



**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WP.CT 181 OF 2026

Sunil Kumar,

**aged about 58 years, son of Late Chowdhury Lal, residing at
Village & Post Office Nahas Rupouli, Via Arer Hat,
Madhuboni, Bihar, Pin – 847222.**

] ...PETITIONER

-VERSUS-

1. Union of India,

**service through the General Manager, Eastern Railway, 17,
Netaji Subhas Road, Kolkata – 700001;**

**2. The Divisional Railway Manager, Eastern Railway,
Howrah Division, Howrah, Pin – 711101;**

**3. The Senior Divisional Manager, Eastern Railway, Howrah
Division, Howrah, Pin – 711101;**

**4. The Assistant Personnel Officer, C/O: Chief Personnel
Officer, Eastern Railway, Howrah Division, Howrah, Pin –
711101.**

]...RESPONDENTS

underlying pleadings, the grounds in support of the reliefs claimed and the specific reliefs sought, do manifest a challenge to the said order. In view of such situation, we have ignored the technical defect of lack of specific prayer and heard the Writ petition on merits treating the order dated July 19, 2022 as having been challenged in this proceeding.

FACTUAL MATRIX:

4. The following facts are evident from the material on record:-

a. The Petitioner's father was appointed to a Class IV post in the office of the Divisional Railway Manager, Eastern Railway, Howrah Division on July 19, 1944. While joining the service, he had declared his date of birth to be February 29, 1919 (It may, however, be noted that actually February had only 28 days in the year 1919). Be that as it may, he retired from service on March 01, 1977.

b. The Petitioner's father had rendered exemplary service to the employer-Railways since he stood firm in his duties during the 'All India Strike' in 1974; therefore, he was awarded an advance increment during service tenure.

c. On August 04, 1986, the Petitioner's mother made an application for appointment of the Petitioner on compassionate

grounds while asserting that the Petitioner's father had been given retirement due to his ill health. Subsequently, on December 13, 1986, the Petitioner also made a similar application for appointment on compassionate grounds.

d. The Petitioner thereafter approached the learned Tribunal by filing OA 847 of 1989 seeking *inter alia* a direction upon the Railway Authorities to provide compassionate appointment to the Petitioner. The case run in the said original application was based on a circular dated February 13, 1974 issued by the Assistant Director, Establishment Railway Board which provides that "*the system of giving appointments on compassionate grounds, in Class III and Class IV posts to sons/daughters/dependants of railway employees who die prematurely or get permanently crippled or afflicted with serious illness having the family in straitened circumstances*" could be extended to the loyal staff as well.

e. It was the Petitioner's case that as his father was a loyal employee therefore, he was entitled to compassionate appointment on the strength of the said circular dated February 13, 1974.

f. The said original application was dismissed for default on June 12, 1990. The Petitioner sought restoration of the said original application only in the year 2013 by filing M.A. No.146 of 2013. Another application being M.A. No.147 of 2013 was filed praying

for condonation of delay in filing the application for restoration. Both the said applications were dismissed by the learned Tribunal by an order dated May 06, 2013.

g. Assailing the said order dated May 06, 2013, the Petitioner approached this Court by filing a Writ Petition being WP.CT No.353 of 2013. The said Writ Petition was dismissed by this Court on February 03, 2015, with the observation that dismissal of the Writ Petition would not prevent the competent authorities from considering the grievances of the Petitioner sympathetically on merits, if any representation in such regard was filed on behalf of the Petitioner within two weeks from the date of the said order.

h. In terms of this Court's observations in the order dated February 03, 2015, passed in WPCT No.353 of 2013, the Petitioner made another representation before the Respondent Railway Authorities seeking appointment on compassionate ground. The same was followed up by several other representations as well. The Petitioner's representations were ultimately disposed by a communication/order dated October 14, 2015 observing as follows:-

