

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH****Original Application No.21/683/2019****Hyderabad, this the 30th day of December, 2019*****Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

Gonti Krishna, S/o. late Smt. G. Shobha,
 Aged about 35 years, Occupation: Un-employee,
 Plot No.5, Alivelamma Colony,
 Trimulgherry, Secunderabad – 500 015.

... Applicant

(By Advocate Mr. B. Kamalakara Rao)

Vs.

1. The Union of India, Rep. by
The Comptroller & Auditor General of India,
Government of India, New Delhi.
2. The Principal Accountant General (Audit),
Hyderabad – 500 004,
Telangana State.
3. The Deputy Accountant General (A)/CPIO,
Hyderabad, Telangana State.
4. The Senior Audit Officer (Administration),
Office of the Principal Accountant General,
Hyderabad, Telangana State.

... Respondents

(By Advocates: Mr. V. Vinod Kumar, Sr. CGSC)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed challenging the decision of the respondents in not considering the request of the applicant for compassionate appointment.



3. Brief facts, as stated by the applicant are that, when the applicant preferred an application for compassionate appointment subsequent to the death of his Mother Smt.Shobha on 3.11.2010 who worked for the respondents in the Group D cadre, he was advised to get qualified in 10th standard in a year's time for necessary consideration. Not satisfied with the response applicant sought reasons for rejection and respondents informed vide letter dated 30.6.2017 that the applicant is ineligible since he was employed and for other allied reasons. Aggrieved applicant filed OA 285/2018 wherein respondents were directed to consider the case of the applicant who in turn examined and rejected the request on 16.4.2019, leading to the filing of the present OA.

4. The contentions of the applicant are that he is fully qualified and eligible for compassionate appointment and therefore pleaded for intervention of the Tribunal lest he would be put to irreparable loss and hardship. Representation made on the issue is pending with the respondents.

5. Respondents in their reply state that the welfare officer made a financial inquiry and recommended immediate financial support to the family of the deceased employee. The departmental screening committee met on 7.12.2012 and recommended the applicant for MTS appointment. However, since the brother of the applicant was working in the



respondent's organisation as Sr. Auditor, approval of R-1 was sought as envisaged in the rules. R-1 rejected the recommendation vide letter dated 11.3.2013 on the grounds that 4 sons of the deceased employee were working and that the applicant did not possess the prescribed 10th class qualification. Applicant filed OA 285/2018 where in respondents were directed to reconsider, which they did and once again rejected the request vide speaking order dated 12.4.2019. Respondents further denied that they advised the applicant to obtain 10th standard qualification. No representation of the applicant is pending with the respondents and that no injustice was done.

6. Heard both the counsel and perused the pleadings on record.
7. Respondents have confirmed in the reply statement at para 4 that the Welfare Officer after making a diligent financial inquiry concluded that the family of the deceased employee needs immediate financial support. Based on the said report, the competent committee recommended the case of the applicant for compassionate appointment to 1st respondent, but the later did not agree to. Resultantly, applicant filed OA 285/2018 wherein the respondents were directed to reconsider the case. However, respondents rejected the claim on grounds stated hereunder, which are analysed in the background of relevant rules and law on the subject.

- I. One of the family members i.e. Sri G. Gouri Shankar was working as Central Government employee.

Respondents did not state in the speaking order as to whether the said family member was supporting the dependent family members of the

deceased employee, namely the applicant and his sister. In this regard, the observations of this Tribunal made in para 6 & 7A of the order in OA 285/2018 being relevant are extracted hereunder:



“.....It is also pertinent to note that the Welfare Officer in his Financial Enquiry Report has mentioned that all the sons of the deceased employee are earning members including the applicant. However, the earning family members of the deceased employee were living separately. The eldest son Sri Gowri Shankar is working as Senior Auditor in the respondent organization. The 2nd son Sr. G. Rama Rao is working privately as Painter and earning Rs.1950/- per month. Two daughters of the deceased employee were married and are living separately. Third son is also working as labourer in general stores and earning Rs.2000 per month. The youngest son i.e. the applicant is unmarried and there is also another daughter Kum. G. Varalakshmi, who is dependent on the applicant. As can be seen from the said Report of the Welfare Officer, sons of the deceased employee are into sundry jobs except the 1st son who is working for the respondent organization. At the moment, the applicant is working as milk supplier and is earning Rs.1800/- per month, which is too meagre to eke out a decent livelihood. Besides, his sister who is unmarried is also dependent on him. Based on the above details, the Welfare Officer recommended the case of the applicant for compassionate appointment.

