

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 06.11.2020

Delivered On : 19.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN  
and  
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.15827 of 2020

Smt.U.Nirmala Devi

...Petitioner

.vs.

1. Union of India,  
Represented by The General Manager,  
Southern Railway,  
Park Town, Chennai - 3.
2. The Senior Divisional Personnel Officer,  
Chennai Division, Southern Railway,  
Chennai - 600 003.
3. The Registrar,  
The Central Administrative Tribunal,  
Madras Bench, Chennai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order of the 3rd respondent made in OA.No.310/00262/2017 dated 06.06.2019 to quash the same and to consequently direct the respondents 1 and 2 to appoint the petitioner's eldest son on compassionate ground.

For Petitioner : Mr.L.Chandrakumar

O R D E R

(Order of the Court was made by R.HEMALATHA, J.)

The present writ petition is filed by the petitioner challenging the order made by the third respondent ie., Central Administrative Tribunal, Madras Bench in OA.No.310/00262/2017

dated 06.06.2019 in and by which the said Original Application was dismissed holding it as devoid of merits.

2. Briefly going into the facts of the case, the petitioner's late husband J.Udayamani was an employee of Southern Railway and was declared medically unfit with effect from 22.09.2015 due to his medical conditions and consequently a super-numerary post was created by the second respondent. The petitioner's husband requested for Voluntary Retirement on 28.10.2015 which was considered and he was allowed to retire with effect from 23.12.2015. Subsequently, on 08.01.2016 he had requested for sanction of appointment to his eldest son on compassionate ground and followed it up with a reminder letter dated 07.03.2016. The second respondent rejected the request vide order no. M/PB/CS/22/122/2015 dated 10.08.2016 and this order was challenged in OA/310/00262/2017 before the Central Administrative Tribunal, Madras Bench by the petitioner's husband. During the pendency of the said Original Application, the present writ petitioner's husband expired on 12.07.2020 and his wife (the present petitioner) was brought on record and she prosecuted the case. The Central Administrative Tribunal, Madras Bench did not find any merits in the contentions of the petitioner and therefore dismissed the OA/310/00262/2017 which has resulted in the present writ petition.

3. Mr.L.Chandrakumar, learned counsel appearing for the petitioner relied on the contents of the Railway Board Circular RBE.No.8 of 2000 dated 18.01.2000 in which it was stated as follows:

"The matter has been reviewed pursuant to a demand raised by the staff side in the DC/JCM and it has now been decided that 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 ground to be an eligible ward be considered."

According to Mr.L.Chandrakumar, learned counsel appearing for the petitioner, an employee who dies in harness on one side and one who is found medically unfit and is allowed to voluntarily retire, are to be placed on equal footing as regards grant of compassionate appointment is concerned. It was also contended by him that but for his medical condition, the petitioner's husband would have retired normally and there was no other intention in his opting for Voluntary Retirement.

4. However, the contentions of the respondents raised before

the Central Administrative Tribunal, Madras Bench was that the petitioner's deceased husband was otherwise due for retirement on 31.12.2015 and his Voluntary Retirement with effect from 23.12.2015, ie., just eight days before his normal date of superannuation smacks of his intention to procure an appointment for his son in this case. Moreover, it was also argued by the respondents before the Central Administrative Tribunal, Madras Bench that the Railway Board Circular in the year 2000 only stated that such cases of request for appointment on compassionate grounds to eligible wards may be considered clearly showing that it is not an entitlement but purely the discretion of the second respondent keeping in mind the financial and other conditions of the family consequent upon Voluntary Retirement of the medically unfit employee. The respondents also relied upon the Honourable Supreme Court decision in the case of State Bank of India & Another vs. Rajkumar, (Civil Appeal No.1641 of 2010) has held as follows:

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme..."

In LIC vs. Asha Ramachandra Ambedkar (1994) 2 SCC 718, the Hon'ble Supreme Court has stressed the need to examine the terms of the rules/scheme governing compassionate appointment and ensure that the claim satisfied the requirements before directing compassionate appointment. Similarly, in Food Corporation of India vs. Ram Kesh Yadav, 2007 (9) SCC 531, it has been observed by the Honourable Supreme Court that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointment, nor can compassionate appointment be directed dehors the policy.

5. It was also pointed out by the learned counsel for respondents before the Central Administrative Tribunal, Madras Bench that the family of the petitioner did not suffer of any financial crisis as claimed by them since out of the three sons

one was earning and living independently and another was already earning and as such the case of the petitioner did not warrant any Judicial intervention.

6. Going through the records submitted by the petitioner, it is clear that the petitioner's husband suffered from a serious medical condition incapacitating him from continuing his employment. His normal superannuation was only on 31.12.2015 and it was only on 22.01.2015 he was declared medically unfit to continue in the employment. It is quite unfortunate that he was not in a position to continue working till the date of his superannuation. This court also does not feel that it was a calculated move on the part of the petitioner's husband to seek Voluntary Retirement in order to accommodate his first son by way of provision of compassionate appointment scheme. However compassionate appointment both in the case of deceased employee as well as employees who voluntarily retire due to medical conditions is not a matter of right or entitlement. The financial distress due to such death or Voluntary Retirement is assessed by the employer and only in case an employer feels that compassionate appointment to one of the wards would alleviate the family from financial stress such appointments would be considered. In the instant case, it was found by the second respondent that two of the three sons were already employed though one was stated to be living independently. Therefore, with the family pension in place for the present petitioner and two of her sons already working, it cannot be said that the family is in penury or poverty. Though it was contended by the learned counsel for the petitioner that the two sons, who are already employed are not taking care of their mother, in the present writ petition, it cannot be a reason for granting compassionate appointment to the son who is not employed. In the result, the writ petition is dismissed. No costs.

Sd/-  
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,  
Union of India,  
Southern Railway,  
Park Town, Chennai - 3.

2. The Senior Divisional Personnel Officer,  
Chennai Division, Southern Railway,  
Chennai - 600 003.

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

+1cc to Mr.L.Chandrakumar, Advocate, S.R.No.37062

Order in  
WP.No.15827 of 2020

rr ii (21/12/2020)



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