“Reference above, to examine the subject claim, the Service Book of the ex-employee, Late Chowdhury Lal, Ex-Peon under SS/HWH has been consulted. As per records available in the Service Book, the ex-employee had been given normal

increment from Rs 220 to Rs 223 w.e.f. 01.01.1974 and again an advance increment being a loyal staff (for rendering service during strike of 1974) from Rs 223 to Rs 226 w.e.f. 01.06.1974 in Scale Rs 196-3-232. He was retired from Railway service w.e.f. 01.03.1977 under age limit. As such, your representation for compassionate appointment is not tenable and is hereby disposed of as regretted.”

i. The Petitioner then approached the learned Tribunal once again by filing O.A. No.1533 of 2016 which was dismissed on July 19, 2022 with the observation that in the event the system of engaging substitute ‘*under GM’s quota is continuous*’, the Petitioner would be duly considered therefore, if he applied for the same.

j. The Petitioner thereafter made several representations to the Respondent Railway Authorities and Petitioner has now approached this Court by filing the present Writ Petition, four years after the dismissal of the Petitioner’s OA.

SUBMISSIONS OF THE PARTIES:

5. It was submitted on behalf of the Petitioner that as the Petitioner’s father was a loyal employee and since he retired from service pre-maturely therefore the Petitioner was entitled to compassionate appointment in terms of the circular dated February 13, 1974.

6. It was contended that the Petitioner's application was turned down initially treating the same to be spurious on the basis of the opinion of the Railway Employees' Union; however, later on it was found by the Railways that the Petitioner's case was genuine. It was asserted that since the Petitioner had all alone been wary and vigilant and his case had been wrongly rejected on the basis of the misleading opinion of the Railway Employees' Union, therefore the delay was not attributable to the Petitioner at all.

7. Relying on a letter dated October 14, 2015 issued to the Petitioner by the Senior Divisional Personnel, Howrah it was contended that the same revealed that the Petitioner's father "*retired from Railway service w.e.f. 01.03.1977 under age limit*", i.e., the Petitioner's father retired prior to attaining the age of superannuation.

8. The Respondents vehemently contended that the Petitioner's father did not retire pre-maturely but he superannuated from service on March 01, 1977.

9. It was submitted that at the time when the Petitioner's father retired, the Petitioner was a minor and that the first application seeking compassionate appointment of the Petitioner was made only in the year 1986 i.e. nine years after the retirement of the Petitioner's father.

10. It was next contended that the Petitioner's father had already been incentivised by awarding an advance increment to him for being a loyal staff/employee.

11. A copy of the service record of the Petitioner's father was produced in Court to show that the date of birth of the Petitioner's father's was declared as February 29, 1919 and that he accordingly retired upon superannuation on March 01, 1977.

ANALYSIS & DECISION:

12. This is a unique case where a claim for compassionate appointment has been laid on the ground of the Employee's loyalty to service. Indeed the circular dated February 13, 1974 provides for extension of the "*the system of giving appointments on compassionate grounds*" to the loyal staff of the Railways as well.

13. Although there is no mention in the said circular dated February 13, 1974 as to how the "*system*" would be implemented, it is clear that for application of such "*system*" the date of retirement of the concerned loyal staff/employee would be the relevant date for reckoning the applicability of the said 'system'. This is so because the "*system*" as it stands speaks of "*giving appointments on compassionate grounds, in Class III and Class IV posts to sons/daughters/dependants of railway employees who die prematurely or get permanently crippled*

or afflicted with serious illness having the family in straitened circumstances”. Since the loyalty itself is the category for which the benefit of compassionate appointment was extended (unless the loyal staff fell within the already specified category of either death in harness or medical invalidation or permanent disability etc. as mentioned above), therefore the date of retirement would be the relevant date instead of date of death in harness or premature retirement either due to permanent disability or due to serious illness as the case may be.

