

Central Administrative Tribunal  
Principal Bench

O.A.No.1682/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 7th day of May, 2003

1. Smt. Burfi Devi  
w/o Late Nand Lal  
H.No.M-83, Gandhi Colony  
Railway Road  
Faridabad (Haryana).

2. Sunil Kumar  
s/o Late Nand Lal  
H.No.M-83, Gandhi Colony  
Railway Road  
Faridabad (Haryana).

... Applicants

(By Advocate: Sh. R.K.Shukla)

Vs.

1. Union of India through  
The Secretary  
Ministry of Urban Development  
Nirman Bhawan  
New Delhi.

2. The Deputy Director (A-III)  
Directorate of Printing, 'B' Wing  
Nirman Bhawan  
New Delhi.

3. The Manager  
Govt. of India  
Photolitho Press  
N.I.T. Faridabad (Haryana).

... Respondents

(By Advocate: Sh. R.N.Singh)

O R D E R

By Shri Shanker Raju, M(J):

Applicants impugn respondents' order dated 17.5.2002 whereby request of applicant No.2, son of deceased Government employee for compassionate appointment has been rejected. Applicants have sought quashment of the aforesaid order with direction to reconsider the case of Applicant No.2 for compassionate appointment against suitable post, including Group 'D' post.

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2. Husband of Applicant No.1 died in harness on 6.1.2001 living behind widow and two sons. On death of the deceased employee, as terminal benefits, applicants were paid Rs.1,22,919/- and are getting family pension of Rs.2378/- per month (including DA). Family also owns a small house consisting of two rooms.

3. Applicants had applied for compassionate appointment by filling up the requisite forms and giving details of the family, assets and liabilities, etc.

4. On spot inspection conducted by verification officer along with the Assistant Labour Welfare Commissioner, keeping in view the great distress in the family and having no regular source of income, case for compassionate appointment was recommended.

5. Compassionate appointment committee in the Directorate of Printing considered the request of applicants and keeping in view the definition of poverty line recommended by Planning Commission, wherein the family of 5 members whose income is not below Rs.1767.20 are not considered to be below poverty line. As the waiting list for compassionate was long and could not mature within one year, case of applicant was not recommended and accordingly by an order dated 17.5.2002, same has been rejected, giving rise to the present OA.

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6. Shri R.K.Shukla assails the order on the ground that consideration in the case of Applicant No.2 for compassionate appointment was not in accordance with the Scheme for compassionate appointment laid down by DoPT in OM dated 9.10.1998. It is in this furtherance, resorting to clause 12(b) of the Scheme ibid, which mandates Welfare Officer to meet the members of the family of the Government servant, and also 12 (c) ibid, which requires a personal hearing by the Committee for better particulars of the facts, contends that the aforesaid directions have not been adhered to, and the fact that, in inspection report, the family has been observed to be consisted of widow and two sons whereas no reference has been made to the liability of two unmarried daughters.

7. Moreover, placing reliance on a decision of Apex Court in Balbir Kaur v. Steel Authority of India Ltd. & Others, JT 2000(7) SC 135, it is contended that the terminal benefits paid to the family cannot be the sole basis for rejecting the claim for compassionate appointment.

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8. With regard to the amount paid as a terminal benefits, it is stated that the same has been incurred towards the treatment of the deceased, and to repay the loans and as per the available resources the family is indigent and is dire need of financial assistance. It is further stated that in the marriage of one of the daughters, the remaining money has been utilised. Applicant alleges arbitrariness in the

action of respondents by depriving Applicant No.2 a rightful consideration for compassionate appointment in accordance with law.

9. On the other hand, respondents' counsel, Shri R.N.Singh, at the outset, placing reliance on a decision of the High Court in Veer Mohd. v. Govt. of NCT, Delhi, 95(2002) DLT 663 (DB) wherein after meticulously discussing the case law on compassionate appointment and distinguished the Balbir Kaur's case supra, it is observed that social justice cannot be permitted to override the constitutional mandate contained in Article 16(2) of the Constitution of India. He also referring to a decision in OA 327/2001, decided on 31.10.2001 in Kamlesh Kumar Tripathi v. Union of India, where the claim for compassionate appointment has been rejected as the same was limited to vacancies pertaining to the 5% quota in direct recruitment quota and more deserving cases were available.

10. Shri R.N.Singh further contended that when the spot inspection was conducted, applicant was present and had signed in proof thereof, accordingly, it was expected from her to provide necessary information to the members.

