



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WP(C)/89/2021

SHRI. LAL BABU BASFORE
HUSBAND OF LATE KIRIA BASFORE, R/O OLD OVER BRIDGE,
DIMAPUR, NAGALAND

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED BY THE SECRETARY, INDIAN RAILWAY, GOVT. OF
INDIA, NEW DELHI

2:THE GENERAL MANAGER

NORTHEAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
ASSAM

3:THE PRINCIPAL CHIEF MEDICAL DIRECTOR

NORTHEAST FRONTIER RAILWAY
MALIGAON
GUWAHATI
ASSAM

4:THE DIVISIONAL RAILWAY MANAGER

NORTHEAST FRONTIER RAILWAY
LUMDING
ASSAM

5:THE STATION SUPERINTENDENT

NORTHEAST FRONTIER RAILWAY
DIMAPUR
NAGALAN

Advocate for the Petitioner : M WABANG, P CHANDA, MOA JAMIR, M SOLO, K T SANGTAM

Advocate for the Respondent : Y.P. GUPTA, Y.P. GUPTA

BEFORE

HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates

For the Petitioner : Ms. P Chanda

For the respondent : Mr. Y. P. Gupta

Date of Hearing : **10.06.2025**

Date of Judgment : **17.06.2025**

JUDGMENT & ORDER (CAV)

Heard learned counsel Mr. P. Chanda for the petitioner, and Mr. Y. P. Gupta, for the respondents.

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner praying for appointment on compassionate ground.

2. The facts in the petition is that the petitioner's wife was serving as a Safaiwala under H&MI, Dimapur and died in harness on 23.05.2024 leaving behind the petitioner and his daughter. After the demise of the

petitioner's wife, the petitioner having no means of livelihood had approached the concerned authorities on several occasions along with all necessary documents for appointment on compassionate ground against any group D category. The petitioner and his daughter do not have any employment in the Railways or any other State or Central Government organizations and as such they are facing immense financial difficulties. The petitioner submitted an application dated 06.08.2009 along with all necessary documents to the Divisional Railway Manager, North East Frontier Railways Lumding, Assam for appointment on compassionate ground and the same was forwarded to the higher authorities. However, the respondents failed to consider his application. The petitioner's wife was holding a regular post at the time of her demise and as such family pension has been granted to the petitioner in appreciation of the service rendered by the deceased employee during her life time.

3. Being aggrieved by the non action of the respondents even after a lapse of eleven years from the date of expiry of the petitioner's wife, the petitioner submitted another application dated 09.04.2015 to the Divisional Railway Manager, North East Frontier Railway, Lumding with a similar prayer for appointment of compassionate ground in any Group 'D' category post. However, the same was also kept in cold storage by the respondents.

4. As per Railway Establishment Rules and Labour Rules, appointment on compassionate ground is offered limited to dependents of the deceased employees of the railways.

5. It is further stated that in spite of the existence of a policy for

appointment of dependents of employees, who died in harness while in service, the inaction of the respondents even after a lapse of fifteen years from the date of death of the petitioner's wife is a case of discrimination and arbitrary action by the respondents.

6. Having no alternative remedy, the petitioner made another application dated 03.05.2019, to the Divisional Railway Manager North East Frontier Railway, Lumding praying for a compassionate appointment, which was duly received. However, this application was also not considered. It is stated that the petitioner has completed his Secondary School Examination and as such, he is eligible for appointment on compassionate grounds in Group 'D' category, as per the Railway Establishments Rules and Labor Rules.

7. The Secretary of the NE Railway, Mazdoor Union, Dimapur, Branch vide letter dated 22.01.2020 wrote to the Divisional Railway Manager (P), N.F. Railway, Lumding on the subject of compassionate appointment of the petitioner, referring the three applications of the petitioner dated 06.08.2009, 09.04.2015 and 03.05.2019, which were not considered till date. The Secretary of the NE railway, Mazdoor Union, Dimapur Branch also stated in the said letter that the petitioner is a genuine applicant as per CGA scheme (Compassionate Ground Appointment) and that the case of the petitioner should be given top priority and to absorb the petitioner in the railway service.

8. The petitioner relies on the case of ***Sushma Gosain vs. Union of India, AIR 1989 SC 1976*** where the Supreme Court stated that in claims for appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on

compassionate ground is to mitigate the hardship due to that of the bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

9. Learned counsel for the petitioner also relies on the case of ***Malaya Nanda Sethy Vrs State of Orissa and Others*** reported in ***2022 SCC Online SC 684*** ; where a similar opinion has been expressed by the Supreme Court. Learned counsel therefore, prays that the respondents may be directed to consider the petitioners applications/representations and appoint the petitioner in any group D category post on compassionate grounds in terms of the Railways Establishments rules and labor Rules.

