

FORM NO. 2
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Report on the Scrutiny of Application

SB/DB 8B

Presented by: RA Vashist Date of Presentation: 1924
Applicant(s): Miss Aditi Vashist Group: 20620
Respondent(s): Union of India
Nature of grievance: Compassionate Appointment
No. of Applicants: _____ No. of Respondents: _____

CLASSIFICATION

Subject: Compassionate Appointment (St) (No. _____) Department: CSIR (No. 59)
* If S.B.

1. Is the application is in the proper form?
(three complete sets in paper book form in two compilations). (PROFORMA/COMPILATION) ✓

2. Whether name, description and address of all the parties been furnished in the cause title? Yes

3. (a) Had the application been duly signed and verified? (SIGNED/VERIFIED) ✓

(b) Have the copies been duly signed? Yes

(c) Have sufficient number of copies of the application been filed? Yes

4. Whether all the necessary parties are impleaded? Yes

5. Whether English translation of documents in a language other than English or Hindi been filed? Yes

6. (a) Is the application in time? Yes
(See Section 21)

(b) Is MA for condonation of delay filed? MA

7. Has the Vakalatnama/Memo of appearance/00 authorisation been filed? Yes

8. Is the application maintainable?
(u/s 2,14,18 or U/R 6 etc.)

u/s 2, u/s 14, u/s 18
U/R 6, PT u/s, 25 file

9. Is the application accompanied by IPO/DD for Rs.50/-?

Yes
LEGIBLE/ATTESTED

10. Has the impugned orders original/duly attested legible copy been filed?

LEGIBLE/ATTESTED

11. Have legible copies of the ann... duly attested been filed?

BA11941 200 ✓✓

12. Has the index of documents been filed and pagination done properly?

FILED/PAGINATION

13. Has the applicant exhausted all available remedies?

Yes

14. Have the declaration as required by item 7 of Form-I been made?

Yes

15. Have required number of envelopes (file size) bearing full address of the respondents been filed?

Yes

16. (a) Whether the reliefs sought for, arise out of single cause of action?

Yes

(b) Whether any interim relief is prayed for?

Yes

17. In case an MA for condonation of delay is filed, is it supported by an affidavit of applicant?

Yes

18. Whether this case can be heard by Single Bench?

Yes

19. Any other point?

20. Result of the scrutiny with initial of the Scrutiny Clerk.

The application is in order and may be registered and listed before the Court for admission/orders on ;

- (a) ~~MA for joining - U/R 4(5)(a)/4(5)(b)~~
- (b) ~~MA U/R 6 of CAT Procedure Rules, 1987~~
- (c) ~~PT u/s 25 under At ACT~~
- (d) MA for condonation of Delay;

OR

The application has not been found in order in respect at item No(s) mentioned below;

- (a) Item Nos.
- (b) Application is not on prescribed size of paper.
- (c) MA U/R 4(5)(a)/4(5)(b) has not been filed.
- (d) Application/counsel has not signed each page of the application/documents.
- (e) MA U/R 6 has not been filed.

The application might be returned to the applicant for rectification of the defects within 7 days.

SCRUTINY CLERK

SECTION OFFICER

JOINT REGISTRAR

COURT NO.

SB

DATE

3-7-2000

3/3

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI.

C.A. No. 1194 of 2000

In the matter between:

Miss Aditi Vashist,
D/o Late Smt. Sudha Vashist &
Shri R.A. Vashist,
R/o C-108, Anand Vihar, Delhi-92.

...Applicant

VERSUS

Union of India through:-
Director General, Council of Scientific
& Industrial Research, New Delhi.

...Respondents

I N D E X

Smt.	Particulars	Annex.No.	Page Nos.
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COMPILATION No. I

- | | | | |
|----|---|---|-----|
| 1. | Application U/s 19 of Administrative Tribunal Act, 1985. | - | 1-9 |
| 2. | Copy of letter No. 3(25)/78-EIII dated 15/22/-3-2000, issued by the Respondent Council, in response to the application of the applicant for A/1 appointment on compassionate grounds. | - | 10 |

COMPILATION II

- | | | | |
|----|---|-----|-------|
| 3. | A copy of Newspaper Cutting dated of Times of India showing the contents regarding the compassionate appointment A/2 in regard to Steel Authority of India Ltd. (SAIL). | - | 11 |
| 4. | Vakalatnama | A/3 | 12 |
| 5. | Application for appointment on compassionate grounds sent on 3-6-1999. | - | 13-16 |

Applicant

प्रधान न्यायपीठ/CAI (C)

माज दाखिल

3 Filed

30 JUN 2000

दाखिल नं. 1194/2000

उपरजिस्टार/Dy. Registrar

Through the Counsel

R.A. Vashist

(R.A. Vashist)

C-108, Anand Vihar,
Delhi-110092.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI.

O.A. No. 1194 of 2000

In the matter between:

Miss Aditi Vashist d/o Shri R.A. Vashist,
r/o C-108, Anand Vihar,
Delhi-110092

...Applicant

VERSUS

Union of India through:-
Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi.

...Respondents

APPLICATION UNDER S. 19 of ADMINISTRATIVE
TRIBUNAL ACT, 1985.

