

Central Administrative Tribunal
Principal Bench

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O.A.No.2343/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 20th day of February, 2003

Shri Jashbir Singh, S/o Late Shri Kartar Singh,
R/o House No.996,
Village & P.O. Khera Khurd,
Delhi-110082.Applicant.

(By Advocate: Shri Praveen Kumar)

Versus

1. The Director,
Institute of Nuclear Medicine & Allied Science
(INMAS)
Defence Research & Development Organisation
(DRDO), Lucknow Road,
Delhi-110 054.
2. Union of India through its Secretary,
Ministry of Defence,
South Block,
New Delhi.

....Respondents.

(By Advocate: Sh. Rajinder Nischal, through Sh.
Inderjit Singh with Sh. B.M.S. Bhutla, DR)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' orders dated 8.3.2001, 20.9.2001 and 1.2.2002 where his request for appointment on compassionate ground has been rejected. He has sought quashment of these orders with further direction to consider his case for compassionate appointment.

2. Applicant's father was working as Technician-B-Grade, who died in harness on 16.3.2000. Family of the deceased consists of one son, four daughters. Three sisters of applicant were already married during the life time of the deceased. An application preferred by the widow for compassionate appointment of applicant was processed and in

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pursuance relevant information had been furnished. The request for compassionate appointment was rejected by an order dated 8.3.2001 on the ground that widow of the deceased had a own house and is not dependent on her children and has been granted sufficient means by way of retiral benefits. Moreover, it is also stated that for whom the appointment has been sought is married and is ineligible for service.

3. Applicant preferred another representation for reconsideration which stood rejected by an order dated 20.9.2001 on the ground that at the time of death of the husband of widow, she had no liability and she has been given sufficient retiral benefits including Rs.3,00,000/- (approx.) and the family pension of Rs.2300/- plus 45% DA and as the request has been made after one year from the death of the deceased, her claim cannot be considered.

4. On further reconsideration, on sympathetic ground, the request for compassionate appointment was rejected on 1.12.2002, giving rise to the present OA.

5. Shri Praveen Kumar, learned counsel appearing on behalf of applicant contended that orders passed by respondents are not in accordance with law and also not as per the Scheme of compassionate appointment, issued by DoPT's OM of 1998.

6. It is further stated that the grounds for rejection are not valid as the family is still in financial crisis as one of the sister is yet to be married. Placing reliance on a decision of the Apex

Court in Balbir Kaur & Anr. v. Steel Authority of India Limited & Ors., 2000(4) Scale 670, it is contended that request of compassionate appointment cannot be rejected solely on the ground of payment of retiral benefits.

7. On the other hand, proxy counsel Shri Inderjit Singh, appearing on behalf of respondents, strongly rebutted the contentions and stated that there is no legal infirmity in the orders passed by respondents. According to him, as per DoPT's Scheme of 9.10.1998, the object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. The compassionate appointment can be made on available vacancies and that to a family who is in real financial crisis.

8. Shri Inderjit Singh further stated that as per Planning Commission's report, poverty line has been defined as below the income of Rs.1767/- per month for a family of five members. Widow of the deceased got an amount of Rs.3,00,000/- (approx.) as retiral benefits and is in receipt of family pension of Rs.2300/- plus DA and family of the deceased is having own built house and half killa of Agricultural land. Moreover, three daughters of the deceased have already been married prior to his death. Keeping in view of the aforesaid, the case of applicant was considered as per the Scheme but as the family has not been found indigent, and there were more deserving

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cases, and the fact that request for compassionate appointment is to be disposed of within a year of the death of the Government servant, and waiting list is to be kept only for an year, the claim of applicant was rightly rejected. It is stated that as there is no vacancy under 5% of direct recruitment quota for compassionate appointment, applicant cannot be offered compassionate appointment, which cannot be adopted as an alternative mode of entry in Government service. He places reliance on an OM issued by the Government on 19.7.2001 laying down the limit for waiting list for one year.

9. In rejoinder, applicant has reiterated his pleas taken in the OA.

10. I have carefully considered the rival contentions of the parties. The Apex Court has clearly laid down in several pronouncements that compassionate appointment cannot be claimed as a right but the right of consideration is available. Moreover, Court cannot direct for compassionate appointment if vacancies are not available and the object of the compassionate appointment is to tide over the sudden financial crisis. The aforesaid ratio laid down by the Apex Court in the following rulings:

1. Umesh Kumar Nagpal v. State of Haryana & Ors. JT 1994(3) SC 525.
2. Life Insurance Corporation of India v. Mrs. Asha Ramchandran Ambedkar and Others. JT 1994(2) SC 183.
3. Himachal Pradesh Road Transport Corporation v. Dinesh Kumar, JT 1996(5) SC 319.
4. Hindustan Aeronautics Limited v. Smt. A. Radhika Thirumalai, JT 1996(9) SC 197.

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11. If one has regard to the aforesaid rulings and also the decision of Apex Court in Union of India v. Joginder Sharma, 2002(8) SCC 65 where the following observations have been made:

"4. Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India v. Asha Ramchandra Ambedkar held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise."

12. Request of the widow of the deceased for consideration for compassionate appointment of her son has been considered and also reconsidered in the light

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of the Scheme of 1998 and as it has been found that widow has no liability and was accorded sufficient means to tide over the sudden financial crisis and moreover, as there has been delay of one year in accord of compassionate appointment, in absence of any vacancy available in 5% of direct recruitment quota and having regard to the fact that more deserving cases than applicant, the claim of applicant was rightly rejected.

13. In my considered view, and also having regard to the benefits accorded to the widow and fact of own house and agricultural land, the family, by no stretch of imagination, is indigent and the liability of ~~marriage~~⁴ of three daughters has already been over before the death of the deceased Government servant. Compassionate appointment cannot be resorted to as an ~~alterna~~⁴ mode of entry in Government service and is to be resorted to in exceptional circumstances. Applicant has failed to bring within the ambit of rules and the Scheme of 1998.

14. I am of the considered view that the orders passed by respondents ~~do not~~^h suffer from any legal infirmity and having considered the cases of applicant the same was rightly rejected under the relevant guide-lines and rules.

15. In so far as the decision in Balbir Kaur's case supra is concerned, the same would not apply in the facts and circumstances of the present case and is distinguishable as therein the retiral benefits have been deposited with the Steel Authority

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of India Limited and are to be disbursed and in this conspectus it was held that the terminal benefits have not been provided, whereas in the present case sufficient financial reliefs have been accorded as terminal benefits to the deceased family.

16. In the result OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

/rao/