10. Regarding maintainability of the present writ petition, the learned counsel for the petitioner has relied on the case of ***RAJASTHAN STATE ELECTRICITY BOARD VERSUS UNION OF INDIA AND OTHERS*** reported in ***(2008) 5 SCC 632***. He has submitted that the Supreme Court in the cited case has held that it is a well settled principle of law that availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution. He has submitted that the North East Frontier Railways falls within the definition of "State" and hence this Court has the jurisdiction to entertain the present writ petition

11. The learned counsel for the petitioner further submits that the latest circular regarding appointment on compassionate ground in

respect of the Railways is the circular No. E(NG)II/2017/RC-1/23 dated 01.02.2023 & No.E(NG)II/2017/RC-1/23 dated 27.02.2023 (RBE No.35/2023);

”Time Limit For Making Compassionate Appointments:

(i) All requests for CGA submitted within the prescribed period of 5 years from the date of death/medical invalidation/2 years of attaining majority for ward registered earlier as minor, shall be finalized/decided by DRMs/CWMS/HODs/Competent Authority. Such cases not received within this period of 5 years will be considered as per the following schedule by the authority indicated against each:

(a)	Beyond 5 years and upto 20 years	DRMS/CWMS/HODs
(b)	Beyond 20 years upto 25 years	To be decided by GMs at their Personal level only (are not to be delegated further).
(c)	Beyond 25 years	With prior approval of Ministry of Railways on personal recommendations of GMs

(ii) As regards cases where the request for CGA has not been received by the Railway Administration within 05 years of the event warranting CGA, such case shall be decided by the authorities as indicated above.

(iii) Railways should ensure that all possible efforts are made to give CGA to the eligible dependent of the Railway employee concerned without undue delay within the time frame as per existing rules/instructions. Further, responsibility may be fixed on the concerned officials/officers for delay/inaction.

(iv) While considering belated requests i.e. those received by Railway Administration after 5 years, it should, however, be kept in view that the concept of CGA largely related to the need for immediate assistance to the family of the Railway servant in order to relieve it from economic distress. The very fact that the fami has been able to manage somehow all these years should normally be taken a adequate proof that the family had some dependable means of subsistence Therefore, examination of such cases would call for a great deal of circumspection as per extant norms.

[E(NG)II/2017/RC-1/23 dated 1.2.2023 (RBE No. 21/2023) & No. E(NG)II/2017/RC-1/23 dated 27.2.2023 (RBE No. 35/2023”

12. Per contra, the learned counsel for the respondent submits that it is not in dispute that the wife of the petitioner expired on 23.05.2024 and that she was working as a Safaiwala at the time of her death. And thereafter, a pension payment order was issued in favor of the petitioner. However, it is denied that the respondents received any application praying for compassionate appointment. Even assuming, but not admitting that the petitioner had submitted an application, the same has been made after five years from the demise of his wife i.e. on 06.08.2009. The learned counsel submits that a consolidated Master circular No. 16 has been issued by the Railway Authorities pertaining to the appointments on compassionate grounds. Clause V to the master circular categorically states that normally all appointments of compassionate ground should be made within five years from the date of occurrence of the event entitling the eligible person to be appointed on this ground. The petitioner's first application was allegedly submitted on 06.08.2009 wherein the petitioner wife died on 23.05.2004. The present writ petition was subsequently, filed on 28.04.2021, seventeen years after the demise of the petitioner's wife and therefore it cannot be said that the petitioner was suffering financially or that he was dependent on his late wife. Appointment on compassionate ground is not a source of recruitment. 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. As per the master circular No. 16, clause V, the time limit for applications for compassionate appointment should be made within a period of five years from the date of

occurrence of the event. The petitioner neither submitted his application for compassionate appointment within the time frame nor did the petitioner submit an application before the General Manager for relaxation of the five years period.

13. Learned counsel for the respondents also states that the petitioner's wife was an employee of the Railways and therefore her husband/ the petitioner and his daughter are receiving the family pension.

14. Learned counsel for the respondents further submits that the petitioner has not exhausted the remedies available, as the petitioner has failed to approach the Central Administrative Tribunal before approaching this Court. Under such facts and circumstances, the respondents submits that the petitioner has failed to make out a case warranting the interference of this Court under Article 226 of the Constitution of India and the writ petition is liable to be dismissed.

15. Learned counsel for the respondent has placed reliance on the case of (i) ***Umesh Kumar Nagpal vs State of Haryana in 1994 SCC(4) 138***, (ii) ***State of West Bengal Versus Debabrata Tiwari and Others*** reported in ***2023 SCC Online SC 219*** and (iii) ***Appeal (Civil) 481 of 1980, L. Chandra Kumar Versus Union of India and Others; DATE OF JUDGMENT: 18/03/1997.***

16. Upon consideration of the submission made by the parties, and on going through the authorities relied upon by the parties, this Court is of the view that there is no dispute regarding the death of the petitioner's wife while in service. There is also no dispute that the

petitioner's wife died in harness on 23.05.2004. It is also an admitted fact that there is a scheme for appointment on compassionate ground under the Ministry of Railways. The scheme for compassionate appointment is provided in the Railway Establishment Rules & Labor Laws and the same is reproduced for easy reference;

“Appointments on Compassionate Grounds:

Appointment on compassionate ground are those appointments which can be made to the dependents of Railway servants who lose their lives in the course of duty or die in -harness or become crippled while in service or medically incapacitated or decategorised for the post holding or no alternative appointment on reasonable emolument could be offered. Compassionate appointments are offered in the following type of cases:

- (i) Dependents of the employees who die or permanently crippled in the course of duty;*
- (ii) Dependents of the employees who die in harness as a result of Railway accidents while off duty;*
- (iii) Dependents of the employees who die in harness while in service before retirement or medically incapacitated;*
- (iv) Dependents of the employees whose whereabouts are not known for a period of 7 years and the settlement dues of the employee are paid to the family on this account;*
- (v) Dependents of the employees who develop serious ailments like heart diseases, cancer or medically decategorised where no alternative job of the same emoluments could be offered to them.*

Notes: 1. Medically decategorised non-Gazetted staff should be absorbed in suitable alternative posts in a regular cadre only and not in tenure posts.

[R.B.'s No. E(NG) 1-88-RE 3/1 of 11.4.88, Bahri's]"

- 17.** The time limit for making compassionate appointments has also been notified by a circular dated 18.04.1985 and 18.04.1990 which is as follows:

“V.TIME LIMIT FOR MAKING COMPASSIONATE APPOINTMENTS:

- a. Normally all appointments on compassionate grounds should be made within a period of five years from the date of occurrence of the event entitling the eligible person to be appointed on this ground. This period of five years may be relaxed by the General Manager, subject to the following conditions:*
 - i. The powers shall be exercised personally by the General Manager. It shall not be delegated to a lower authority.*
 - ii. The case should not be more than ten years old as reckoned from the date of death.*
 - iii. The widow of the deceased employee should not have remarried.*
 - iv. The benefit of compassionate appointment should not have been given at any time to any other member of the family or to a near relative of the deceased employee.*
 - v. The circumstances of the case should be such as to warrant relaxation of the time limit of five years.*
 - vi. The reasons for relaxing the time limit should be placed on record.*
 - vii. The request for compassionate appointment should have been received by the Railway Administration as soon as the son/daughter to be considered for The above delegation of powers is current upto 31.03.1992.*

[No. E(NG)11/84/RC-1/26 dated 18.04.1985 (RBE 112/1985) and E(NG)II/84/RC-1/26 dated 18.4.1990. (RBE 68/1990)]”

- 18.** It is evident that the application for compassionate appointment has to be made within five years from the demise of the employee.

However, when belated applications are received by the Railway Administration, the same have to be dealt with in accordance with the circular E(NG)II/2017/RC-1/23 dated 01.02.2023 & No.E(NG)II/2017/RC-1/23 dated 27.02.2023 (RBE No.35/2023) (Supra). From the various authorities regarding compassionate appointment, what emerges is that the purpose of providing appointment on compassionate ground is to mitigate the hardship caused due to the death of the bread earner in the family. Such an appointment should, therefore, be provided immediately to the family in distress. In the case of ***State of West Bengal Versus Debabrata, (Supra)*** the Hon'ble Supreme Court held that the provision for compassionate appointment makes a departure from the general provision providing for appointment to a post by following a particular procedure of recruitment. Since, such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provision and must be resorted to only in order to achieve the stated objective i.e. to enable the family of the deceased to get over the sudden financial crises. Appointment on compassionate ground is not a source of recruitment. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

19. The Court further stated;

“35. Considering the second question referred to above, in the first Instance, regarding whether applications for compassionate appointment could be considered after a delay of several years,

we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee."

In the case of **CANARA BANK VERSUS AJITHKUMAR G.K.** reported in **2025 INSC 184**, the Supreme Court further, emphasized that the financial condition of the family must be assessed, and compassionate appointments should only be considered if the applicant meets the eligibility criteria and there is a demonstrable need for immediate assistance. The Court also clarified that compassionate appointments are not a guaranteed right for dependents of deceased employees, even if they are eligible.

20. In the light of the principles laid down by the Supreme Court and upon considering the present case in the backdrop of such pronouncement, this Court has observed that the petitioner submitted his application praying for compassionate appointment only after five years after the demise of his wife. Moreover, the petitioner has also

approached this Court after seventeen years after the death of his wife. The only ground which can justify compassionate employment is the penurious condition of the deceased family. The sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependents of the deceased being employed on compassionate grounds.

21. The law regarding compassionate appointment is no longer res integra. Be that as it may be, in the present case the Railway authorities have issued the Circulars No. E(NG)II/2017/RC-1/23 dated 01.02.2023 & No.E(NG)II/2017/RC-1/23 dated 27.02.2023 (RBE No.35/2023) providing for consideration of applications made even beyond 25 years after the employee's death.

22. In view of the above mentioned Circulars, this petition is disposed of with a direction to the respondents 1, 2, 3, 4 and 5 to consider the applications of the petitioner dated 06.08.2009; 09.04.2015 and 03.05.2019 for compassionate appointment in terms of the Circulars No.E (NG)II/2017/RC-1/23 dated 01.02.2023 & No.E (NG)II/2017/RC-1/23 dated 27.02.2023 (RBE No.35/2023) within a period of 3 (three) months and dispose of the same by a reasoned order.

23. No Orders as to cost.

JUDGE

Comparing Assistant