

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.29298 of 2016

W.M.P.No.24997 of 2016

1. R.Pitchaiammal  
2. R.Ramalakshmi ... Petitioners

versus

1. The General Manager,  
Union of India,  
Southern Railway,  
Park Town, Chennai.  
2. The Senior Divisional Personnel Officer,  
Madurai Division, Southern Railway,  
Madurai.  
3. The Registrar,  
Central Administrative Tribunal,  
Madras Bench, Chennai. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records from the 3<sup>rd</sup> respondent made in M.A.No.310/00964/2015, dated 17.12.2015, quash the same and consequently, direct the respondents 1 and 2 to consider the claim of the 2nd respondent for appointment on compassionate grounds.

For Petitioner : Mr.L.Chandrakumar

For Respondents 1 and 2 : Mr.P.T.Ramkumar

## ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this writ petition is to the order, dated 17.12.2015, made in M.A.No.310/00964/2015, of the Central Administrative Tribunal, Madras Bench, Chennai, 3rd respondent, declining to condone the delay of 1142 days in filing the Original Application, assailing the correctness of the order, dated 22.07.2010, passed by the Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd respondent, by which, the request of the 2nd petitioner for employment assistance, on compassionate grounds, has been rejected.

2. Short facts leading to the writ petition are as follows:

The 1st petitioner, is the wife of late G.Ramakrishnan, a Senior Technician (Brick Layer), in the Office of the Section Engineer/Works, at Tirunelveli in Madurai Division, Southern Railway and died in harness on 09.05.2009. The 2nd petitioner is the married daughter of the deceased employee. The 1st petitioner-wife, made an application, dated 20.06.2009, to the respondents, for employment assistance, on compassionate grounds. The Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd respondent herein, vide order, dated 22.07.2010, has rejected the same, on the grounds, viz.,

"(i) All the 3 daughters of the deceased employee (G.Ramakrishnan) were married, when he was alive.

(ii) The 1st petitioner has received Rs.7 Lakhs, as settlement dues. She was in receipt of enhanced family pension of Rs.8,080/-, payable upto 09.05.2019.

(iii) The 1st petitioner is residing in her own house and no minor children or dependents to be taken care of."

3. According to the petitioners, the Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd respondent herein, is not the competent authority to pass orders, on the request made for compassionate appointment. Therefore, the 1st petitioner made a request, dated 07.03.2011, to re-consider the decision by the competent authority. Subsequently, the 1st petitioner has made representations, dated 16.03.2014 and 16.04.2014, respectively. As there was no response, the petitioners were advised to challenge the decision, dated 22.07.2010. The petitioners could not generate

funds and in the process, there was a delay of 1142 days in filing the Original Application. According to them, the delay has occurred due to bona fide reasons in pursuing the remedy with Railways. The Tribunal declined to accept the said contention and at Paragraph 5 of the order made in M.A.No.310/00964/2015, dated 17.12.2015, ordered as follows:

"A glaring fact is required to be noted that the deceased employee has three daughters. All the three daughters got married while in service. The first applicant received terminal benefits for Rs.7 Lakhs and she is receiving pension of Rs.8080/-. In the order, dated 22.07.2010, it has been stated that the competent authority turned down the request of the first applicant for appointment on compassionate grounds. The subsequent representations submitted by the 1st applicant to re-consider her case do not save the limitation. Therefore, we are of the view that the applicants fail to offer sufficient reasons to condone delay of 1142 days in filing the OA. Accordingly, this MA is dismissed at the admission stage."

4. Being aggrieved by the same, instant writ petition is filed, reiterating the very same contentions. In addition to the above, attention was also invited to the Master Circular No.16, which is the compendium, on appointment on compassionate grounds, issued in Circular No.E(NG)II/88/RC-1/1/Policy, dated 12.02.1990, which provides for appointment on compassionate grounds to the dependents of the railway servants, who lose their lives in the course of duty or die in harness, or are medically incapacitated/de-categorized.

5. Contention has also been made that the order of rejection, dated 22.07.2010, is inconsistent with the Board Circular, dated 12.02.1990. It has also been contended that married daughters can also be considered for employment assistance, on compassionate grounds. Hence, there is no proof for submitting a letter, dated 07.03.2011, raising the ground of competency, of the authority, who rejected the request for compassionate appointment.