7A. We find that the enquiry done by the Welfare Officer has been elaborate giving reasons as to why the applicant should be considered. As seen from the details, the applicant's case deserves consideration as he is working privately for a meagre amount of Rs.1800/- per month and he has also to take care of an unmarried sister. The applicant has the responsibility of getting his sister married. The terminal benefits were distributed amongst all the four brothers and the applicant got 1/4th of the gratuity amount of Rs.86,126/- which was used to repay the loan taken for performing the marriage of his second sister. Similarly, he got a sum of Rs.9,525/- as his share from CGEGIS amount, which was also utilized to repay the loan taken from Punjab Sind Bank. Thus, the applicant is definitely under financial stress, besides he has to shoulder the major responsibility of getting his sister married. It is these aspects which deserve consideration.”

The applicant has contended that his sister is aged 31 years and because of poverty he was not able to get her married. Besides, his brothers were living separately and are not taking care of the dependent members of the deceased employee. The same was confirmed by the Welfare Officer. Ld. counsel for the applicant has repeatedly emphasised that even when Smt



Shobha was alive the sons referred to were living separately and were not supporting the family. The same continued even after the death of Smt Shobha, mother of the applicant on whom the applicant and his sister were dependent at the time of her death. Ld. Counsel also pleaded fervently that the applicant and his sister are living in abject poverty given the galloping inflation. In addition Tribunal findings cited supra were based on the report of the welfare officer who stated the ground facts of the family being in financial distress, which is the *Sine qua non* for compassionate appointment. Yet respondents brushing aside the request of the applicant without going into specific details is surprising to say the least. In fact as per DoP&T's O.M. No. 14014/02/2012-Estt.(D) dated 16.01.2013, the course of action open to the respondents in case if a family member is working is given hereunder:

11. WHERE THERE IS AN EARNING MEMBER (a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family. (b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

The four sons of the family were living separately as per the report of the welfare officer. The earning of the sons excluding the one working for the Central Government were reported to be meagre as is evident from the details furnished above. They were not supportive of the applicant or his

unmarried sister. Even retirement benefits were distributed among the 4 sons as stated by the respondents in the reply statement. Loans had to be paid by the applicant. The recommendation of the welfare officer was based on a direct evaluation of the economic distress of the dependent family members of the deceased employee, unlike the committee report which was presumptive without analysing the details as required. The income, liabilities, assets etc have not been discussed in the speaking order. When it comes to livelihood, it is incumbent upon the respondents to get into the relevant details as is expected under the rules before rejecting a legitimate request. Thus the decision of the respondents to reject the claim of the applicant being incongruent to the rule cited needs to be reviewed.



II. Sister of the applicant is receiving family pension.

True, it is an undeniable fact. The pension received is helping the applicant and his sister to a certain extent. Applicant is doing a sundry job with a meagre salary as per the Welfare Officer report. However, grant of pension can be no ground to reject the claim of the applicant as per DOPT norm laid down in the circular dated 16.1.2013 as under:

An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

The balanced and objective assessment in respect of the financial condition of the family taking into account the assets and liabilities and other relevant factors have not been considered despite being broached in the previous

OA 285/2018. The speaking order in question does not present an objective assessment of the crucial factors involved in deciding compassionate appointment cases, as required under the Rules.

III. Pensionary benefits were distributed among the 4 sons of the deceased employee.



The contention of the respondents is all the more reason that the case of the applicant requires consideration, since applicant and his sister got only 1/4th of the pensionary benefits. It is also an indication that the brothers are living separately independent of each other.

IV. More than 8 years have passed since the demise of Smt. Shobha, ex employee.

Against the above submission, facts of the case reveal the other dimension of the issue. Application for compassionate appointment was preferred in 2010 on the demise of the ex-employee and the same was rejected by the respondents at the first instance in 2013. Three years were taken to decide the case. Of the 8 years lapsed, 3 years have been consumed by the respondents themselves. The judgments of the Hon'ble Supreme Court cited by the respondents ordain that compassionate appointment has to be provided as an immediate relief to the dependent family of the deceased employee. It is not explained as to why the respondents have taken nearly 3 years to decide the case of the applicant, when the law provides for immediate relief in deserving cases. Having not done so respondents making an assertion that since the applicant could pull along for the said years or more, there is no need to provide compassionate appointment is not

a fair preposition. To survive, the applicant has to do some job or the other and in the present case, it was a sundry job with meagre returns was the essence of the Welfare Officer report. Annexures R-2 & R-4 emphasise this aspect. The essential aspect to be examined was as to whether the family of the deceased employee is in economic distress. This question was answered in favour of the applicant by the Welfare Officer. Ignoring the same is against rules and delay in deciding the case by the respondents contravenes the observation of the Hon'ble Supreme Court as under:



In Sushma Gosain & Ors. vs. Union of India & Ors., (1989) 4 SCC 468, this Court held as thus:

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years.”

