

Central Administrative Tribunal  
Principal Bench

OA No.948/2002

New Delhi this the 17th day of December, 2002

Hon'ble Shri Shanker Raju, Member (J)

1. Kumari Roopna  
adopted D/o late Shri Lekh Bahadur,  
R/o 985, Sector-3, Pushp Vihar,  
New Delhi-110 017.

-Applicant

(By Advocate: Shri G.S. Chaman)

Versus

1. Union of India, through  
Secretary,  
Ministry of Human Resources Development,  
Deptt. of Culture, Shastri Bhawan,  
New Delhi.

2. Director General,  
Archaeological Survey of India (ASI),  
National Museum, Janpath,  
New Delhi.

-Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER (Oral)

Applicant impugns respondents' decision not to accord compassionate appointment to her on the ground that she has failed to prove her dependance on deceased Government servant and for want of vacancy under 5% prescribed quota under compassionate appointment. Applicant alleged to be niece of the deceased and adopted daughter taken from her sister as per prevalent customs was nominated by the applicant and was accorded the retiral benefits of the applicant. On her request, the respondents rejected the case on examination as the case was not covered under the DOPT Scheme for compassionate appointment and in the light of non-availability of vacancies under the prescribed quota.

2. Learned counsel for applicant Shri G.S. Chaman, assailed the impugned orders as issued on non-application of mind de hors the policy and by resorting the definition of

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family under CCS (Conduct) Rules, 1965. It is contended that family consists of near relative and as per Rule-53 of the CCS (Pension) Rules, 1972, the applicant was accorded all the pensionary benefits of the deceased Government servant, she cannot be treated differently and by referring to the ration card, it is stated that since 1989 the applicant was dependent on the deceased Government servant and having adopted as per prevalent customs, she cannot be denied compassionate appointment. Moreover, by referring to the instructions, prevalent at the time when application for compassionate appointment was made, i.e., in the year 1997 it is contended that the applicant being close relative is entitled and rejection of the request is contrary to the law laid down by the Apex Court in **G. Vijayraghwan Vs. Union of India** 2001 (1) SCT 1098 and a decision of the Tribunal in **A.N. Gambhir Vs. Secretary, Ministry of Water Resources** (1998) 8 ATC 249.

3. On the other hand, respondents' counsel Shri R.P. Aggarwal rebutted the contentions and stated that nothing on record has been brought to establish that the applicant was adopted by the deceased Government servant as no documents have been filed on account of conditions laid down in Rule-53 of the CCS (Pension) Rules (ibid). Applicant on account of being nominee of all retirement dues as the applicant has failed to show her dependance upon the late Government servant and the wife of the applicant died prior to his death and his son who become major left in 1983-84 cannot be termed as a dependent family member as per the DOPT Scheme of 9.10.1998. Moreover, it is contended that the application is barred by limitation as the request for compassionate appointment was rejected on 26.9.1997 whereas the OA was filed on 5.4.2002. Moreover, it is stated that the

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compassionate appointment cannot be claimed as a right and is only restricted to 5% of the total vacancies under direct recruitment quota to redress the family of financial constraints.

4. I have carefully considered the rival contention of parties and perused the material on record.

5. The applicant's claim for compassionate appointment though considered, has not been acceded to by the respondents on the ground that she was not dependent being a family member as per the old DOPT Scheme prior to 1998 which is a pre-requisite for accord of compassionate appointment. Nothing has been agreed to on record to intimate that applicant was dependent on deceased Government servant. The applicant was adopted as a daughter has not been validly established by tendering any evidence in support as such the applicant being niece cannot be treated as a daughter to be accorded the benefit of compassionate appointment.

6. Moreover, mere grant of retiral benefits and nomination of the applicant in front of family member would not be construed as a declaration to the effect that applicant is a family member and the cardinal principles of estoppel cannot be applied de hors the statutory Rules.

7. Moreover, compassionate appointment as held by the Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana & Ors.** JT 1994 (3) SC 525 and **LIC of India Vs. Mrs Asha Ramachandra Ambekar & Anr.** JT 1994 (2) SC 183 cannot be claimed as a right merely on the death of Government servant and directions cannot be issued if no vacancy available as held by the Apex Court in **Hindustan Aeronautics Ltd. Vs.**

Smt. A Radhika Thirumalai JT 1996 (9) SC 197.. Moreover, recently the Apex Court in HSEB Vs. Krishna Devi 2002 (3) JT 485 held that compassionate appointment cannot be claimed as a matter of right and in absence of rules or its derogation applicant cannot claim appointment on compassionate grounds.

8. As per the OM of 1998, family consists of only son/daughter including adopted daughter and sister as the applicant has failed to establish that she has been adopted by the deceased Government servant and there was nothing on record that she was dependent. Mere living together would not be construed as dependence. Moreover, applicant has attained the age of 30 years and has no liability, the amount which has been accorded as retirement benefits of the deceased to the applicant does not bring her within the ambit of indigent family or dependent member to be accorded compassionate which as a matter of right cannot be claimed.

9. In the result, OA is found bereft of merit and is accordingly dismissed.

S. Raju

(Shanker Raju)  
Member (J)

cc.