

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.2706/2001

Date of decision: 7.5.2003

Himmat Singh .. Applicant

(By Advocate: Dr. D.C.Vohra)

versus

Union of India & Others .. Respondents

(By Advocates: Sh. S.Mohd. Arif)

CORAM:

The Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes 'Yes'
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes 'Yes'

S. Raju
(Shanker Raju)
Member(J)

Central Adminisrative Tribunal
Principal Bench
O.A.No.2706/2001

Hon'ble Shri Shanker Raju, Member(J)

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

Himmat Singh
s/o Late Shri Diwan Singh
r/o House No.4
Block No.74
Sector-1, Pushp Vihar
New Delhi - 110 017. ... Applicant

(By Advocate: Dr. D.C.Vohra)

Vs.

1. Union of India through
The Secretary
Ministry of Defence
South Block
New Delhi - 110 011.
2. The Joint Secretary
(Trg.) & CAO
Ministry of Defence
C-2, Hutmants
Dalhousie Road
New Delhi - 110 011. .. Respondents

(By Advocate: Sh. S.Mohd. Arif)

O R D E R

By Shri Shanker Raju, M(J):

In the present OA, applicant impugns respondents' order dated 24.7.2001 rejecting the request of applicant for compassionate appointment. He has sought quashment of this order with direction to respondents to consider his case for compassionate appointment.

2. Applicant is a son of Government servant, who died in harness on 19.1.1999, he immediately filed a request for compassionate appointment which was rejected on 31.12.1999 observing that the family is not indigent.

3. Applicant filed OA 874/2000 wherein by an order dated 24.1.2001 directions have been issued to reconsider the case of applicant in the light of the Apex Court's decision in Balbir Kaur & Another v. Steel Authority of India Ltd. and Others, (2000) 6 SCC 493.

4. Respondents, after reconsideration, rejected the case of applicant by holding that applicant was over aged and was not a dependant member on the Government servant and keeping in view the terminal benefits paid to the deceased family, and the enhanced family pension, the family was not found to be indigent.

5. Dr. D.C.Vohra, learned counsel contended, by placing reliance on a decision of this Tribunal at Jaipur Bench in Nirmala Devi v. Union of India & Others, OA 299/2001, decided on 19.11.2001 as well as Debi Prasad Mohanty v. Union of India & Others, OA 135/2000, decided on 7.3.2002 as well as the decision of the Principal Bench in Anarkali & Another v. Union of India & Others, 2001(2) ATJ 387, that on evaluating various factors and indigent circumstances and existence of financial crisis, the Board had recommended the case of applicant for compassionate appointment, the date of birth of applicant is to be reckoned from the date of his application and is entitled for upper age relaxation as prayed in the Scheme.

6. Dr. D.C.Vohra further contended that as per the Clause 12(d) of the Scheme, it is incumbent upon the competent authority in case of a disagreement with the Committee for Compassionate Appointment, to refer the matter to next higher authority who has to take a decision. As no decision has been taken by the higher authority, and no reasons have been recorded, matter requires reconsideration.

7. It is, in the aforesaid backdrop, contended that respondents have found new clues to decline compassionate appointment to applicant and in view of Balbir Kaur's case supra, Pension and Gratuity are not relevant for the compassionate appointment.

8. It is contended that the request of applicant has been rejected in a most mechanical manner showing non-application of mind reflecting discrimination violative of Articles 14 and 16 of the Constitution of India.

9. On the other hand, Shri S.M.Arif, learned counsel appearing on behalf of respondents, vehemently opposed the contentions and contested the OA by stating that on reconsideration as well, the request of applicant who is a second son of the deceased employee was considered in the light of the DoPT's OM dated 9.10.1998, and deceased family received a sum of Rs.6.3 lacs as a terminal benefits, and elder son of the deceased was employed and taking into account over all factors, the family was not found indigent, and accordingly, the case was rejected.

10. Shri Arif, further, by producing the official records, contended that though the Board has recommended the case of applicant for compassionate appointment, but has been disagreed by the competent authority and thereafter, the matter was approved, both by ~the Joint Secretary and Additional Secretary, i.e., higher authorities, which is a valid compliance as per Clause 12(d) of the DoPT's Scheme of 1998.