6. Mr.L.Chandra Kumar, learned counsel for the petitioners submitted that the General Manager, Southern Railways, Chennai, is the competent authority, to decide the request for compassionate appointment, in the case of married daughters. To ascertain, as to whether, the order of rejection was passed by the competent authority, we directed the learned counsel appearing for the Railways to produce the files.

7. On this day, Mr.P.T.Ramkumar, learned counsel appearing for the Railways fairly submitted that it is a fact that consequent on the death of the employee, the 1st petitioner-widow has submitted a letter, dated 20.06.2009, requesting for appointment to her marriage daughter, the 2nd petitioner herein, on compassionate grounds. Inquiry at APO's level was conducted. Enquiry was also conducted by S & WI. According to him, after conducting the enquiry, the file has to be referred to the Head Quarters for consideration and that was the opinion of the Divisional Railway Manager (P).

8. Learned counsel for the respondents-Railway submitted that the Divisional Railway Manager (P) sought for opinion from the Head Quarters. He fairly submitted that the file was not sent to the General Manager, Southern Railways, Chennai, 1st respondent herein, who is the competent authority to decide. He further submitted that the Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd respondent herein, vide letter, dated 22.07.2010, has turned down the request of the 1st petitioner. The said letter is extracted hereunder:

SOUTHERN RAILWAY

No.U/Z735/I/64/2009 Divisional  
Office,  
Confidential Section,  
Madurai, dt. 22.07.2010

Smt.R.Pitchaiammal,  
W/o. (Late) G.Ramakrishnan,  
Sr.Tech(B.Layer) Works/TEN,  
1/297, Durga Colony,  
Sankarankovil Main Road,  
South Kuruvikulam,  
Sankarankovil Taluk,  
Tirunelveli District,  
PIN 627754.

Sub: Appointment on compassionate grounds to  
Smt.R.Ramalakshmi, married daughter of (Late)  
G.Ramakrishnan, Ex.Sr.Tech(B.Layer) Works/  
O/TEN. (Died on 09.05.2009)

Ref: Your application, dated 20.06.2009

Your request for appointment on compassionate grounds to Smt.R.Ramalakshmi, married daughter of (late) G.Ramakrishnan has been turn down by the competent authority for the following reasons:

"(i) All the 3 daughters of the deceased employee (G.Ramakrishnan) were married off when he was alive.

(ii) You have received Rs.7 Lakhs, as settlement dues and you are in receipt of enhanced family pension of Rs.8,080/- + relief (payable upto 09.05.2019).

(iii) You are residing in her own house and no minor children or dependents to be taken care of.

Sd/-

Sr.Divl.Personnel Officer

9. In the light of the above submission and upon persual of the files, it is manifestly clear that the request for appointment on compassionate grounds, has not been turned down by the General Manager, Southern Railways, Chennai, 1st respondent herein, who is the competent authority. But in the impugned order, it is stated, as if, the request has been turned down by the competent authority. Factually, it is not correct.

10. Though the writ petitioners have contended that by sending representations to the competent authorities, they have pointed out the incompetency of the authority, who had rejected the request, there is no proof. Therefore, we are of the view that when the question of competency has been raised, the Tribunal ought to have ascertained the same from the Railways. It is ascertained that the General Manager, Southern Railways, Chennai, 1st respondent herein, is the competent authority.

11. Perusal of the application, dated 20.06.2009, of the 1st petitioner-widow, for compassionate appointment, shows that she has only affixed her thumb impression, in the application. The 2nd petitioner, daughter of the 1st petitioner, has studied upto Higher Secondary School level. She was married, on the date, when the application was submitted. However, by inviting the attention of this Court to the guidelines of the Railway Board, prescribing time limit for making appointments, Mr.L.Chandra Kumar, learned counsel appearing for the petitioners submitted that as per the latest guidelines, employment assistance, on compassionate grounds, should not be made, if the death has occurred, more than 10 years, as reckoned from the date of death. According to him, in the case on hand, husband of the first petitioner died on 09.05.2009 and therefore, the General Manager, Southern Railways, Chennai, 1st respondent, competent authority, can still consider the request of the petitioners, notwithstanding the delay in filing the Original Application.

12. We have already observed that the order, dated 22.07.2010, has been passed by the 2nd respondent, as if, it was turned down by the competent authority, viz., the General Manager, Southern Railways, Chennai, 1st respondent herein. The General Manager, Southern Railways, Chennai, 1st respondent herein, has not rejected the request of the petitioners.

