

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7031 OF 2015

Union of India  
Through the General Manager,  
Central Railway, CSTM  
Mumbai 400001.

2. The Divisional Railway Manager  
Personnel Branch,  
Central Railway, CSTM,  
Mumbai 400001.

... Petitioners

V/s.

Shri Velumani Chinnasamy Sanyasi  
R/at Room No.5, Railway Quarter  
No.MS/RB/I, Building No.11,  
Juinagar, Sector 22,  
Navi Mumbai

... Respondent

Mr. Suresh Kumar a/w. Ms. Sangeeta Yadav for the petitioner.  
Ms. Priyanka Mehndiratta for the respondent.

**CORAM : NARESH H. PATIL AND  
PRAKASH D. NAIK, JJ.**

**RESERVED ON : 20<sup>th</sup> October, 2016.**

**PRONOUNCED ON : 16<sup>th</sup> December, 2016.**

**JUDGMENT (PER NARESH H. PATIL, J)**

Rule. Rule made returnable forthwith. Heard finally by consent of

the parties.

2. The petitioner challenges judgment and order dated 19<sup>th</sup> December, 2014 passed by Central Administrative Tribunal in Original Application No.592/2013. Briefly stated the facts as described by the petitioner in his petition are as under:-

The father of respondent no.1 was railway employee who joined the service from 3<sup>rd</sup> December, 1981. While in service he died on 20<sup>th</sup> December, 1997. He was survived by his wife and four sons i.e. Velumurugan aged about 14 years, the respondent herein aged 11 years, Hayaraja aged about 7 years and Selakumar aged about 5 years.

3. The elder son Velumurugan applied for appointment on compassionate ground on 26<sup>th</sup> November, 2001 on his mother giving no objection in his favour on 10<sup>th</sup> January, 2002. The application filed by Velumurugan was rejected as it was found that he produced a bogus certificate. The decision of administration was communicated by the letter dated 23<sup>rd</sup> September, 2002 (Exhibit B). Another son of deceased i.e. respondent no.1 applied for appointment on compassionate ground on 17<sup>th</sup> July, 2009.

4. The Original Application bearing No.470/2009 was filed on 7<sup>th</sup> August, 2009 which came to be allowed by the CAT vide order dated 20<sup>th</sup> April, 2011 with a direction to consider application filed by the respondent for appointment on compassionate ground. It was directed that the rejection of the application of the brother of the respondent in the year 2001 will not come in the way of the respondent. The respondent filed application for compassionate appointment after he attained majority.

5. The petitioner filed a writ petition against the order dated 20<sup>th</sup> April, 2011 bearing Writ Petition No.8852/2011. The said writ petition was finally disposed of by Division Bench of this Court (Coram: D.K.Deshmukh & Anoop V. Mohta, JJ) by an order dated 8<sup>th</sup> December, 2011 which reads as under:-

Heard.

2. By the order impugned, all that the CAT has done is that it has directed the Petitioner to consider the application made by the Respondent for appointment on compassionate ground. All the grounds are available to the Petitioner. The only direction which is required is that the application should be considered in accordance with law. If law permits, the Petitioner to reject the application on the ground that the elder brother's application for the same relief was rejected and that order has not been challenged, the Petitioner will be at liberty to give such a

ground. Of course, it will be open to the Respondent to challenge such an order if so advised. No interference is called for. Writ Petition is dismissed. No costs.

6. Consequent to the order passed by the High Court, the petitioner reconsidered the application filed by the respondent. By communication dated 5<sup>th</sup> February, 2013 the petitioner rejected the application of the respondent. Thereafter the respondent again preferred an original application bearing OA No.592/2013 before the Central Administrative Tribunal challenging the communication dated 5<sup>th</sup> February, 2013. A written-statement was filed by the petitioner on 14<sup>th</sup> February, 2014.

7. By impugned judgment and order dated 19<sup>th</sup> December, 2014 the Central Administrative Tribunal directed petitioner to appoint the respondent on compassionate ground. This order is subject matter of challenge in the present petition.

8. Learned Counsel appearing for the petitioner submitted that the impugned order of Tribunal is unreasonable and erroneous one. In the facts there is no need now to appoint respondent on compassionate ground after the family survived for near about 17 years after the death of bread earner i.e. father of the respondent. This is not a fit case for

upholding the order of the Central Administrative Tribunal. It was brought to our notice that the application filed by the brother of the respondent was rejected in the year 2002 and the respondent thereafter filed an application in the year 2005. Reliance was placed on the Master Circular No.16 by the learned Counsel. On merits it was submitted that deceased employee died in the year 1997 and after 17 years it would not be reasonable and proper to consider respondent for appointing him on compassionate ground. Learned Counsel submitted that Railways had clarified in its circular dated 16<sup>th</sup> August, 2007 wards/child producing fake certificate do not deserve any compassion and any claim in this regard by any of wards/child need to be summarily rejected. The fundamental principle of the rules is to 'mitigate' immediate financial distress of the family which arises on the sudden demise of the bread earner.