Indeed, applicant and the other sons doing jobs was duly reckoned by the Welfare officer while recommending the case. Therefore, assertion of the respondents that there is no need to provide compassionate appointment since the applicant could survive for 8 years after the death of the employee, is disturbing to note. It was the mistake of the respondents in not considering the full facts of the case as per rules cited and also in deciding the issue belatedly. Consequently, respondents rubbing of their follies on to the applicant, is a unfair preposition which they ought not to, as per Hon'ble Apex Court observation in a catena of judgments as under:

- (i) *The Apex Court in a recent case decided on 14.12.2007 (Union of India vs. Sadhana Khanna, C.A. No. 8208/01) held that the mistake of the department cannot recoiled on employees.*

(ii) *In yet another recent case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

(iii) *It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”*



V. Further there is no time limit to consider the cases of compassionate appointment as per DOPT memo dated 26.07.2012 as under:

“TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT: Prescribing time limit for considering applications for compassionate appointment has been reviewed vide this Department O.M No.14014/3/2011- Estt.(D) dated 26.07.2012.

Subject to availability of a vacancy and instructions on the subject issued by this Department and as amended from time to time, any application for compassionate appointment is to be considered without any time limit and decision taken on merit in each case.”

The underlying factor is to decide the case based on merit. Importantly, to assess as to whether the dependent family members of the deceased employee are in financial distress, which was answered in adequate abundance by the welfare officer and by the facts of the case brought out in the preceding paras, including the observations made in the OA 285 of 2018.

VI. Also the committee could have called the applicant for a personal hearing before tendering its recommendations while taking a contrary view to that of the welfare officer report, as per DOPT instruction dated 16.1.2013, reproduced hereunder, for a better appreciation of the case and to take a holistic view in the matter:

“The applicant may also be granted personal hearing by the committee, if necessary, for better appreciation of the facts of the case vide F.No.14014/02/2012--Estt. (D) Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), North Block, New Delhi, dated the 16th January, 2013.”



VII. True to speak, DOPT has advised to consider cases of compassionate appointment due to death of erstwhile Group ‘D’ employees in a sympathetic manner since those who belong to the Group D cadre, like in the present one, are lowly paid and call for humane consideration even by relaxing the standards vide Memo dated 16.1.2013.

“Requests for compassionate appointment consequent on death or retirement on medical grounds of erstwhile Group ‘D’ staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case. “

VIII. Moreover, applicant has also qualified in 10th standard as per SSC certificate dated 27.12.2013 (AnnexureA-7) enclosed with the OA. Thus he has obtained the desired qualification as required under the rules, even though there is a provision under the rules to appoint candidates without the desired qualification as trainees (R-4).

IX. The respondents have relied on the Hon’ble Apex Court Judgment in **State Bank of India & Anr. v. Somvir Singh**, in Civil Appeal No.743 of 2007, delivered on 13.02.2007. In the said Judgment, the Hon’ble Apex Court has observed as under:

“In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds.”

In the present case, the respondents have not followed the instructions of DoPT as was discussed in the above paras and, therefore, the decision so arrived cannot be traced to the instructions issued on the subject and, hence, the respondents have failed to abide by the observations of the Hon'ble Supreme Court referred to by the respondents.



Further, in the very same Judgment, it was also observed as under:

“The only question the High Court could have adverted itself, is whether the decision making process rejecting the claim of the respondent for the compassionate appointment is vitiated?”

Applying the said principles to the instant case, the respondents have not adhered to the DoPT rules on the subject and, therefore, their decision is obviously vitiated. Hence, even in the Judgment cited by the respondents, the decision of the respondents to reject the claim of the applicant is invalid.

Another Judgment, referred to by the respondents is that of the Hon'ble Bench of Madras High Court, dated 19.06.2019, in Writ Petition (MD) No.20973 of 2015 (Arunkumar v. The Secretary to Government, Dept. of School Education and Others). In the said Judgment too, it was stated as under:

“The competent authority has to examine the financial condition of the family of the deceased employee and only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family of the deceased employee.”