11. By referring to the decision of the competent authority, it is stated that sufficient reasons have been recorded which were considered by the higher authorities. As such it is not incumbent to record reasons for an approval in case of disagreement.

12. Shri Arif contended that applicant is not a dependent family member as during the life time of the deceased, applicant's name was deleted from the CGHS index card on 16.7.1998. As per the procedure laid down, it is contended that once the name has been deleted from the CGHS index card, the person is no more dependant on the Government employee, i.e., the card holder. As the compassionate appointment is to be given to a dependant member, the same would not apply to the case of applicant.

13. Shri Arif relied upon the decision of the Apex Court in H.S.E.B. v. Krishna Devi, JT 2002 (3) SC 485 to contend that the belated claim for compassionate appointment cannot be entertained and compassionate appointment cannot be made in absence of rules or instructions.

14. In the rejoinder, applicant has reiterated the pleas taken by him in the OA.

15. I have carefully considered the rival contentions of the parties and perused the material on record.

16. Before entering into the arena of adjudication of the present claim of applicant, it would be relevant to highlight the concept of compassionate appointment as a welfare measure, since its inception and further progression during the years.

17. As per the recommendations of study report on employment on compassionate grounds and the consequences of delay and harassment, need was felt to streamline the procedures which were compiled and issued in August, 1990. One of the salient features were to recommend the DoPT to revise its instructions to include certain persons as near relatives, power of relaxation to limit 5% of direct recruitment vacancies for compassionate appointment to the Secretary ensuring the appointment on means-cum-merit basis, and meeting of Welfare Officer of the concerned Ministry/Department with the family members of the deceased. A time limit to work out the compassionate appointment and periodical reviews. It was also stressed in the recommendations that appointment should be made on need-cum-economic status basis and to fix the norms by DoPT.

18. The aforesaid recommendations have been circulated vide DoPT's OM dated 29.7.1998 and in the light of the various decisions of the Apex Court and also recommendations of Fifth Central Pay Commission, as well as study reports of years 1990-94 prepared by Department/Ministry of Reforms and Public Grievances, these instructions were revised and circulated as Scheme for compassionate appointment vide OM dated 9.10.1998.

19.. The object of the Scheme was to grant compassionate appointment to a dependant family member of a Government servant, who died in harness or to those who retired on medical grounds living behind the family in penury without any means of livelihood with the prime object to tide over the family from financial destitution and to get over the emergency.

20.. The salient features of the Scheme include addition of adopted son/daughter/brother and sister within the definition of dependent family members, Head of the Department/Secretary, Ministry/Department were authorised and competent to make compassionate appointment. This appointment was to be made applicable in Group 'C' and 'D' posts against direct recruitment quota for indigent family in immediate financial assistance and eligibility and suitability of the candidate for the post as per the provisions of relevant recruitment rules. However, the recruitment procedure and ban orders to fill up the posts are not to effect the appointment and was exempted. In so far as the age relaxation is concerned, the same was relaxable but not below 18

years and to be computed from the date of application. However, Secretary concerned of the Department/Ministry, was authorised and competent to relax temporarily the educational qualifications prescribed in the relevant rules in Group 'C' and 'D' in exceptional circumstances, but the appointee as to secure the requisite qualification within two years.

21. In the aforesaid Scheme appointment was to be made only on regular basis against regular vacancies and upto maximum of 5% of the vacancies falling under direct recruitment quota in any Group 'C' and 'D' posts. However, as per the category of SC/ST/OBC/General, the appointees to be adjusted accordingly. However, it is forbidden to circumvent the ceiling of 5% by appointment of dependent family member on casual daily wages and ad hoc. It is also made clear in the Scheme that the employment is not confined to the Ministry/Department in which the deceased has been working can be given anywhere depending upon availability of suitable vacancies if sufficient vacancies are not available in any particular vacancy to accommodate the officer in waiting list for compassionate appointment, it would be open to take up the matter with other Ministries/Department so that compassionate appointment is made earliest to those who are in the waiting list.