9. Learned Counsel submitted that in this case the spouse of the employee was deriving two pensions and had grown up children.

10. The Counsel appearing for respondent submitted that the earlier order passed by the Tribunal was not obeyed by the railway administration. The railway administration had again referred to the services of the petitioner's mother who was working as woman khalasi in

railway and drawing family pension. The said reason was not to be considered while deciding application of the respondent. The delay in considering the case of respondent had occurred due to fault of the petitioners' administration. They have taken unnecessary time and delayed the consideration of the application filed by the respondent and continued litigation without justifiable cause. The learned Counsel submitted that the respondent is in a need of work. The family needs reasonable income to survive and it would not be permissible for the petitioner to say that even at this stage the respondent would not be entitled to apply under Master circular or any other circular issued by the railway administration. The Tribunal had rightly considered the facts of the case and after considering the over all facts and circumstances had reached the appropriate conclusion directing appointment of respondent on compassionate ground.

11. Both the learned Counsel appearing for the respective parties referred to the judgments on settled principles of appointment on compassionate ground which are placed on record. Learned Counsel appearing for the petitioners referred to following case laws:

***i) Local Administration Department & anr. v/s. M.***

***Selvanayagam Alias Kumaravelu {(2011) 13 Supreme Court Cases 42}.***

***ii) Union of India & anr. V/s. Shashank Goswami & anr. {(2012) 11 Supreme Court Cases 307}***

***iii) Union of India & anr. v/s. B. Kishore {(2011) 13 Supreme Court Cases 131}.***

***iv) Union of India & ors. v/s. Bhagwan Singh {(1995) 6 Supreme Court Cases 476.}***

***v) Umesh Kumar Nagpal v/s. State of Haryana & ors. {(1994) 4 Supreme Court Cases 138}***

***vi) State of U.P. & ors. v/s. Paras Nath {(1998) 2 Supreme Court Cases 412}.***

Learned Counsel appearing for respondent has referred to the Supreme Court judgment in the case of ***Balbir Kaur & anr. v/s. Steel Authority of India Ltd. & ors. and in the case of Meenakshi (Smt.) & anr. v/s. Steel Authority of India Ltd. & ors. {2000 Supreme Court Cases (L & S) 767}.***

12. We have perused the record, the impugned judgment and order and the case laws cited above. The principles regarding the consideration

of the application on compassionate ground are settled by now. Claiming appointment on compassionate ground is not a vested right. It would amount to an other mode of recruitment of a person. Each case would depend on facts and circumstances of its own. The rules framed in this behalf by the employer, the instructions issued and circulars are guiding principles for the employer to take appropriate decisions in such matters. In certain cases it has been held that if the family survives for number of years i.e. for more than 10 to 15 years after the loss of bread winner then the case has to be looked into carefully as to whether the application for appointment on compassionate ground at that stage was required to be considered.

13. In the facts, we are informed that both the mother and father of the respondent were working with Railways. The mother was receiving pension from railway administration. It is unfortunate and sad that while on duty the respondent's father succumbed to injuries and died. One of the brother of the respondent had earlier filed an application on compassionate ground which came to be rejected as he filed some bogus certificate.

14. It is informed that respondent became major and he filed a fresh

application. In the communication dated 5<sup>th</sup> February, 2013 the railway administration informed that the family had failed to establish strong merit of financial distress for granting appointment on compassionate ground. The case was examined in accordance with Railway Board's letter dated 1<sup>st</sup> March, 1985. It was found that the case lacked merits. There is a reference made to the services of respondent's mother who at the relevant time was working as a woman Khalasi in railways and was drawing pension of her husband. But merely by giving reference of the same by the department, it shall not be construed to be a ground for rejecting the request of the respondent for appointment on compassionate ground. We find that on the whole the railway administration had taken into consideration the case in its entirety and had reached its conclusion.

15. In the facts the railway administration after taking into consideration their norms, rules and circulars and in particular the facts of the case formed an opinion that after near about 17 years of death of father of respondent and on merits no case was made out for giving appointment on compassionate ground. We do not find the decision to be perverse or against the established principles governing the rules. The Tribunal had directed to provide appointment on compassionate ground to the

respondent. Taking into consideration the peculiar facts and circumstances of the case and considering the law laid down on the subject of appointment on compassionate ground, we are not in agreement with the view expressed by the Tribunal.

16. In the facts, we are of the view that the decision taken by the railway administration cannot be faulted. We are, therefore, not inclined to uphold the order passed by the Tribunal.

### **ORDER**

I) The Writ Petition is allowed.

II) The impugned Judgment and order dated 19<sup>th</sup> December, 2014 passed by the Central Administrative Tribunal in Original Application no. 592 of 2013 is hereby quashed and set aside.

17. The rule is made absolute in the above terms.

**(PRAKASH D. NAIK, J.)**

**(NARESH H. PATIL, J.)**