14. It is now well settled that compassionate appointment is not an alternative mode of recruitment inasmuch as the same would be antithetic to the constitutional mandate of equality before law under Article 14 and equality of opportunity in matters of employment under Article 16 of the Constitution of India. Schemes of compassionate appointment are framed for the purpose of helping the family of an Employee which is forced into dire straits due to the sudden loss of employment (and hence the earning) of the sole bread-winner of the family either due to death in harness or serious ailment or any other contingency that may be indicated in the scheme itself. Such schemes are concessions aimed at providing immediate help to the family members of the concerned Employee so that they can tide over the sudden penury. The Hon’ble Supreme Court has in the case of *Canara*

Bank vs. Ajithkumar G.K.³ comprehensively consolidated the jurisprudence on the point of compassionate appointments. The following observations of the Hon'ble Supreme Court are relevant for the present purpose:-

“26. Decisions of this Court on the contours of appointment on compassionate ground are legion and it would be apt for us to consider certain well settled principles, which have crystallised through precedents into a rule of law. They are (not in sequential but contextual order):

26.1. Appointment on compassionate ground, which is offered on humanitarian grounds, is an exception to the rule of equality in the matter of public employment [see SBI v. Anju Jain [SBI v. Anju Jain, (2008) 8 SCC 475 : (2008) 2 SCC (L&S) 724]].

26.2. Compassionate appointment cannot be made in the absence of rules or instructions [see Haryana SEB v. Krishna Devi [Haryana SEB v. Krishna Devi, (2002) 10 SCC 246 : 2003 SCC (L&S) 248]].

26.3. Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service [see V. Sivamurthy v. State of A.P. [V. Sivamurthy v. State of A.P., (2008) 13 SCC 730 : (2009) 1 SCC (L&S) 335]].

26.4. The whole object of granting compassionate employment by an employer being intended to enable the family members of a deceased or an incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress [see Sushma Gosain v. Union of India [Sushma Gosain v. Union of India, (1989) 4 SCC 468 : 1989 SCC (L&S) 662]].

26.5. Since rules relating to compassionate appointment permit a side-door entry, the same have to be given strict interpretation [see Uttaranchal Jal Sansthan v. Laxmi Devi [Uttaranchal Jal

³ (2025) 11 SCC 178

Sansthan v. Laxmi Devi, (2009) 7 SCC 205 : (2009) 2 SCC (L&S) 304]].

26.6. *Compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirants [see SAIL v. Madhusudan Das [SAIL v. Madhusudan Das, (2008) 15 SCC 560: (2009) 2 SCC (L&S) 378]].*

26.7. *None can claim compassionate appointment by way of inheritance [see State of Chhattisgarh v. Dhirjo Kumar Sengar [State of Chhattisgarh v. Dhirjo Kumar Sengar, (2009) 13 SCC 600 : (2010) 1 SCC (L&S) 281]].*

26.8. *Appointment based solely on descent is inimical to our constitutional scheme, and being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve [see Bhawani Prasad Sonkar v. Union of India [Bhawani Prasad Sonkar v. Union of India, (2011) 4 SCC 209 : (2011) 1 SCC (L&S) 667]].*

26.9. *None can claim compassionate appointment, on the occurrence of death/medical incapacitation of the employee concerned (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible [see Union of India v. Amrita Sinha [Union of India v. Amrita Sinha, (2021) 20 SCC 695]].*

26.10. *An application for compassionate appointment has to be made immediately upon death/incapacitation and in any case within a reasonable period thereof or else a presumption could be drawn that the family of the deceased/incapacitated employee is not in immediate need of financial assistance. Such appointment not being a vested right, the right to apply cannot be exercised at any time in future and it cannot be offered whatever the lapse of time and after the crisis is over [see Eastern Coalfields Ltd. v. Anil Badyakar [Eastern Coalfields Ltd. v. Anil Badyakar, (2009) 13 SCC 112 : (2010) 1 SCC (L&S) 220]].*

26.11. *The object of compassionate employment is not to give a member of a family of the deceased employee a post much less a post for post held by the deceased. Offering compassionate employment as a matter of course irrespective of the financial*

condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV is legally impermissible [see Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138 : 1994 SCC (L&S) 930]].