22. However, belated request for compassionate appointment after 5 years made should not be entertained. The delay itself shows that the

family has maintained/survived and the object of compassionate appointment to tide over the sudden financial crisis frustrates.

23. In exceptional circumstances, 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, on satisfaction, keeping in view the assets and liabilities and income of the earning member, who is not a support to other members of the family. The facility of appointment on compassionate ground is not to be circumvented and misused by putting forward the aforesaid plea and is to be resorted in a deserving case only. In so far as procedure is concerned, a proforma has been worked out which is to be filled by the family/dependent members of the deceased Government servant and it is made clear it was upto the Welfare Officer to meet the members of the family with an object to advice and assist them in getting appointment on compassionate ground.

24. The person who is applying should be called to explain about the requirement and formalities. The committee is recommended consisting of Chairman and two members along with Welfare Officer as one of the members to consider the cases and if required necessary, for better appreciation of the case of the person applying should also be called upon. These recommendations are to be put before the

competent authority and in case of disagreement, the matter is to be referred to the next higher authority for its decision.

25. On appointment of the person concerned is to file undertaking to support and maintain the family properly and in case of neglect, to face termination.

26. This is the sum and substance of the DoPT's OM dated 9.10.1998. However, through OM dated 3.12.1999, DoPT has laid down time limit for compassionate appointment by providing that compassionate appointment is to be made subject to availability of vacancies and the Committee for Compassionate Appointment should also take into account the position regarding availability of vacancies, and to order appointment only in really deserving cases that to against a vacancy which is available within a year. This would ensure grant of appointment within a year. However, in the other really deserving cases, recommendation is to be made to take up the matter with other Ministries and Departments.

27. By OM dated 20.12.1999, it is made clear that the compassionate appointee has to give undertaking to maintain properly the other family members, failing which his services would be terminated, has been incorporated as one of the additional conditions in the offer of appointment.

28. DoPT, by OM dated 22.6.2001 reiterated that in view of 5% ceiling prescribed for compassionate appointment, there are no enough vacancies to accommodate request for family members of the Government servant belonging to the same Ministry/Department and there are no spare vacancies left to accommodate request for other Ministries/Departments no useful purpose being served by taking up the matter with other Ministries/Department to consider such other cases received by them from other Ministries/Departments/Offices for compassionate appointment, it on the other hand, only gives false hope to the applicants for grant of such appointments. Accordingly, the request for compassionate appointment has been restricted to only really deserving cases subject to availability of vacancies within a year in the concerned administrative Ministry/Department/Office within the ceiling of quota of 5% in direct recruitment in Group 'C' and 'D' posts.

29. After having enumerated the various provisions contained in the instructions on the Scheme for grant of compassionate appointment, the important decisions on the subject are necessarily to be highlighted which would facilitate the adjudication and would crystallise the position of law on the subject.

29.1. Justice K.T.Shetty, speaking for the Bench in Smt. Sushma Gosain and Others v. Union of India & Others, AIR 1989 SC 1976 observed as under:

"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. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

29.2. In Life Insurance Corporation of India Ltd. v. Mrs. Asha Ramchandra Ambekar & Anr., JT 1994(2) SC 183, speaking for the Bench Justice S.Mohan, the Apex Court observed as under:

"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction. No doubt Shakespeare said in Merchant of Venice:

"The quality of mercy is not strain'd;

It droppeth, as the gentle rain from heaven

Upon the place beneath it is twice bless'd'

It blesseth him that gives, and him that takes;."

Further, it was also observed that direction as to appointment on compassionate ground cannot be issued under the jurisdiction and as mandamus to straightway direct the appointment would be the employment in piquant situation.

