

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No. 37924 of 2015

Senthil Kumar

..Petitioner

Vs.

1.Union of India,
rep. by General Manager,
Southern Railway, Park Town,
Chennai-600 003.

2.The Divisional Signal & Telecommunication Engineer,
Palakkad Division, Southern Railway, Palakkad.

3.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003.

4.Workshop Personnel Officer,
Signal & Telecommunication,
Podanur-641 023.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records culminating in the order dated 19.06.2015 passed by the Central Administrative Tribunal, Chennai Bench, dismissing O.A.No.310/ 00528/2015, quash the same and to direct the 3rd respondent to provide employment to the petitioner on compassionate ground by considering the petitioner's representation dated 20.03.2014.

For petitioner : Mr.M.Arikarasudan
for Mr.B.Harikrishnan

For respondents : Mr.M.Vellaisamy
for Mr.V.G.Suresh Kumar
Standing Counsel for Railways
R1 to R4

O R D E R

(Order of the Court was made by HULUVADI G. RAMESH, J.)

This Writ Petition is filed challenging the order passed by the Central Administrative Tribunal, Chennai Bench, in O.A.No.310/00528/2015, dated 19th June 2015, wherein, the request made by the petitioner herein seeking employment on compassionate ground was rejected.

2. It is the case of the petitioner that his father was found missing from 18.02.1996. Hence, a complaint was lodged by the petitioner on 23.04.1996. A non-traceable certificate was issued by the Tamil Nadu Police on 23.10.1997. The amounts due to the petitioner's father viz., as Death-cum-Retirement- Gratuity (DCRG) amounting to Rs.71,300/- and Rs.6,108/- towards GIS were paid. Apart from the above, enhanced family pension in favour of Jayanthi, the mother of the petitioner amounting to Rs.2,300/- + DA relief on the basic pension from 24.04.1996 was also sanctioned. Further, on the recommendations of the V pay commission, the family pension was also revised w.e.f. 01.01.1996. While so, the petitioner's mother sent a representation dated 04.10.1999, seeking appointment on compassionate grounds for her elder son, viz., D.Harikrishnan. The said request was rejected by the General Manager on 20.12.2001. Thereafter, the petitioner's brother viz., D.Harikrishnan submitted a Mercy Appeal on 02.06.2005, seeking appointment on compassionate ground. Subsequently, the petitioner's brother also made a representation dated 23.02.2006 seeking appointment on compassionate ground for his brother, viz., the petitioner herein, which was again taken into consideration by the General Manager and the same was also rejected. The petitioner made another representation dated 20.03.2014, which was again, rejected. Aggrieved by the said rejection order, the petitioner filed O.A.No.649 of 2014 before the Central Administrative Tribunal, Ernakulam Bench. Subsequently, the petitioner had withdrawn the said O.A., reserving liberty to approach the appropriate forum. The petitioner thereafter, approached the Central Administrative Tribunal, Chennai Bench, by filing O.A.No.310/00528/2015. The said application was dismissed by the Tribunal on 19.06.2015. Aggrieved by the said order, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner contended that the Tribunal ought not to have dismissed the O.A. on technical ground and should have provided employment to the petitioner on compassionate ground. He further submitted that as the father of the petitioner was not found for more than 7 years, from the date of disappearance, the case of the petitioner could have been considered for appointment on compassionate ground as the family of the employee was in a very poor financial state. The whereabouts of the employee was not known as reported

by the police through the non-traceable certificate dated 23.10.1997. The petitioner's brother also filed the application for appointment on compassionate ground in 1999 itself which is well within the time. However, the said application came to be rejected on 24.07.2003. Thereafter, the representation sent by the petitioner was also rejected. Hence, the O.A. came to be filed by the petitioner before the Central Administrative Tribunal. Learned counsel further contended that the dismissal of the O.A. by the Central Administrative Tribunal holding that the petitioner's brother has not challenged the order of rejection dated 24.07.2003, is not sustainable. The petitioner's brother, at this distant point of time, cannot challenge the order and, therefore, the dismissal of O.A., on the above technical ground, is unsustainable.