26.12. *Indigence of the dependants of the deceased employee is the first precondition to bring the case under the scheme of compassionate appointment. If the element of indigence and the need to provide immediate assistance for relief from financial destitution is taken away from compassionate appointment, it would turn out to be a reservation in favour of the dependants of the employee who died while in service which would directly be in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution [see Union of India v. B. Kishore [Union of India v. B. Kishore, (2011) 13 SCC 131 : (2012) 2 SCC (L&S) 84]].*

26.13. *The idea of compassionate appointment is not to provide for endless compassion* [see I.G. (Karmik) v. Prahalad Mani Tripathi [I.G. (Karmik) v. Prahalad Mani Tripathi, (2007) 6 SCC 162 : (2007) 2 SCC (L&S) 417]].

26.14. *Satisfaction that the family members have been facing financial distress and that an appointment on compassionate ground may assist them to tide over such distress is not enough; the dependant must fulfil the eligibility criteria for such appointment [see State of Gujarat v. Arvindkumar T. Tiwari [State of Gujarat v. Arvindkumar T. Tiwari, (2012) 9 SCC 545 : (2012) 2 SCC (L&S) 795]].*

26.15. *There cannot be reservation of a vacancy till such time as the applicant becomes a major after a number of years, unless there are some specific provisions [see Sanjay Kumar v. State of Bihar [Sanjay Kumar v. State of Bihar, (2000) 7 SCC 192 : 2000 SCC (L&S) 895]].*

26.24. *Courts cannot confer benediction impelled by sympathetic consideration [see LIC v. Asha Ramchhandra Ambekar [LIC v.*

Asha Ramchandra Ambekar, (1994) 2 SCC 718 : 1994 SCC (L&S) 737]].

26.25. *Courts cannot allow compassionate appointment dehors the statutory regulations/instructions. Hardship of the candidate does not entitle him to appointment dehors such regulations/instructions [see SBI v. Jaspal Kaur [SBI v. Jaspal Kaur, (2007) 9 SCC 571 : (2007) 2 SCC (L&S) 578]].*

26.26. *An employer cannot be compelled to make an appointment on compassionate ground contrary to its policy [see Kendriya Vidyalaya Sangathan v. Dharmendra Sharma [Kendriya Vidyalaya Sangathan v. Dharmendra Sharma, (2007) 8 SCC 148 : (2007) 2 SCC (L&S) 804]].”*

(Emphasis supplied)

15. We, therefore, need to consider the Petitioner’s case in the light of the aforementioned guiding principles.

16. It is not in dispute that the Petitioner’s father retired on March 01, 1977. It is also undisputed that the first application seeking appointment of the petitioner on compassionate ground was made in the year 1986 i.e., about nine years after the retirement of the Petitioner’s father.

17. The fact that the Petitioner and his family have been able to survive for about nine years after the retirement of the petitioner’s father would reasonably lead to an inference that the Petitioner’s family did not fall in penury. Given the law governing the field, such aspect may singularly be sufficient to disentitle the petitioner to lay any claim for compassionate appointment unless the scheme therefore provides for a time limit going beyond the said period of nine years.

18. We are cognisant of the fact that the Petitioner was a minor at the relevant point of time and therefore, he could not have applied for such appointment earlier, but that alone would not be sufficient. However, since compassionate appointment is an exception to the general rule of public employment, therefore such appointment has to be done strictly in terms of the relevant scheme.

19. No scheme either contemporaneous with or prevailing at the time when the said circular dated February 13, 1974 was issued, was produced before us by any of the parties. However, on our query as to whether any scheme for appointment on compassionate grounds existed at any time proximate to the said circular dated February 13, 1974, the learned Counsel representing the Petitioner produced a document bearing No. CPO/SC/SA/POL/Pt.I dated May 14, 1979 which referred to a Railway Board's Letter No. E(NG)III/78/RC1/1 dated April 30, 1979 which in turn provided "*instructions*" for deciding "*cases for appointments on compassionate grounds*". Paragraphs 2 and 4(i) of the said letter are relevant for the present purpose. The same read thus:-

“(2) Appointments on compassionate grounds can also be made in the case of staff who die in harness but in such cases it should be restricted to a son/daughter/widow of the employees. Where the widow cannot take up employment and the sons/daughters are minor, the case may be kept pending till the first son/daughter becomes a major that is attains the age of 18. Such cases should

be kept pending only for 5 years after which the claim will lapse. However, in cases coming under priority (4)(i) below, if an appointment could not be made within five years due to the son/daughter being minor, the GM may personally authorise relaxation of the 5 year limit in deserving cases.