29.3. The Division Bench of the Apex Court in Umesh Kumar Nagpal v. State of Haryana & Others, 1994(4) SCC 138 observed as under:-----

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of recruitment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if

not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Court which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India¹ has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech., etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the

policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III and IV post. While we leave it to the Government to exercise its discretion judiciously in making appointment to Class I and II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

29.4. In Haryana State Electricity Board and Another v. Hakim Singh, 1997(8) SCC 85 while dealing with the claim of deceased employee son who latter on attained majority, the following observations have been made:

"13. This Court has considered the scope of the aforesaid circulars in Haryana SEB v. Naresh Tanwar¹. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in Umesh Kumar Nagpal v. State of Haryana², the other in Jagdish Prasad v. State of Bihar³. In the former, a Bench of two Judges has pointed out that "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 the post held by the deceased". In the latter decision, which also we rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependant 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". The learned Judge pointed out that if the claim of the dependant which was preferred long after the death of the deceased employee is to be dependant of the deceased government servant "which cannot be encouraged, dehors the recruitment rules".

29.5. While reiterating the ratio in Umesh Kumar Nagpal's case supra, Apex Court in Managing Director, MMTC Ltd., New Delhi & Other v. Pramoda Dei alias Nayak, (1997) 11 SCC 390 observed as under:----

"4. Shri Harish Salve, the learned Senior Counsel appearing for the appellants, has submitted that under Rule 18 a discretion has been given to the Chairman/Director (Personnel) in the matter of appointment of a direct dependant of a regular employee of MMTC who dies in harness or is permanently disabled while in the service of MMTC and that the High Court was not justified in issuing a writ directing the appellants to give a rehabilitation appointment to the respondent and all that could be done was that the High Court could have directed the competent authority to consider the matter of giving rehabilitation appointment to the respondent. In support of the said submission, Shri Salve has invited our attention to the recent decision of this Court in LIC of India v. Asha Ramchandra Ambekar wherein this Court was considering the provisions of Life Insurance Corporation of India (Staff) Regulations, 1960 providing for appointment on compassionate grounds and it was held that the Court should not have directed appointment on compassionate grounds and it could have merely directed consideration of the claim of the dependant of the deceased employee. We find considerable merit in the said submission of Shri Salvi. In our opinion, Rule 18 of the Rules confers a discretion on the Chairman/Director (Personnel) to appoint a direct dependant of a regular employee who dies in harness

or is permanently disabled while in the service. It is no doubt true that this discretion is not an unfettered discretion and has to be exercised reasonably after taking into consideration the relevant facts and circumstances. The High Court has proceeded on the basis that rehabilitation appointment has to be given in all cases where it becomes due because of death of an employee in harness or by his permanent disability and it can be refused only in certain circumstances as indicated by the High Court. In our opinion, the discretion of the competent authority cannot be thus fettered. As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment (See: Umesh Kumar Nagpal v. State of Haryana²). Ineligibility, incapacity or unsuitability of the person seeking employment are no doubt relevant considerations but they cannot be regarded as exhaustive. There may be other circumstances which may be relevant and can be taken into account by the competent authority for considering whether rehabilitation appointment should be given under Rule 18 of the Rules."

29.6. In State of U.P. & Others v. Paras Nath, (1998) 2 SCC 412, the Apex Court held as follows:

"5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

29.7. In Director of Education (Secondary) &

Another v. Pushpendra Kumar & Others, (1998) 5 SCC 192, a decision by three Judges Bench of the Apex Court, the following observations have been made:----

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a procedure enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee. In Umesh Kumar Nagpal v. State of Haryana¹ this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in Classes III and IV. It was held that

such appointment could only be made against the lowest posts in non-manual categories. It was observed : (SCC p.140, para 2)

"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by the deceased employee is in consideration of serviced rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

10. The construction placed by the High Court on the Regulations governing appointment of dependants of teaching/non-teaching staff in non-government recognised aided institutions dying in harness would result in all the vacancies in Class III posts in non-government recognised aided institutions which are required to be filled by direct recruitment being made available to the dependants of persons employed on the teaching/non-teaching staff of such institutions who die in harness and the right of other persons who are eligible for appointment to seek employment on those posts by direct recruitment would be completely excluded. On such a construction, the said provision in the Regulations would be open to equality in the matter of ground of being violative of the right to equality in the matter of employment inasmuch as other persons who are eligible for appointment and who may be more meritorious than the dependants of deceased employees would be deprived of their right of being considered for such appointment under the rules. A construction which leads to such a result has to be avoided. Having regard to the fact that there are a large number of posts falling vacant in Class IV and appointment on these posts is made by direct recruitment, the object underlying the provision for giving employment to a

