

**1CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

OA No.471/2017

Dated this Wednesday the 5th day of February, 2020

Coram: R. N. Singh, Member (J) .

Deepak Chandrakant Gosavi
Aged 39 years,
R/o Ramdular yadav Chawl,
Room No.2, Opposite Dhobi Ghat,
Halav Pool, Mumbai-400 070.

...Applicant.

(By Advocate Ms. Mehndiratta Priyanka) .

Versus

1. The Union of India,
Through the Secretary,
Ministry of Information and
Broadcasting, Directorate of
Advertising and Visual Publicity
Soochana Bhawan, CGO Complex,
Lodi Road, New Delhi-110 003.
2. The Deputy Director (A)
Directorate of Advertising and
Visual Publicity, Soochana Bhawan,
CGO Complex, Lodhi Road,
New Delhi-110 003.

... Respondents.

(By Advocate Shri R. R. Shetty) .

O R D E R (O R A L)

Present.

1. Ms. Priyanka Mehndiratta, learned counsel
for the applicant.

2. Shri R. R. Shetty, learned counsel for the respondents.

3. The applicant has filed the present OA on 06.07.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the impugned order dated 29.07.2016.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to appoint the Applicant on Compassionate Grounds forthwith.

c. Cost of the Application be provided for.

d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

4. The brief facts leading to the present OA, evident from the assertions made in the OA are that the applicant's father Shri Chandrakant Eknath Gosavi was working as Chowkidar (Group "D") under the respondent no.2 who unfortunately expired on 06.02.1999 after rendering 33 years of service leaving behind his family consisting of his wife aged about 34 years and his two sons aged about 19 and 17 and a daughter aged about 14 years. The applicant was 19 years of age and unemployed at the

time of death of his father and his brother and sister were school going and minor. The wife of the deceased employee was also unemployed and the entire family was completely dependent on the Applicant. The applicant's mother received an amount of Rs.2,20,000/- towards DCR Gratuity and service fund. The mother of the applicant in receipt of family pension amounting to Rs.1705/- plus DA w.e.f. 07.02.1999.

5. The learned counsel for the applicant submits that the wife of deceased employee submitted an application to the Respondents for appointment of her son on compassionate grounds. The respondents vide letter dated 09.04.1999 (Annexure A-2) informed that he is being considered for the appointment and required to fill up the annexed form and to submit the same to the department. The applicant submitted form on 17.04.1999 (Annexure A-3) for appointment. He was appointed on temporary basis but after 113 days his service was terminated orally without any reason.

6. Further he submits that the applicant's mother submitted an application to the respondent no.2 for appointment of her son on compassionate

grounds on 17.11.1999 (Annexure A-4). The applicant's mother submitted that she received the reply that 'your case is under consideration' but the applicant has not been appointed till today on compassionate grounds as per rules. The applicant states that his mother and he himself filed a revised application for appointment on compassionate grounds, a copy whereof is marked and produced at Annexure A-5 (Colly.). Further, he was informed that his case is under consideration for appointment on compassionate grounds by the Supervisor, Directorate of Advertising and Visual Publicity vide order dated 01.08.2001 and 17.11.1999 (Annexure A-6 (Colly.)). However, till date no such appointment has been made by the Department inspite of repeated representations. On 29.07.2016 (Annexure A-1) the respondent no.2 vide impugned order informed the applicant that though his case for compassionate appointment was circulated to all the Media Units of Ministry of Information and Broadcasting with a request to consider his case sympathetically for appointment on compassionate ground to any suitable post in any of the offices under their administrative control.

However, no positive response was received from the Media Units of Ministry of I&B/Ministries/Departments in this regard.

7. The applicant states that he registered his grievance before Centralized Public Grievance Redress and Monitoring System (CPGRAMS) on 23.08.2016 (Annexure A-7). He further states that in response to aforesaid grievance registered on 23.08.2016, he was informed that he has already been replied vide letter dated 20.09.2016.

8. The learned counsel for the applicant further submits that as per OM dated 26.07.2012 (Annexure A-8) the time limit of 03 years has been removed and the respondents can now consider the genuine case of the applicant for grant of appointment on compassionate grounds against a suitable Group 'C' post as he has passed the 9th standard.

9. The respondents have denied the compassionate appointment. The applicant's family has not been able to make both ends meets. He has a family of 04 members including his mother, brother, and sister. The applicant is in dire need of appointment in order to sustain himself and his

family. The applicant is not even able to fulfill the daily needs of his family.

10. The learned counsel for the respondents submits that the applicant's father expired on 06.02.1999 at which time the applicant was 19 years of age. The applicant is seeking compassionate appointment at this belated stage in the year 2017. It is pertinent to mention here that the applicant's case was supposed to be under consideration sometime in 1999 whereafter the issue of compassionate appointment has once again been raised after lapse of around 17 years vide his representation dated 11.07.2016.

11. From the aforesaid, it is evident that the compassionate appointment is sought after 18 years of death of the deceased employee by his son who now happens to be 37 years of age. It is, therefore, clear that the family of the deceased government servant Late Chandrakant Eknath Gosavi has managed to pull on for 18 years from the date of unfortunate death. It is, therefore, obvious that there is no indigent circumstance prevailing since they have been able to manage for so long.

12. Moreover, the very object of the grant of

Compassionate Appointment is to extend assistance to the family which has suffered sudden financial jerk as would be evident from the very object, enshrined under the scheme itself on grant of Compassionate Appointment which reads as under:

"The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency."

