate appointment to the Wards of Medically decategorised staff – Relaxation of cut off period.

Reference : Railway Board's letter No. E(NG)II/2000/RC-1/Gen./17 dt. 6.6.2002 (Bahri's, 19/2002, p. 47)

[No.E(NG)II/2000/RC-1/Gen./17, dated 26.5.2004.]

In terms of this Ministry's letter under reference, compassionate appointment may be considered in favour of wife/eligible wards of such of the employee who were medically decategorised between 29.4.1999 and 18.1.2000 (both days inclusive) and declared unfit to continue in the posts they were holding but fit to hold posts with lower medical classification, subject to the condition that :-

(i) the employees concerned have retired voluntarily between 29.4.1999 and 18.1.2000 (both days inclusive) on medical decategorisation during the period; and

(ii) such cases are personally considered and decided by the General Manager on individual merit of each case.

2. Staff side have represented vide item No.11/2004 in the DC-JCM held in March, 2004 that in many of the cases, though the employees were medically decategorised between the period 29.4.1999 and 18.1.2000 and sought voluntary retirement on medical decategorisation but were retired after 18.1.2000, the cases for appointment on compassionate ground of such employees have not been considered by the Railway Administration which is not justified.

3. The matter has been considered by the Board and it has been decided that further to Board's letter under reference, compassionate ground appointment may also be considered in favour of wife/eligible wards of such of the employees who were medically de-categorised between the period 29.4.1999 and 18.1.2000 and sought voluntary retirement on medical de-categorisation but were retired after 18.1.2000. Such cases are to be considered and decided personally by the General Manager on Individual merits of each case."

18. Thereafter, another circular/instructions was issued by way of RBE.No.78/ 2006 vide letter No.ECoR/Pers/R/Rectt./20, dated 21.07.2006, which reads as follows:

"Sub : Appointment on compassionate grounds of ward/spouse of medically de-categorized staff on the Railways.

Pursuant to the notification of the Persons with Disabilities (Equal Opportunities of Rights and Full Participation) Act, 1995 instructions were issued by Ministry of Railways (Railway Board) laying down that in case where an employee has been medically invalidated/de-categorised where the administration cannot find alternative posts for such an employee, he may be kept on a supernumerary post in the grade in which he was working on regular basis, till such times suitable post can be identified or till his retirement, whichever is earlier. As these instructions provided for continuation of service a Medically invalidated/de-categorised employee, there would be no occasion to the employee to be retire from service on medical grounds. Therefore, according to the instructions, in such cases the occasion to consider a request for appointment on compassionate ground of an eligible ward would not arise.

[Board's letter No.E[NG]1/96/RE-3/9[2] dated 29-04-1999 refers]

2. Even the employee chooses to retire voluntarily on his being declared medically de-categorised, if he so desires he may be permitted but without extending the benefit of appointment on compassionate ground to a ward [para 4 of Board's letter of even number dated 18-01-2000 refers]

3. Board has earlier decided in cases where an employee is totally incapacitated and is not in a position to continue in any post because of his medical condition, he may be allowed to opt for retirement. In such cases, request for appointment on compassionate grounds to an eligible ward may be considered if the said employee chooses to retire voluntarily [para 3 of Board's letter of even number dated 18.01.2000]

4. Pursuant to the demand raised by staff side the issue has been deliberated upon at length in the full Board Meeting and it has been decided that compassionate ground appointment to the wife/ward/dependants of partially medically de-categorised staff who seeks voluntary retirement may be given subject to the following provisions:

[a] The appointment will be given only in the eligible Group 'D' categories. 'Eligible' would mean that in case Group 'D' recruitment is banned for any particular category, the same would also apply for the compassionate ground appointment.

[b] Such an appointment should only be given in case of employees who are declared partially de-categorised at a time when they have at least 5 years or more service left.

[c] CMD of the Railway should keep a watch over the trend of de-categorisation so that the present figure do not get inflated. CMD should also get 10% partially de-categorised cases re-examined by another Medical Board not belonging to Divisional Hospital which initially declared them unfit.

5. All those employees medically de-categorised after issuance of Board's letter No.E[NG]II/95RC-1/94 dated 18.01.2000 will also be covered under these instructions. However, such cases which have already been finalised in terms of Railway Board's letter No.E[NG]II/95/RC-1/94 dated 18.01.2000; 10.11.2000 and No.E[NG]II/2000/RC-1/Genl./17 dated 06.03.2000 & 26.05.2004 need not be re-opened.

6. While considering such requests for compassionate grounds appointment the General Manager should satisfy himself on the basis of balanced and objective assessment of the financial & other conditions of the family, that the grounds for compassionate ground appointment in each such case, is justified [Board's letter No.E[NG]II/98/RC-1/64 dated 28.7.2000 refers]"

19. A holistic reading of the RBE instructions dated 21.07.2006 clearly entails that, while considering such requests for appointment on compassionate grounds, the General manager should satisfy himself on the basis of balanced and objective assessment of the financial and other conditions of the family, that the grounds for compassionate appointment in each case is justified.

20. As already discussed above, the application was made in the year 2006 which was considered and recommendations were made to the General Manager indicating the financial distress and other circumstances applicable for appointing on compassionate grounds. This recommendation does not find place in the speaking order addressed to the petitioner while rejecting the application. The learned Tribunal also did not venture into the enquiry so conducted by the said officer which was placed as material papers annexed to the application and simply dismissed on the ground that the Managing Director, who is the competent authority to condone the delay, examined all relevant factors, took into consideration the inordinate delay in

making the application and, accordingly, rejected the claim of the applicant for compassionate appointment.

21. In fine, we find that the delay of five years in making the application after the voluntary retirement i.e., 22.03.2000, cannot be considered as inordinate delay as observed by the Tribunal and the petitioner at paragraph No.3 stated that "*my father and myself and other family members are not that much aware of the Railway Rules regarding compassionate appointment in spite of the fact that the petitioner is entitled to get employment under Railway Board orders dated 06-03-2002*".

22. In fine, the present Writ Petition succeeds and the order of the Tribunal dated 27.12.2018 passed in O.A.No.1534 of 2014 is hereby set aside. The respondents are directed to consider for appointing the petitioner under compassionate grounds within a period of three (03) months from the date of receipt of a copy of this order. There shall be no order as to costs.

23. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHEEKATI MANAVENDRANATH ROY, J

TUHIN KUMAR GEDELA, J