dependant of a person employed on teaching/non-teaching staff who dies in harness would be achieved if the said provision in the Regulations is construed to mean that in the matter of appointment of a dependant of a teaching/non-teaching staff in a non-government recognised aided institution dying in harness if a post in Class III is not available in the institution in which the deceased employee was employed or in any other institution in the district, the dependant would be appointed on a Class IV post in the institution in which the deceased employee was employed and for that purpose a supernumerary post in Classs IV may be created. If the Regulations are thus construed, the respondent-applicants could only be appointed on a Class IV post and they could not seek a direction for being appointed on a Class III pot and for creation of supernumerary post in Class III for that purpose. We are, therefore, unable to uphold the direction given by the High Court in the impugned judgments whereby the respondents have been directed to be appointed on a Class III post if they possess the requisite qualifications for such a post and in case no Class III post is available, then a supernumerary Class III post be created for the purpose of such appointment."

29.8. In S.Mohan v. Govt. of T.N. &

Another, (1998)9 SCC 485, the following observations have been made by the Apex Court:---

"4. Learned counsel for the appellant has strenuously urged that the appointment of the appellant on compassionate grounds was justified and appointment on compassionate grounds. The question, however, is whether in the facts and circumstances set out, could the appointment of the appellant have been made on compassionate grounds after a lapse of 10 years from the date of the death of his mother. Secondly, whether the circumstances justify the appointment of the appellant on compassionate grounds. On the first question, this Court in the case of Umesh Kumar Nagpal v. State of Haryana1 SCH at p.141 has observed that the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the Rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the

time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In breadwinner of the family. Two sons were already employed and the father was receiving a small pension. The appellant sought employment on compassionate grounds after a lapse of 10 years. It was, therefore, obvious that there was no immediate financial crisis in the family which would warrant any out of turn appointment of the appellant on compassionate grounds. The financial crisis, if any, caused by the death of the mother was 10 years prior to the application of the appellant. At the time of the death of his mother, the appellant was around 12 or 13 years of age and his two brothers were employed. Looking to all the circumstances, the Government had rightly refused to give him appointment. The fact that the appellant was continued in service on account of the interim orders passed during the pendency of the proceedings taken out by the appellant will not be of any help to the appellant since he was throughout aware that these were only interim orders which were subject to the outcome of the proceedings. We do not see any reason to set aside the order of the Tribunal. The appeal is, therefore, dismissed. There will, however, be no order as to costs."

29.9. The Apex Court in Orissa State

Electricity Board v. Raj Kumari Panda, 1999 SCC (L&S)

729, observed as under:

"Special leave granted. Heard counsel for the parties. The High Court has proceeded on an erroneous view of the law on the subject. Compassionate employment is to be given to the parties satisfying the requirements only if there are vacancies and not otherwise. To direct the employer to create supernumerary posts to accommodate such employees is not warranted by the rules. Hence the direction is set aside. However, since the employees concerned have already been accommodated and they have been working till date, we are not interfering with the employment of the respondent-employees in these particular matters. However, it is made clear that the High Court should not pass such directions which are as stated earlier not warranted by law. The appeals are disposed of accordingly with no order as to costs."

29.10. The Apex Court in Balbir Kaur & Another v. Steel Authority of India Ltd. & Others,
(2000) 6 SCC 493 observed as under:-----

"13. Mr Bhasme, learned advocate appearing for Steel Authority contended that the Family Benefit Scheme was introduced on 21-11-1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management could avail of the Scheme by depositing the lump sum provident fund and gratuity amount with the Company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr Bhasme contended that consequently on deposits as above with the management employee's family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the employee's union, question of any departure therefrom or any compassionate appointment does not and cannot rise. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family - this is on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.

