

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.328/2001

New Delhi, this the 30th day of August, 2001

Shri Dinesh Kumar Thagela
s/o late Shri Kedar Nath Thagela
r/o Quarter No.120/1, Sector-1
Pushp Vihar
New Delhi - 110 017.

... Applicant

(By Advocate: Shri S.C.Saxena)

Vs.

1. The Union of India
through
The Comptroller & Auditor General
of India
10, Bahadur Shah Zafar Marg
New Delhi - 110001.
 2. The Audit Officer (Administration)
Indian Audit & Accounts Department
through Principal Director of
Commercial Audit Ex-Officio Member
Audit Board-I, 6th Floor
Enquiry Centre, Mathew Road
Mumbai - 400 004.
 3. The Indian Audit & Accounts Deptt.
Office of the Principal Director of
Commercial Audit & Ex. Officio Member
Audit Board - I, I.P.Bhawan, 3rd Floor
'A' Wing, New Delhi.
- ... Respondents

(By Advocate: Shri M.K.Gupta)

O R D E R (Oral)

By Shanker Raju, Member (J):

The present case has been filed by the applicant, a legal heir of the deceased Government servant who died in harness on 14.1.2000. The respondents have considered the case of the applicant but rejected it by an order dated 5.10.2000 in terms of the existing policy and orders of the Government of India on the subject. The learned counsel for the applicant stated that as per the clause 7(c) of Scheme of DoPT even if a vacancy is not available in the present Department it is open to the administrative

~

Ministry/Department to provide appointment to the dependent of the deceased, who died in harness. The applicant states that he belongs to reserved category he is to be accorded compassionate appointment as the family is indigent and quoting the case of one Late Y.P.Chaddha, whose wife is already in Government service has been accorded the compassionate appointment. In this back ground, it is stated that the respondents have treated the applicant with hostile discrimination which is prohibited under Article 14 and 16 of the Constitution of India. The learned counsel for the applicant has further stated that though the applicant had been paid certain emoluments by the respondents but due to huge debts made by his father with regard to marriage of sister Kavita and other expenses have been born out from the emoluments paid to the applicant. It is also stated that the applicant is one of the sons of the deceased whereas the other sons who are working and are living with their families independently. It is lastly stated that the consideration by the respondents of regarding compassionate appointment was not in accordance with the rules and guide-lines laid down. By referring to the decision of this Court in Smt. Anar Kali and Anr. Vs. Union of India, 2001(2) ATJ 387, it is stated that while considering the case of compassionate appointment the authority cannot take into consideration the terminal benefits paid to the family members of the deceased. It is also stated that the aforesaid ratio has been passed on the basis of the decision of Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors., 2000 (4) Scale 670 =

he

2000(2) SCSLJ SC 71, wherein it has been held that if some emoluments available to the family, the compassionate appointment would not be denied.

9

2. Strongly rebutting the contentions of the applicant it is stated that the applicant has not come out with clean hands and has not disclosed properly all the facts. It is stated that all the three sons are working and one is Constable in Delhi and other Inspector in Income-Tax and the third one in private job. The learned counsel for the respondents further stated that the applicant had been paid a total sum of Rs.546828/- as a terminal benefits and a family pension of Rs.4795/-. The respondents have also described the liabilities of the applicant which are lesser than what has been paid to him. It is also contended that as per the ratio of Hon'ble Apex Court in Umesh Kumar Nagpal Vs. State of Haryana & Others, JT 1994(3) SC 525, it has been clearly observed that compassionate appointment cannot be claimed as a matter of right and would not be a method of entry in Government service and on the basis of the decision the guide-lines of 1998 which have been issued by the Government in respect of compassionate appointment, wherein it has been stated that the compassionate appointment would be accorded to a family which is really indigent and has not been accorded sufficient financial resources to cope up with.

3. I have carefully considered the rival contentions of the parties and perused the material available on record. It is a settled position that a compassionate appointment cannot be claimed as a right

- 4 -

but only a right of consideration is with the person who claims it. As per the policy laid down by the Government of India in OM dated 9.10.1998 the paramount consideration for accord of compassionate appointment is restricted to 5% vacancies and that to a family who is indigent and where the sufficient means have not been accorded by the Government. It can not be claimed as a right or an alternate to get an entry into Government service without subjected to all regular procedures. The compassionate appointment cannot be accorded only on the basis of decent. What has been the paramount consideration is that the family should be in immediate need of assistance and their is no other member of the family of the deceased Government servant to supplement the income. Applying the test laid down in Umesh Kumar Nagpal supra, we find that the deceased Government servant has been died leaving behind four sons out of which three are in service. The contention of the learned counsel for the applicant that they are maintaining their families separately would be of no avail of him. As regards the emoluments, which have been paid to the Government servant we find that sufficient amount upto the tune of Rs.546000/- had been paid to the family of the deceased Government servant and she is getting family pension of Rs.4795/-. In my considered view the family is not indigent. As regards the ratio cited by the learned counsel for the applicant what has been held by the Apex Court that while considering the case for compassionate appointment financial reliefs would not weigh. in the matter of consideration but here it is a case where sufficient financial benefits have been accorded and other three sons of the deceased

~S~

Government servants have been working in Government organisation as such the facts and law enumerated in the decision of the Apex Court are distinguishable and would not apply to the facts and circumstances of the present case.

4. In the result and having regard to the reasons recorded I find that this is not a case to be interfered with. The present OA is accordingly dismissed as bereft of merit. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/