(4) The following should be order of priority to be followed while offering appointment on compassionate grounds:-

i) Dependents of employees who die or are permanently crippled in the course of duty;”

(Emphasis supplied)

20. Thus, while the relevant scheme provided that the case of a claimant for compassionate appointment could be kept pending till such person attained the age of 18 years, the same was also hedged with another condition that the waiting window would close after five years. This would effectively mean that in cases where the person to be appointed was a minor, the railways would permit such person to be considered for appointment on compassionate grounds provided such minor attained majority within five years of the death of the Employee. Such time limit was extendable by the General Manager of the relevant Railways in cases where the Employee died or got permanently crippled in course of his duty.

21. The Petitioner’s case could at best fall in the first category since he was a minor at the relevant point of time but it would certainly

be out of the bracket of Paragraph 4(i) of the scheme as the Petitioner's father did not die or become permanently crippled in course of duty.

22. Here again, going by the language of the scheme, for a person to claim the benefit of the five years window, the application must be made immediately so that the authorities are keep the application pending for the specified period.

23. In the case at hand the Petitioner's mother made the first application in the year 1986 i.e., nine years after the retirement of the Petitioner's father. This being the situation, the Petitioner was clearly not eligible under the said scheme, even if it is assumed that the same was applicable to him.

24. Even otherwise, the Petitioner may not be entitled to any equitable relief given the fact that the Petitioner has approached this Court four years after the order dated July 19, 2022 was passed by the Tribunal inasmuch as there is no explanation for the delay occasioned by the Petitioner in filing the present Writ Petition.

25. The petitioner has been unreasonably lax in espousing his own cause. He allowed his initial OA filed in 1989 to be dismissed for default on June 12, 1990. He did not care to seek restoration thereof prior to 2013 i.e. twenty three years. He has approached this Court also four years after the dismissal of the second OA on July 19, 2022

without any explanation for the delay. This Court cannot come to rescue of the indolent, even otherwise since delay defeats equity.

26. The Tribunal's order rightly holds that the Petitioner has approached it with a *hopelessly belated* case. We find no reason at all to take a different view.

27. The question as to whether the Petitioner's father was given a premature retirement or not no longer deserves any consideration inasmuch as even if we proceed on the assumption that the Petitioner's father had retired prematurely, then also the gap of nine long years between the date of retirement of the Petitioner's father and the application for compassionate appointment made by or on behalf of the Petitioner, as discussed in the preceding paragraphs disentitles the petitioner to get appointment on compassionate grounds. The subsequent conduct of the Petitioner as indicated hereinabove makes the matter further worse for him. In such view of the matter the aspect of the petitioner's father's date of birth being shown as February 29, 1919 would also lose relevance. Given the indolence of the petitioner, even if the petitioner's father's date of birth was March 29, 1919 and it was a case of premature retirement, then also the result would be the same as indicated hereinabove.

28. We also notice from the records that after the strike, in which the Petitioner's father had performed his duties and did not strike work, he continued in employment. Therefore, there was no issue of appointing anyone in his place. Hence, the Employer paid an additional increment, along with the regular increment, to the Petitioner's father as a reward. As such, this chapter was closed. On this aspect, the Petitioner cannot claim a compassionate employment, after passage of 51 years.

29. For all the aforesaid reasons, the impugned order calls for no interference. **WP.CT 181 of 2026 stands dismissed.** No costs.

30. **Rule is made absolute.**

31. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

[OM NARAYAN RAI]

[RAVINDRA V. GHUGE]
CHIEF JUSTICE