The respondents, though the Welfare Officer after making a pertinent financial inquiry has recommended the case for compassionate appointment, yet the respondents rejected it by citing the same facts which were also reckoned by the Welfare Officer in recommending the case.



Therefore, the decision of the respondents once again does not stand to reason even keeping in view the Judgment referred to by the respondents.

Further, in the same Judgment, the Hon'ble High Court of Madras has referred to the verdict of the Hon'ble Supreme Court in the **State of Manipur v. Md. Jajaodin**, (2003) 7 SCC 511, wherein the Hon'ble Supreme Court held as under:

“In Smt. Sushma Gosain and others vs. Union of India and others (1989 (4) SCC 468) it was observed that in all claims of appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.”

The facts of the instant case make it evident that the ex-employee died in 2010 and the respondents have rejected the claim in 2013, though law stipulates that there should not be any delay in providing employment to the family in distress.

The Judgment further refers to the verdict of the Hon'ble Apex Court in **MGB Gramin Bank v. Chakrawarti Singh** (2014) 13 SCC 583, wherein it was held as under:

“The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without

providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post.”

Here too, even the observations of the Hon’ble Apex Court, in their judgement, is in favour of the applicant, since the financial conditions of the family of the dependant family members has not been gauged as has to be done under Rules.



De facto, in the present case, Welfare Officer, has come to the conclusion that the family requires financial help. Further, in sum and substance, the Judgements referred to by the respondents are in fact favourable to the applicant on the following grounds:

- a) Respondents failed to provide immediate relief as per the law laid down by the Hon’ble Apex Court Judgement cited by the respondents.
- b) Rules have to be followed in deciding the request for compassionate appointment. Respondents have failed on this count also.
- c) The rejection of the request of the applicant on grounds already taken into consideration while submitting the report by the Welfare Officer is difficult to appreciate. The respondents recommended the case for compassionate appointment on 04.01.2013, but when Respondent No.1 raised certain objections, another Committee has gone into the issue consequent to the direction of this Tribunal in OA 285/2018 and rejected the request. It gives an impression that the Committee has not applied its mind independently but has fallen in line with the directions of Respondent No.1, which is not expected as per law.

The Tribunal is not questioning the decision but the decision making process which has not been in confirmative with the rules and law and hence contravene the observation of the Hon'ble Apex Court in **State Bank of India & Others** v. **Somvir Singh** cited supra, relied upon by the respondents.



X. Besides, other judgments cited by the respondents are not relevant to the case since the facts and circumstances are different. Respondents have fundamentally failed to process the case of the applicant as per rules and applicable law on the subject. It is well settled that Compassionate appointment cannot be sought as a matter of right. However, the applicant has a right to be considered. The key factor to be gone into is the indigent circumstances in which the dependent family members of the deceased employee are placed in. This was emphasised in a cornucopia of judgments by the Hon'ble Apex Court. Respondents rightly followed the rule of deputing a welfare officer to visit the family and report on the indigent circumstance in which the dependent family members are placed in. Welfare officer, recommended the case after making an elaborate and comprehensive financial inquiry. Unfortunately, facts on ground as reported by the welfare officer were ignored by R-1 and rejected, which find an echo in the later rejection by a committee in response to OA 285/2018, on lines found not justifiable as explained in the paras supra.

XI. Therefore, the recommendations of the Committee as at Annexure R-6 dated 10.4.2019 filed along with the Reply Statement and the speaking order of the competent authority dated 12.4.2019 (Annexure R-7) being not

in accordance with the Rules and law, are therefore quashed. Consequently, respondents are directed as under:



- i) To reconsider the case of the applicant for compassionate appointment after making a fresh and proper study of the indigent circumstances, in which the dependent members of the deceased employee, are placed by deputing a responsible official to study the same, keeping in view the previous report of the Welfare Officer, as provided for in the DOPT rules for considering compassionate appointment.
- ii) On obtaining the fresh report, the same be placed before a Committee, which comprises of new members and not those who have already taken a stand on the subject as per their recommendation on 10.4.2019.
- iii) The new Committee should provide an opportunity of personal hearing to the applicant as per Rules and thereafter take a view on the matter.
- iv) The relevant Rules on the subject circulated by DOPT, from time to time, and the law laid down should be strictly followed in their entirety by proper application of mind to the issue.
- v) Time allowed is 3 months from the date of this order.
- vi) With the above directions, the OA is allowed.
- vii) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

/evr/