19. Mr Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

29.11. In Union of India v. Joginder Sharma, 2002 SCC (L&S) 1111 the Apex Court observed as under:

"4. Heard the learned counsel for the applicant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal requirement process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India v. Asha Ramchandra Ambekar held that the courts cannot direct appointments on compassionate grounds

dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

5. So far as the case on hand is concerned, both the Tribunal as well as the High Court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the courts/tribunals can compel the competent authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of the law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the tribunal/court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf of the respondent, have been properly explained by the appellant to be not really and in substance a deviation from the general policy not to relax so as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds."

29.12. The High Court of Delhi in Veer Mohd.

v. Municipal Corporation of Delhi, 95(2002) DLT 663(DB), held as under:

"13. The purpose and object for which such appointment is granted is now well known. Appointment on compassionate grounds is granted when an employee dies

harness leaving his family in penury without any means of livelihood. Grant of appointment on compassionate ground enables the family to tide over sudden crisis. Nobody has any fundamental or statutory right to claim employment on compassionate grounds. It is also-settled that the right for an appointment on compassionate ground must as on the date on which cause of action arose therefor namely at the time when the employee dies in harness.

20. Having regard to the fact that the petitioner was a minor at the time of death of his father and furthermore he applied eight years after death of his father, we are of the opinion that the discretion exercised by the learned Single Judge need not be interfered with.

21. It may be true, as submitted by the learned Counsel, that industrial law must be viewed having regard to the concept of justice but social justice cannot be permitted to override the constitutional mandate contained in Clause(2) of Article 16 of the Constitution of India."

30. As crystallised from the executive instructions and policy laid down by the Government and various rulings of the Apex Court, the settled position of law and in the context of salient features, Scheme for compassionate appointment can be summarised as under:

30.1. Compassionate appointment is an exception to Article 16(2) of the Constitution of India and the prime object of its grant to dependant family member is to relieve the family of the Government servant concerned from financial destitution to tide over the crisis. The object is not to give member of such family a post much less for a post held by the deceased.

30.2. The compassionate appointment cannot be claimed as a right but one has a right for consideration.

30.3. In order to qualify, one has to be a dependant family member as per the DoPT's Scheme of 9.10.1998.

30.4. Compassionate appointment is restricted to Group 'C' and 'D' posts against direct recruitment quota and is made against a regular vacancy. Compassionate appointment can be made upto maximum of 5% of the vacancies in direct recruitment quota and is limited to availability of vacancies. The recommendations for appointment are restricted to only really deserving cases, on subject to availability of vacancies, within a year in the concerned administrative Ministry/Department/Office. Question of relaxing the ceiling limit of 5% being discretionary of the authority concerned, purely administrative and statutory in nature, Tribunal cannot compel, the authority to accord the relaxation.

30.5. The sole object of the compassionate appointment is to tide over the financial crisis. Accord of such appointment, after delay, frustrates the very object and draws a presumption that no financial crisis in the family existed and warranting out of turn appointment on compassionate ground.

30.6. Claim of compassionate appointment cannot be put forward as a claim through line of succession by virtue of right of inheritance.

30.7. Compassionate appointment can be given only when vacancy exists, Tribunal is not competent to direct the employer to create supernumerary post.

30.8. Compassionate appointment cannot be insisted upon a particular post, and if appointment on Class-IV post is offered, on non-availability of Class-III post, there is no infirmity in the same.

30.9. Grant of compassionate appointment could not interfere with the right of other persons who are eligible for appointment against the post which have been made available to them but for the provisions of compassionate appointment, this violates Articles 14 and 16, the principle enshrined in the Constitution of India.

31. After the death of Government employee in penury, it is incumbent upon the Welfare Officer in the Ministry/Department to assist and advice the members of the family in getting appointment on compassionate ground and also to apprise them of requirements and formalities to be completed by them.

31.1. Committee, formed as per the guide-lines of DoPT should consider the case for appointment having regard to the financial destitution, indigent condition of the family, which interalia includes the evaluation of the assets and liabilities and various other factors like age, number of members in the family and also earning member in the family with a view to arrive at a finding as to

whether the family is indigent and the member is really deserving to be considered for compassionate appointment.