11. Shri R.N.Singh also contended that in view of the decision in Life Insurance Corporation of India v. Ms. Asha Ramchandra~~/~~ Ambedkar, JT 1994(2) SC 183, this court cannot direct creation of vacancies as the case of applicant was meticulously considered as per the OM dated 9.10.1998 and after meticulous

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consideration of relevant factors including earning member, size of the family, age and liabilities and assets as well, and keeping in view of the Planning Commission figures of poverty line amounting to income below Rs.1767/- for a family of 5 members, and in the light of the DoPT's OM dated 22.6.2001 where the compassionate appointment is limited to within one year in any Group 'D' category. It is further stated that assuming the case of applicant was recommended, it could not have been matured, as the name cannot remain in the list indefinitely beyond one year.

12. As applicants own a small house, and getting family pension of Rs.2378/-, apart from, a sum of Rs.1,22,000 as terminal benefits was paid to applicants, and moreover, case of applicants has been found less deserving and as applicants have no right, the OA is liable to be dismissed.

13. In rejoinder, applicants have reiterated their pleas taken in the OA.

14. I have carefully considered the rival contentions of the parties and perused the material on record. Although there cannot be a denial of the fact that compassionate appointment cannot be claimed as a right and is also governed by the policy Scheme laid down by the Government, in their OM issued on 9.10.1998. As per the Scheme which is an exception to Article 16(2) of the Constitution of India, the prime object is to grant appointment on compassionate grounds to a dependant family member, if the

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Government servant died in harness, to tide over the deceased family from the financial destitution and get over the emergency.

15. Planning Commission, in its latest recommendation, laid down the criteria of an income of 1767/- in family of 5 members, and below it, poverty line starts. Moreover, DoPT's OM dated 22.6.2001, limits consideration for compassionate appointment of deserving cases only, that to within one year.

16. DoPT's Scheme of 9.10.1998 in its Clause 12(b) enjoins upon the Welfare Officer of the concerned Department/Ministry to meet the members of the family to advice them and assist them in getting appointment on compassionate ground. Once the matter comes before the Committee for compassionate appointment, is also required to give personal hearing if necessary for better appreciation of the facts of the case. In the instant case though applicant, now by producing ration card, states that the family consisting of more dependant members, and the house is stated to be in the name of widow and it was a joint property and having only one room, while filling up the requisite forms under Rule 77(4) of the Pension Rules, 1972 as well as under Rule 77(3), applicant No.1 has mentioned her name as well as name of two sons as surviving members of the family.

17. At the time of spot inspection by the Welfare Officer on 5.3.2002, three members, i.e., widow and two sons were verified to be the dependants and the aforesaid documents have been signed by

applicant No.1 herself. Keeping in view the factors including the assets and liabilities and the benefits received, under various welfare Scheme, although there is a discrepancy in terminal benefits, whereas in the orders it is stated that as Rs.1,00,018/-. But in the reply filed by the respondents it is shown to be Rs.1,22,919/- keeping in view of the family pension of Rs.2378/-, the claim of applicant was rejected by an order dated 17.5.2002. Earlier also, in pursuance of compassionate appointment, Committee, by an order passed on 19.4.2002, rejecting the claim of applicant on the ground that as the waiting list for compassionate appointment is long enough to be matured in the coming years. Assuming that the case of applicant was recommended, would not have matured within one year.

18. In the light of the non-challenge to the aforesaid OMs of DoPT, which are laid down after hectic deliberations and consultations, being a policy decision, in absence of any challenge on the ground of mala fide, arbitrariness, are to be accepted and followed.

19. Assuming that the applicants' case was not considered properly in accordance with provisions of Clause 12(b) and (c) of the Scheme ibid, and further assuming that applicant No.2 was recommended keeping in view the long list which could not mature within a year, accord of compassionate appointment to Applicant No.2 would be a remote possibility. However, in view of Ms. Asha Ramchandran Ambedkar's case supra, this Court cannot issue directions to

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relax the requirement of vacancies as compassionate appointment is restricted to only 5% of the direct recruitment quota.

20. Having regard to the decision of Apex Court in Umesh Kumar Nagpal v. Union of India, 1994(4) SCC 138, which is reiterated in the decision of the High Court in Veer Mohd.'s case where the decision in Balbir Kaur's case supra has been distinguished, I respectfully follow the same.

21. Though the object of compassionate appointment is beneficiary, but yet sympathetic consideration alone cannot override the statutory principles of law.

22. In the result, for the foregoing reasons, as the consideration of applicant for compassionate appointment has been in accordance with rules and instructions, I do not find any legal infirmity by the orders passed by respondents. Accordingly, OA is rejected. No costs.

S. Raju

(Shanker Raju)  
Member(J)

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