13. Besides, the Hon'ble Apex Court in Sanjay Kumar Vs. State of Bihar, reported in CRL No.9967 of 2011 decided on 28.01.2014 their Lordships have ruled in of the judgment as under:

"Para-3 We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education & Anr. v. Pushpendra Kumar & Ors. supra. It is also Significant to notice that on the date when the first application was made by the petitioner

on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief. We are, therefore, unable to agree with the view expressed in Chandra Bhushan's case. For the reasons stated above, we hold that there are no merits in this SLP and the same is accordingly dismissed."

14. The Hon'ble Supreme Court in the case of **Santosh Kumar Dubey v. State of U.P. & Ors.** {2009 (6) SCC 481}, held that the scheme is meant to provide immediate financial assistance to family which has lost its bread winner and request for compassionate appointment should be proximate to employee's death and compassionate appointment is not a bonanza or another source of recruitment, and it cannot be claimed as a matter of right.

15. The Hon'ble Supreme Court in **State Bank of India v. Raj Kumar**, (2010) 11 SCC 661, elucidating the nature of the scheme of compassionate appointments observed: "It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to

public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme".

16. The Hon'ble Supreme Court in the case of Local Administration Department & Anr. vs. M. Selvanayagam @ Kumaravelu, Civil Appeal No.No.2206 OF 2006 decided on 05.04.2011 has observed as under:-

"It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as

a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind."

17. In another decision in the case of Jagdish Prasad v. State of Bihar (1996) 1 SCC 301 the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a

deceased government servant which cannot be encouraged, de hors the recruitment rules.

4. The appeal is accordingly dismissed."

18. In the case of Umesh Kumar Nagpal v. State of Haryana and Ors. reported in JT 1994(3)SC 525 it has been observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Relevant portion of the said judgment is reproduced below:-

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

19. In the case of Sanjay Kumar vs State Of Bihar And Ors reported in 2000 (SCC) (7) 192 the

Hon'ble Supreme Court has observed as under:-

" We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education & Anr. v. Pushpendra Kumar & Ors. supra. It is also Significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

We are, therefore, unable to agree with the view expressed in Chandra Bhushan's case.

For the reasons stated above, we hold that there are no merits in this SLP and the same is accordingly dismissed."

20. In the case of Municipal Corporation of Delhi Vs. Shri Vir Mohd. Reported in 94 (2001) DLT-746 the Hon'ble Delhi High Court has observed as

under:-

"11. The Supreme Court has pronounced against entitlement for appointment on compassionate grounds as a right. Such employment has a specific purpose, that is, to tide over a sudden tragedy, where an application' is filed five years after 'the death, the suddenness of the demise disappears and hence there is no warrant or justification for violating the equalities guaranteed under Articles 14 and 16 of the Constitution, Quite obviously, if the family could;have subsisted for five years it could continue to do so in the future also. It is necessary to appreciate the distinction between a delayed application by the Petitioner, which in view of the observations 'of the Apex Court, would defeat a request; and a claim or demand for compassionate appointment, which is unjustified in law; and a timely application that has been kept pending for a very long time where the request is otherwise justified in that the death was sudden and early in the career of the deceased and the bereaved family is, in a 'penurious state, a delay in deciding the application would not defeat the request. In fact Courts should be quick to direct the Managements to take a decision on all applications expeditiously. Since the Petitioner's request for compassionate appointment had been "deferred at the Petitioner's request with the purpose of enabling him to attain majority, it had become stale as held in Jagdish Prasad's case (supra). In these circumstances the impugned Award is contrary to law and must, therefore, be set aside. The Award is accordingly set aside. The C.W.P. No. 7694/99, stands, allowed accordingly.

12. In C.W.P. 422/2000 the family income was such as would place the Petitioner and the family of the deceased well above the poverty line. The Scheme, reproduced above, correctly requires

eight considerations to be fully considered, before compassionate appointment can be granted. All these considerations are legally valid and salutary, and in conformity with the pronouncements of the Supreme Court., Since compassionate appointment runs counter to the equality of employment guaranteed to all citizens, the Management, appears to have taken the correct decision in declining the request of the Petitioner keeping the family income and assets in perspective. It is also significant that the deceased-father of the Petitioner died shortly before he would have otherwise superannuated. The claim for compassionate appointment is, therefore, wholly unjustified.

13. On facts as well as in law Nagendra Sahni's case is meritless. I feel compelled to impose atleast nominal costs in the hope of discouraging unjustified litigation, if not in the sanguine hope of arresting avarice. C.W.P. No. 422/2000 is dismissed with costs quantified at Rs.1000.00. I desist from awarding these costs to the S.S.I because of its financial strength. The cost be deposited in favor o the Delhi Legal Services Authority, Patiala House, New Delhi within four weeks.

14. The W.P.No.422/2000 is accordingly dismissed."

21. In view of the discussions made herein above in relation to the facts of the case as well as the legal precedents settled by the Hon'ble Supreme Court and Hon'ble High Court, I am of the opinion that the scope of compassionate appointment is restricted to the terms and conditions of scheme

itself and the same cannot be stretched by the Courts, so as to provide appointment on compassionate ground. This apart, the delay is also a vital factor. The benefit of the scheme of compassionate appointment cannot be granted after a reasonable period. Such being the consistent view of the Hon'ble Supreme Court in respect of the scheme, the grounds raised in this OA deserve no further consideration. Further, the strong case made out by the respondents does not permit this Tribunal to allow the OA as no ground of discrimination, mala fides, arbitrariness or illegality, stands established by the applicant.

22. Accordingly, the OA stands dismissed. However, there shall be no order as to costs.

(R.N. Singh)
Member (J)

V.

