

Central Administrative Tribunal  
Principal Bench

O.A.No.1853/2002

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 29<sup>th</sup> day of April, 2003

1. Smt. Surjo Devi  
w/o late Shri Murli Dhar  
r/o Village & P.O. Dujana  
District Jhajjar (Haryana).
2. Pradeep Kumar  
s/o Late Shri Murli Dhar  
r/o Village & P.O. Dujana  
District Jhajjar (Haryana). ... Applicants

(By Advocate: Sh. S.K.Gupta)

Vs.

1. Union of India  
through Secretary  
Ministry of Defence  
South Block  
New Delhi.
2. Director General-cum-SA to RM  
Defence Research & Development Organisation  
Sena Bhawan, Dalhauzi Road  
New Delhi.
3. Director  
Solid State Physical Laboratory  
R & D Organisation  
Lucknow Road  
Delhi - 110 054. .. Respondents

(By Advocate: Mrs. Rinchen O. Bhutia)

O R D E R

By Shri Shanker Raju, M(J):

Applicant No.1 is a widow & Applicant No.2 is son of the deceased Government servant. They have filed the present OA impugning respondents' order dated 19.11.2001 whereby the request of Applicant No.2 for employment on compassionate ground has been rejected. They have sought quashment of the impugned orders dated 19.11.2001 and 13.6.2002 with direction to consider the case of Applicant No.2 for compassionate appointment.

-2-

12

2. Brief facts of case are that the deceased Government servant, who died in harness on 29.1.2000 due to cardiac arrest, has left behind widow and four sons. One of the sons of Applicant No.1 is married and living separately. As terminal benefits, Applicant No.1 had been paid a sum of Rs.3,36,000. The widow is getting monthly family pension to the tune of Rs.4519/- plus 49 per cent DA and the family owns two and half storied House in Delhi.

3. Case of the applicant was considered, on submission of the concerned relevant documents by the respondents and was turned down by an order dated 6.9.2000 thereafter, another representation preferred on 23.10.2001 met the same fate and by an order dated 19.11.2001, impugned herein, it was not found possible to appoint Applicant No.2 on compassionate ground, this gives rise to the present OA.

4. Learned counsel for applicant, Shri S.K.Gupta, contended that mere payment of terminal benefits would not be a criteria to review the compassionate appointment as held by the Apex Court in Balbir Kaur v. Steel Authority of India Ltd., 2000(6) SCC 493. It is further stated that two responsible officers of the respondents S/Shri Manmohan Singh and H.L.Mandolia, who are Scientist-E and Technical Officer-B respectively, visited the applicant, and after evaluating the assets and liabilities, recommended to the respondents sympathetic consideration of the case as the financial position of applicant was weak and required further assistance, this report was not at all taken into consideration as

contended by learned counsel for applicant as such the matter requires reconsideration at the hands of the respondents.

5. In the above conspectus, it is stated that keeping in view the liability of the applicant, the family is indigent and is in dire need of financial assistance which can be compensated by accord of compassionate appointment to Applicant No.2. Moreover, by referring to the Scheme of 2001, it is stated that both in the years 2000 and 2001, no appointments have been made on compassionate basis and in the light of the instructions of DoPT, clubbing of vacancies in offices where the vacancies have direct recruitment are below 20 in number at least one vacancy, i.e., 5% of the total vacancies in direct recruitment is to be utilised for compassionate appointment.

6. It is further stated that the instructions issued on 22.6.2001 would not apply to the case of applicant as the same cannot be retrospectively applied as the claim of applicant for compassionate appointment was made in January, 2000.

7. On the other hand, respondents' counsel, Mrs. Rinchen O. Bhutia opposed the contentions and stated that keeping in view the financial status of applicants and terminal benefits given and after assessing the assets and liabilities, the family of the deceased Government servant has not been found to

be deserving in comparison to others to be accorded compassionate appointment. It is also stated that the family owns House and elder son is employed.

8. By referring to Circular dated 22.6.2001, it is stated that the appointment is restricted to the deserving cases and if vacancies meant for appointment on compassionate grounds will be available within a year in the concerned Department for consideration that too within the ceiling of the 5% of the vacancies falling under direct recruitment quota in Group 'D' posts.

9. However, on merits, it is stated that as the family has not been found indigent even on re-examination as well, the request was rejected. It is also stated that report of the team of officers was placed before the competent authority but on examination, it has been observed that the case of Applicant No.2 not deserving for compassionate appointment. As the appointment is to be finalised within one year and no waiting list is maintained beyond one year from the date of request is turned down, the very object of accord of compassionate appointment, in the present case, is frustrated. However, while referring to clubbing of vacancies, it is stated that it is allowed only when total number of vacancies in Group 'C' and 'D' together to be filled in direct recruitment less than 20 which has not been established by the applicants.

10. I have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in L.I.C. of India v. Ms. Asha Ram Chandran, <sup>Ambedkar & others</sup> JT 1994(2) SC 183 has held that "relaxation to be availed if none of the family members are in gainfully employed, Tribunal should not to have conferred benediction impelled by sympathetic consideration disregardful of law.

11. Moreover, in Union of India & Others v. Joginder Singh, 2002 SCC (L&S) 1111, the Apex Court has held that relaxation in ceiling of 5% of the quota is an administrative discretion, which cannot be compelled by the Court.

12. In H.S.E.B. v. Krishna Devi, JT 2002(3) SC 485, the Apex Court has held that compassionate appointment is given purely on humanitarian consideration and cannot be claimed as a matter of right, it cannot be made de hors the rules or instructions.

13. In the light of the aforesaid rulings and also DoPT's OM issued in 1998, as the inspection report has already been referred to Committee, and on his evaluation and on assessment of assets and liabilities, case of applicant has not been found deserving this Court cannot sit as an appellate authority over the findings of the Expert Committee. Moreover, as compassionate appointment cannot be claimed as a right, having considered the same and in the light of the employment of first son of applicant, and the amount of terminal benefits as well as the

family pension received, if the department has reached to a conclusion that the case of applicant is not deserving, this Court cannot compel them to relax any of the provision or to appoint the applicant.

14. However, in so far as the instructions dated 22.6.2001 is concerned, though the earlier case of applicant was rejected but once the matter was reconsidered, OM dated 12.6.2001 was in vogue and has been rightly applied though there is clubbing of vacancies allowed but having failed to establish that the total number of vacancies are less than 20, applicant cannot have any indefeasible right to be appointed on compassionate basis which is restricted to only 5% of the quota under direct recruitment and as there is no provision for waiting list and after one year the claim cannot be considered. As period of more than one year has expired since first rejection, the request has been rightly rejected.

15. In so far as the Balbir Kaur's decision is concerned, even applying the same, the fact remains that applicant's case was not found deserving as per the guidelines on the subject, and was accordingly rejected which does not suffer from any legal infirmity.

16. In the result, for the foregoing reasons, I do not find any infirmity in the order passed by respondents. OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member(J)