31.2. However, terminal benefits provided to the family could not be a sole criteria for consideration of compassionate appointment but in view of the yard-stick of the DoPT as to the poverty line to determine the penurious condition of the family to ascertain whether the case is really deserving one, the Planning Commission's figure of poverty line amounting to income below Rs.1767.20 for a family of five members per month shall be applicable in so far as judging the financial destitution of the family of the concerned Government servant on consideration of request from the dependants for compassionate appointment. However, in my considered view, prevalent inflation rate and cost of living, the aforesaid figure is not commensurate and rational.

31.3. In cases, member of the family is already earning and living separately, it is for the concerned Ministry/Department in a deserving case with the prior approval of the Secretary or Head of the Department in deserving cases to consider the appointment of another family member after being satisfied as to the liabilities and assets of the family, and also to ensure that the facility of appointment is neither circumvented nor misused by putting forward the plea of family member employed not supporting the family and living separately.

31.4. Member of the deceased Government servant/family, though considered for compassionate appointment by the competent authority, cannot be indefinitely kept in the waiting list, it is to be in operation only for a period of one year and that to on availability of vacancies.

31.5. That in case the vacancies are not available in the concerned Ministry/Department, the case of the claimant cannot be considered in other Ministries/Departments.

32. In the light of the aforesaid, I have carefully considered the Scheme of the compassionate appointment and above legal positions of the Apex Court on the subject and pleadings on record. In so far as the plea of applicant in earlier OA despite payment of Rs.6.3 lacs as retiral benefits, Tribunal has directed for reconsideration for compassionate appointment in the light of the decision of Balbir Kaur's case supra. In Balbir Kaur's case supra the situation, rested upon different facts, where the compassionate appointment was denied on the ground that family pension Scheme, introduced as per the tripartite agreement of 1989, it was held to be not counted to the legislative Scheme to allow compassionate appointment. In this conspectus, grant of payment of gratuity and family pension, has been found relevant as to the Scheme of grant of compassionate grounds. The present case does not envisages the aforesaid position. The Scheme of DoPT of 1998 is applicable where the consideration for compassionate appointment by the Committee is

dependent upon several factors, interalia, one of its payment of retiral benefits. Accordingly, the respondents reconsidered the request of applicant and keeping in view the assets and liabilities and that one of the family member was in employment and the amount of family pension, the family has not been found to be indigent, which is the pre-requisite and a condition precedent for accord of compassionate appointment. As the compassionate appointment cannot be claimed as a right having evaluated meticulously, case of applicant has not been found really deserving, I do not find any infirmity in the order passed by the respondents.

33. In so far as the question of applicant having attained the age of 29 years on the date of application for compassionate appointment and his deletion from the CGHS index card, though these factors considered by the respondents are incidental only the decision has been taken on the basis of over all considerations and factors relevant as per the Scheme.

34. In so far as the application of Clause 12(d) of the Scheme is concerned, I have perused the record produced by the respondents. Board has recommended compassionate appointment of the applicant. However, the competent authority, i.e., Director, on disagreement by recording reasons, relevant and as per the Scheme of DoPT dated 1998, observed that the Board has failed to take into consideration the relevant factors and keeping in view the object of the Scheme, to provide compassionate

appointment to a deserving member of an indigent family, recommended the case to the higher authority, i.e., Joint Secretary, who agreed with the aforesaid. Thereafter Additional Secretary took a decision agreeing with the findings of the competent authority. Nowhere in the Scheme, it is mandated upon the higher authority to whom the disagreement is forwarded to record reasons. What has been provided in the Scheme to refer the matter to the next higher authority, who has to take a decision. As the Additional Secretary on receipt of the disagreement, approved the same, it is not necessary to record separate reasons in support. Moreover, after the decision, respondents had passed a detailed order. In my considered view, the aforesaid procedure is not in violation of Clause 12(d) of the Scheme ibid.

35. As the case of applicant has been duly considered and the family has not been found indigent, or in dire need of financial assistance, rejection of such a request for compassionate appointment does not suffer from any legal infirmity. Accordingly, OA is found bereft of merit and is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/