

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

WRIT PETITION NO. 15059 OF 2022

Raj Dattu Gaikwad	}	Petitioner
versus		
Union of India and Ors.	}	Respondents

Mr. Rahul Walia with Mr. Siddharth
Seshadri for the petitioner.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE: DECEMBER 8, 2022

P.C.:

1. The petitioner, on the death of Sanjani Dattu Gaikwad (hereafter "Sanjani", for short), applied for compassionate appointment claiming that he was the adopted son of Sanjani and her husband, Dattu Genu Gaikwad (since deceased). Sanjani was employed as 'safaiwali' under the Central Railway and died on 5th September 2017. The said application for compassionate appointment came to be rejected by an order dated 20th January 2021 of the Divisional Office, Personnel Department, Pune of the Central Railway. The order reads as follows: -

"This is to inform you that your application for compassionate ground appointment against the death of your mother, Late. Sanjani Dattu Gaikwad, Ex. Safaiwali working under CHI/Pune has been regretted by the Competent Authority because there is no dependent of the deceased employee to be taken care of, you have not owned responsibility of your deceased mother while

she was alive. Your mother did not mention anywhere about your adoption in her entire service in the railway records neither did she avail any benefit due from railways to the adopted son. Moreover, it was also proved by the Welfare Inspector's report that you lived with your biological parents who is a railway employee."

2. A challenge to the said order dated 20th January 2021 was laid by the petitioner before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short). The Member (Administrative) heard the original application and dismissed the same by his order dated 16th March 2021. It was recorded in the order that Sanjani came to be appointed on compassionate ground, on 9th August 2000, upon the death of her husband Dattu Genu Gaikwad on 7th June 2000. The petitioner was held disentitled to appointment on compassionate ground since, according to the Tribunal, compassionate appointment can be granted "only once and in close proximity to the death of an ex-employee, which has already been done in this case". The order also records that on the death of Sanjani, the petitioner had received Rs. 9,40,311/- on account of terminal benefits based on a succession certificate dated 30th December 2019 issued by the competent Civil Court.

3. Mr. Walia, learned advocate for the petitioner, firstly assails the order of the Tribunal on the ground that the Member (Administrative) did not have jurisdiction to decide the original application while presiding over a Single Bench. In support of such contention, Mr. Walia has placed reliance on the decision of the Supreme Court reported in (2002) 10 SCC 338 (**State of M. P. vs. B. R. Thakare and Ors.**) as well as a Division Bench decision of the Calcutta High Court dated

24th February 2015 on W.P.C.T. 41 of 2015 (**Tarun Kumar Chatterjee vs. Union of India and Ors.**).

4. Mr. Walia also assails the order on the ground that the Tribunal misdirected itself in dismissing the original application. He contends that the petitioner claimed compassionate appointment not because Dattu Genu Gaikwad died-in-harness but on the death-in-harness of Sanjani who herself was an employee of the Central Railway. According to him, there is no rule prohibiting appointment on compassionate ground on the death of an employee who himself/herself was a compassionate appointee. He concludes his address by with the submission that the matter ought to be sent back on remand for consideration afresh in the light of the relevant rules/scheme for compassionate appointment.

5. There can be no quarrel with regard to the position of law that the Member (Administrative) could not have decided the original application finally, while presiding over a Single Bench. To that extent, the order suffers from total want of jurisdiction. The easy way out would have been to set aside the order dated 16th March 2021 and to remit the matter to the Tribunal for fresh decision in accordance with law. However, since we have heard Mr. Walia for some time and looked into the materials placed before the Tribunal with the care, attention and seriousness the same deserve, we see no reason to remit the matter to it, for, in our view, no case had been set up in the original application by the petitioner for interference with the order dated 20th January 2021, which was the subject matter of challenge before the Tribunal.

6. Despite the original application being dismissed on 16th March 2021, this writ petition has been instituted on 26th September 2022, i.e., 18 (eighteen) months from the date of the impugned order. One claiming compassionate appointment cannot choose his own sweet time for approaching the writ court. The court, in a case of the present nature, has to be approached with utmost promptitude. The petitioner seems to have unduly delayed his approach. We, however, do not propose to dismiss the writ petition on the ground of delay and laches.

7. The petitioner sought for compassionate appointment on the death of Sanjani by claiming that he was adopted by Dattu Genu Gaikwad (since deceased) and Sanjani (since deceased), sometime in May 2000. In support of such adoption, the petitioner relied upon an adoption deed. However, there is no document on record to show that Dattu Genu Gaikwad, prior to his death on 7th June 2000, or for that matter Sanjani, prior to her death on 5th September 2017, did inform their respective employers that they had adopted the petitioner as their son. Obviously, for such reason, there is nothing on record to show that the name of the petitioner was entered as their son in their respective service books.

8. The petitioner has referred to settlement forms generated from the office of the respondents, pursuant whereunto the terminal benefits of Sanjani were settled in his favour. Those forms were generated on 6th August 2020 after the petitioner obtained the succession certificate. It goes without saying that the employer could not have dishonoured the succession certificate and being under a legal obligation,

went on to make payment of the terminal benefits which accrued to Sanjani in favour of the petitioner. However, nothing turns on this. What is worthy of being noted is the ground assigned in the impugned order dated 20th January 2021 to the effect that the petitioner was residing, not with Sanjani, but with his biological parents, one of whom was a Railway employee. We have noticed from the original application that the petitioner has made a statement to the effect that such a finding is incorrect. However, what was required of the petitioner was a further specific statement that ever since his adoption, he had been residing with Dattu Genu Gaikwad and Sanjani and that it is they who had brought him up as their own son. We have labored in vain to locate such a statement in the original application. In the absence of any such statement, we are unable to find fault with the impugned order.

9. Law is well settled that a public post is not heritable and that right to compassionate appointment is not a heritable property. Compassionate appointment is offered only in such exceptional cases where an aspirant seeking compassionate appointment sets up a case that but for such an appointment, he would not survive because of the financial crisis arising out of the death of the bread earner of the family. We do not see any material on record which would persuade us to hold that the petitioner was entirely dependant on the earnings of Sanjani and that but for an appointment on compassionate ground in her place, he would not survive.

10. We also record the inability of Mr. Walia to produce the relevant rules/scheme for compassionate appointment to test

whether the finding that the Tribunal returned is justified or not. Normally, there may not be a bar for an appointment on compassionate appointment if such appointment is claimed on the death of a compassionate appointee. Nevertheless, compassionate appointment being an exception to the concept of equality in matters of public employment, the same has to be made strictly in terms of the rules/scheme therefor. However, as noted above, the rules/scheme have/has not been placed for our consideration. In any event, we are not persuaded to exercise discretion in favour of the petitioner for the reasons we have assigned.

11. In such view of the matter, we uphold the dismissal of the original application by the Tribunal but based on our reasons notwithstanding that the Member (Administrative) may not have/had jurisdiction to decide the original application finally.

12. The writ petition stands dismissed. No costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

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signed by
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DASHARATH
PANDIT
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