13. Having found that the order, dated 22.07.2010, has been passed, without jurisdiction, we cannot allow the same to be in force. Though the petitioners have approached the Tribunal with an inordinate delay, when the order, dated 22.07.2010, is per se without jurisdiction, the same cannot be allowed to be perpetuated. While setting aside the order made in M.A.No.310/00964/2015, dated 17.12.2015, the only question to be considered is, whether the matter should be remanded back to the Tribunal, for numbering the original application, for adjudication. In the light of our discussion, we are of the view that it is only procedural, and hence, we refrain from doing so.

14. In the light of the above discussion, we are inclined to quash the order in M.A.No.310/00964/2015, dated 17.12.2015. Hence, while quashing the order of the Tribunal in M.A.No.310/00964/2015, dated 17.12.2015, this Court also set aside the order, dated 22.07.2010, passed by the Senior Divisional Personnel Officer, Madurai Division, Southern Railway, Madurai, 2nd respondent and direct the competent authority, viz., General Manager, Southern Railways, Chennai, 1st respondent, to consider the case of the 2nd petitioner for appointment on compassionate grounds, in accordance with the guidelines of the Railway Board, made in No.E(NG)-II/2014/RC-1/SCR/5, dated 08.07.2014 and pass a reasoned order, within a period of six weeks, from the date of receipt of a copy of this order. No costs.

16. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

skm

To

1 The Registrar,  
Central Administrative Tribunal,  
Madras Bench, Chennai.

2 The General Manager,  
Union of India,  
Southern Railway,  
Park Town, Chennai.

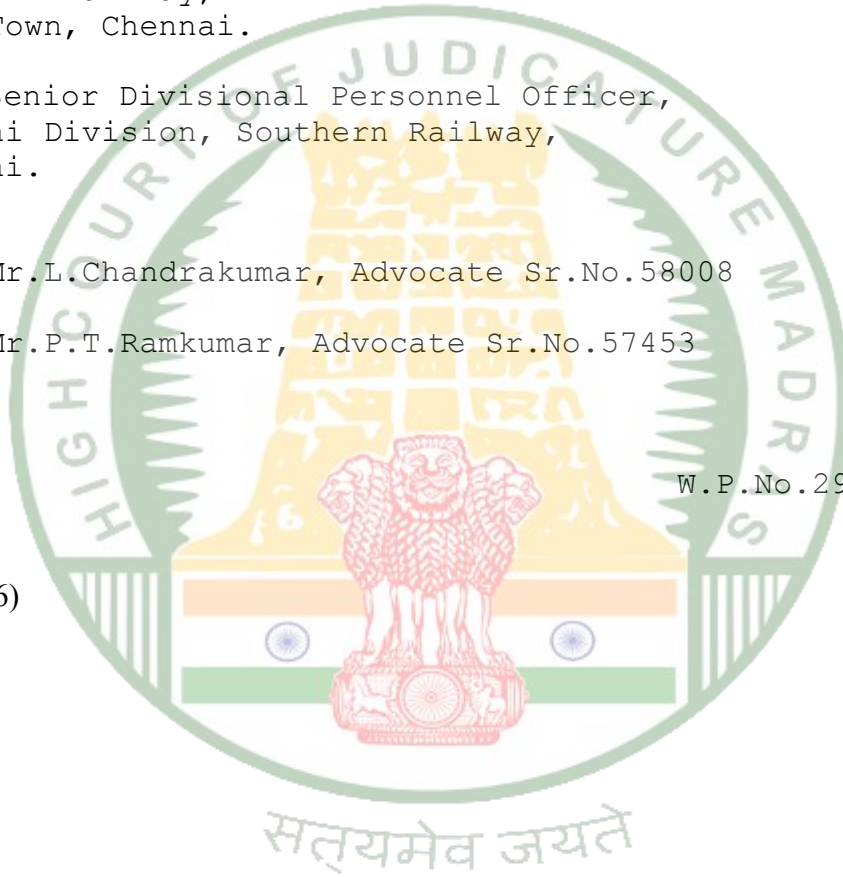
3 The Senior Divisional Personnel Officer,  
Madurai Division, Southern Railway,  
Madurai.

+1 CC to Mr.L.Chandrakumar, Advocate Sr.No.58008

+1 CC to Mr.P.T.Ramkumar, Advocate Sr.No.57453

W.P.No.29298 of 2016

AD(CO)  
KP(12.11.2016)



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