4. Per contra, learned standing counsel appearing for the Railways submitted that the claim for appointment on compassionate ground is not a matter of right. The claim of the petitioner's brother was examined by the General Manager twice and rejected and hence, the present request of the petitioner could not be processed further. The object of compassionate appointment is to enable the family of the deceased to overcome the sudden financial crisis and at this distant point of time, it cannot be stated that the family is facing financial crisis. Learned counsel further submitted that the petitioner's father was found missing from 18.2.1996 and the date of retirement of the petitioner's father was 31.05.1999 and the petitioner's mother made representation on 04.10.1999, i.e., after the date of retirement. Taking the above facts into consideration, the General Manager has rejected the case on 20.12.2001 observing that the employee would not have been in railway service on the date of application as he would have retired on 31.05.1999 itself. On the above facts, the order of the Tribunal, dismissing the original application filed by the petitioner is just and proper.

5. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the railways and perused the typed set of papers filed before this Court.

6. It appears that the petitioner has sent an application seeking for compassionate appointment on the ground of Civil Death of his father, i.e., his father having been found missing and not traceable for more than 7 years. Prior to the application of the petitioner, his mother has also sent an application for considering the petitioner's brother for appointment on compassionate ground. The whereabouts of the employee/father of the petitioner, was not known as reported by the police vide certificate dated 23.10.1997. The petitioner's father could not be traced for more than 7 years, as is evident from the non-traceable certificate dated 23.10.1997. Since 23.04.1996 i.e., the date of disappearance, the petitioner's father was not traceable

for more than 7 years. In such a scenario, the petitioner's case could have been considered for appointment on compassionate ground as the family would have been facing financial crisis. However, the case of the petitioner could not be considered as the 7 years period from the date of disappearance of the petitioner's father gets over only 3 years subsequent to his date of superannuation.

7. However, for filing an application for appointment on compassionate ground, there is a time limit. It is reported that the petitioner's father was missing from 1996 and the application was filed in October, 1999, though the petitioner's father would have retired in May, 1999. However, the Department has rejected the application filed in October, 1999 on the ground that by that time the petitioner's father would have reached superannuation. However, by way of technical approach, the Department ought not have rejected the representation sent by the petitioner's mother. The first application filed by the petitioner's mother was rejected and again, the application filed by the petitioner's brother was rejected and subsequently, the application filed by the petitioner was also rejected. The Tribunal has observed that if the applicant was aggrieved by the rejection order, he should have challenged the rejection order dated 24.07.2003 made in the application filed by the brother of the petitioner for appointment on compassionate ground. The Tribunal held that since no challenge was made to the order dated 24.07.2003, the present application for compassionate appointment is not sustainable.

8. Though the Tribunal has reasoned as above, however this Court is of the view that the technical approach taken by the Department appears to be depriving the legitimate right accrued to the petitioner's mother who claimed compassionate appointment on the ground of financial crisis and hardship due to the missing of her husband and his whereabouts being not traceable. The approach adopted by the Department as well as the Central Administrative Tribunal is not proper. If the Tribunal was of the opinion that the petitioner ought to have challenged the rejection of the application seeking appointment on compassionate ground liberty could have been granted by the Tribunal itself for carrying out the said exercise, which the Tribunal has failed to do and this affects the right of the petitioner for claiming compassionate appointment.

7. In these circumstances, while setting aside the order dated 19.06.2015 passed by the Central Administrative Tribunal, the order of the third respondent dated 03.07.2014 rejecting the application of the petitioner is also set aside. The matter is remitted back to the Department to reconsider the application of the petitioner under the Master Circular No.16 (I) (iii) r/w clarification dated 26.07.1998 issued by the Government of India, Ministry of Railways. It is left open to the petitioner to raise

all the above contentions raised herein at the appropriate place.
The writ petition is disposed of with the aforesaid observation
and direction. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsi

To

- 1.The General Manager,
Union of India,
Southern Railway, Park Town,
Chennai-600 003.
- 2.The Divisional Signal & Telecommunication Engineer,
Palakkad Division, Southern Railway,
Palakkad.
- 3.The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-600 003.
- 4.Workshop Personnel Officer,
Signal & Telecommunication,
Podanur-641 023.
5. The Registrar
Learned Administrative Tribunal
Chennai Bench

1 cc to Mr.B. Harikrishnan, Advocate, Sr. 25506

Writ Petition No. 37924 of 2015

MSM (CO)
kk 9/6

WEB COPY