



WEB COPY



W.P.No.9389 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.9389 of 2024
and
WMP Nos.10401 & 10404 of 2024

1. Union of India represented by
Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
Chennai - 600 003.
2. Divisional Railway Manager,
Personnel Branch,
Chennai Division,
Southern Railway,
Chennai 600 003.
3. Special Divisional Officer,
Chennai Division,
Southern Railway,
Chennai 600 003.
4. Southern Zone Officer,
Park Town,
Southern Railway,
Chennai 600 003

... Petitioners



W.P.No.9389 of 2024

Vs

WEB COPY

1. Shri M. Anburaj

2. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 600 104

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorari to call for the records pertaining to order dated 17.11.2022 passed in Original Application No.1331/2016 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr. Sakthivel A.R

For Respondents : Mr. Sam Jeyaraj
for M/s. Sarvabhaumam Associates
for R1

R2-Tribunal.

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 17.11.2022 passed in O.A.No.1331 of 2016 on the file of the Central Administrative Tribunal, Chennai Bench.

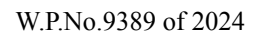
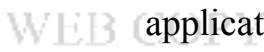
2. The first respondent is the son of the deceased railway employee born



W.P.No.9389 of 2024

through his second wife. The first wife of the deceased employee is Mrs.Pushpa and the second wife is Mrs.Kavery. The first respondent is the son of the second wife Mrs. Kavery. The employee died while in service on 21.03.2008. There was a family dispute between the legal heirs, i.e., two wives and children of the employee. A Civil Suit was instituted in O.S.No.345 of 2008 for declaration. The competent Civil Court of Law declared that Mrs.Pushpa is the first wife of the deceased employee and Mrs.Kavery is the second wife. The first respondent in the present writ petition Mr.Anburaj is admittedly son of the second wife of the deceased employee.

3. The employee died on 21.03.2008 and on account of family dispute, no application seeking compassionate appointment was filed within the time limit as stipulated under the scheme. The family dispute was resolved by way of compromise memo filed in Appeal Suit instituted in AS.No.17 of 2011. The compromise memo agreed between the parties was implemented by the Railway Authorities and the terminal benefits due to the deceased employee was settled as per the joint compromise memo recorded in the Appeal Suit. The application seeking compassionate appointment was filed on 11.01.2012. However, perusal of the application reveals that it was not submitted in the prescribed format. Again an application was submitted seeking compassionate appointment on



4. The learned Panel Counsel appearing on behalf of the writ petitioner would submit that as per the Board's decision, the first respondent is ineligible to submit an application seeking compassionate appointment. That apart, the application itself was filed after a lapse of about 4 years from the date of death of the deceased employee and citing all these reasons, the application was rejected by the competent authorities. The Tribunal issued a direction to consider the application, which resulted in filing of the present writ proceedings.



W.P.No.9389 of 2024

WEB COPY

5. The learned counsel appearing on behalf of the first respondent would oppose by stating that the Board's decision was over turned by High Court of Calcutta, which was confirmed by the Hon'ble Supreme Court. Therefore, relying on the said Board's decision, the case of the first respondent ought not to have been rejected. The family of the first respondent is in indigent circumstances and therefore, the first respondent is eligible to secure appointment on compassionate grounds. Due to family dispute and on account of pendency of civil litigation, the first respondent was not in a position to pursue the application filed seeking compassionate appointment. After disposal of the Appeal suit, the Original Application was filed before the Central Administrative Tribunal and therefore, the delay cannot be a ground to reject the claim of the first respondent for compassionate appointment.

6. Heard both sides.

7. Scheme of compassionate appointment is a concession and it cannot be claimed as an absolute right. The purpose and object of the scheme of compassionate appointment is to mitigate the circumstances arising on account of the sudden death of an employee while in service. Thus, the penurious



W.P.No.9389 of 2024

circumstances prevailed at the time of the death is to be taken into consideration for the purpose of considering the application seeking compassionate appointment.

8. Equal opportunity of public employment is the Constitutional mandate. All appointments are to be made under the Constitutional Scheme and by following the Recruitment Rules in force. Large Scale compassionate appointments under the special scheme if provided would result in infringement of the constitutional rights of the eligible citizen, who all are aspiring to secure public employment through open competitive process. Therefore, the scheme of compassionate appointment is to be restricted only to the legal heirs of the deceased employee, who all are deserving and such appointments are to be provided soon after the death of an employee. Scheme does not contemplate one appointment for the family of the deceased employee. The very purpose is to mitigate the circumstances and therefore, the terms and conditions of the scheme is to be scrupulously followed with reference to the facts established. Long delay in submitting an application is a ground to reject the application since the penurious circumstances arose on account of the sudden death of employee became vanished.



W.P.No.9389 of 2024

9. There is no merit assessment while making appointment on compassionate grounds. Rule of reservations are not followed. Constitutional scheme of appointment is absent. When there is no service rules are adopted for compassionate appointments, such schemes made for the benefit of the legal heirs of the deceased employee is to be restricted and implemented strictly in accordance with the terms of the scheme and any expansion by the Courts on misplaced sympathy would result in an unconstitutionality and thereby violating the rights of all other eligible candidates who all are longing to secure public employment through open competitive process.

10. In the present case, the employee died on 21.03.2008. First application was filed in the year 2012. Civil suits were pending on account of family dispute between the legal heirs of first wife and second wife. The dispute ended with the joint compromise memo. The application was rejected on the ground that the legal heirs of the first wife had not applied for appointment on compassionate ground.



W.P.No.9389 of 2024

11. The Central Administrative Tribunal directed the writ petitioners to consider the case of the petitioner. Such a direction would do no service to the cause of justice. The litigant will be back again to the Court by filing another writ petition if an order of rejection once again is passed by the writ petitioners. In the present case, the application was rejected by the Southern Railway. Therefore, the direction issued by the Central Administrative Tribunal to consider the application is unwarranted. It is preferable to decide the issues on merits at all circumstances. Any such order of direction to consider the representation can be considered only if issues are not decided by the competent authorities and the person approaching the Court could able to establish his right or violation of right as per the Statues and Rules in force. The direction to dispose of the representation may be an easy way out for disposal of cases, but it will not meet the ends of justice. Thus, this Court is not inclined to support the view of the Central Administrative Tribunal in the present case. The first respondent has not established any right for the purpose of considering the relief to grant compassionate appointment. He has to participate in the process of selection through open competitive process for securing employment on merits and in accordance with law.



W.P.No.9389 of 2024

12. With these observations, the order impugned dated 17.11.2022 in

O.A.No.1331 of 2016 is set aside and the writ petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

[S.M.S., J.]

[M.J.R., J.]

20.01.2025

Index: Yes/No

Speaking/Non-speaking order

mrp

To

1. The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai 600 104

2.The Public Prosecutor,
High Court of Madras.



WEB COPY



W.P.No.9389 of 2024

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

mrp

W.P.No.9389 of 2024

20.01.2025