COMPILATION I

1. PARTICULARS OF THE ORDERS AGAINST WHICH THIS
APPLICATION IS MADE:

- That the applicant's mother Smt. Sudha Vashist, joined
7 the Office of the Respondent Council in the year 1971
as Lower Division Clerk.
2. That, while in service, the applicant's mother was
promoted to the rank of Asstt./Section Officer(A/cS).
3. That in the early 1997, the applicant's mother i.e.
deceased fell sick and was diagnosed having suffering from
Chronic Renal Failure (Kidney Failure) and Liver failure
of the end stage and started having treatment in Batra
Hospital & Medical Research Centre, New Delhi where she
was put to bi-weekly haemodialysis and hospitalisation
by the doctors of the said Hospital and ultimately
the mother of the applicant died on 10th May, 1999.

20

- 1.4: That during the sickness of the applicant's mother, the family had to spend several lakhs of rupees, including the expenses on bi-weekly haemodialysis which costed the family Rs.2000/- per dialysis, plus the hospitalisation, in the aforesaid Hospital.
- 1.5: That immediately after the death i.e. 10-5-1999 of the deceased mother, this applicant applied for a suitable job on compassionate grounds, in the office of the respondent Council, on the proformas prescribed by the Respondent, showing all the details of assets and liabilities, including the fact that there was no earning member in the family except the father of the applicant was getting a meagre pension on his superannuation, which is not sufficient to survive in such a time.
- 1.6: That as per the Recruitment Rules, the deceased employee's wife, widow, son/daughter, are entitled to be appointed on compassionate grounds to Group 'C' Grade posts, when the employee dies in harness.
- 1.7: That even in exceptional cases of distress, the compassionate appointment can be given even when there is earning member in the family, with the approval of the Secretary and Joint Secretary (Admin.) of the Department.
- 1.8: That the Respondent Council, after a gap of more than 9 months of the application submitted by the applicant, the Respondent Council have now informed to the father of the applicant, vide their letter No.3(25)/78-EIII dt.15/22-3-2000 that:-
- "Keeping in view the factors like number of dependants, quantum of payment received by the family of the deceased employee on account of final settlement as



also the details of other assets held by the family and also the liabilities left behind by the deceased employee, it has been found that the condition of the family cannot be termed as INDIGENT. Accordingly, it is regretted that your request for compassionate appointment of your daughter, being not covered under the Rules, cannot be acceded to."

1.9: That incidentally the office of the Respondent Council is a "STATE" within the meaning of Article 12 of the Constitution of India and the Respondent Council is under an obligation to act, in terms of the avowed objectives of social and economic justice as enshrined in the Constitution.

1.10: That in a recent judgement, delivered by a Division Bench comprising of Justice S.B. Majumdar and Justice U.C. Banerjee, in the case of Steel Authority of India Ltd. (SAIL), it has been held that "it is the Constitutional obligation for every Public Sector Undertaking to offer jobs to the dependents of its employees who die harness".


1.11: It has further been held that "To deny a compassionate employment opportunity would neither be fair nor reasonable and it is the duty and an obligation to offer suitable posts to the dependents on compassionate grounds, who die in harness."

2. JURISDICTION:

That the applicant declares that the subject matter of the orders against which the applicant wants redressal, is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION:

That the applicant further declares that the application is

 well within limitation prescribed under the ACT.

4: FACTS OF THE CASE:

- 4.1: That the applicant's mother was appointed as Lower Division Clerk, in the year 1971 and by the passage of time, she was promoted to the rank of Asstt./Section Officer (A/cs) in the office of the Respondent Council.
- 4.2: That in the early 1997, the applicants mother was diagnosed as having suffering from Chronic Renal Failure (Kidney failure) and after she also suffered with liver infection of the end stage and through out the period of 2½ years of her treatment she remained under the treatment of Batra Hospital and Medical Research Centre, New Delhi, where she was supported for her life on bi-weekly Haemodialysis and was also frequently hospitalised in the same Hospital and ultimately, the mother of the applicant died in harness on 10th May, 1999, in the same hospital.
- 4.3: That the treatment given to the applicant's mother was quite costly, involving an expenditure of more than Rs.15 Lakhs, which resulted in heavy debts of the family and other assets were used up within 2½ years of her treatment of the deceased.
- 4.4: That the status of the family is as under:-

(a) Father:


He is a retired person from Railways, on his superannuation. Being a Law Graduate, he started his practice as an Advocate. There is hardly any income from his profession.

(b) Brother:

He has studied Medicine and is unemployed. He is living separately, with his wife, as no sufficient accommodation is available with us. He is neither supporting his family nor his father financially, rather father is financially supporting him.

(c) Daughter:

That the applicant is the only daughter. She was working in a private Company and her services had been terminated due to excessive leave taken by her during the sickness of the deceased mother. There is no source of income.



(d) Assets:

There are no assets of the family, except a house in the name of the father which comprised only one Room and one basement for storage purposes. There is no rental income from the property.

(e) Brief of liabilities of the family:

Still there is huge liability of the family, in the shape loans raised during the sickness of the deceased mother which are still to be paid off besides other liabilities of Bank loans, (Rs.61,000), House Tax payable to the M.C.D. amounting to Rs.1,20,000/- and periphery charges amounting to Rs.3,00,000/- payable to the D.D.A. All these liabilities. These liabilities could not be liquidated, due to the sickness of the deceased mother, as the family had no source of income. There is also a loan taken from friends and relatives, during the sickness, which amounts to Rs.1,50,000/- and the same could not be paid back due to the aforesaid reasons.

- 4.5: That the applicant is educationally qualified, having graduated in English (Hons.) from Delhi University. She has also completed her B.Ed. from Kurushetra University.
- 4.6: That the applicant, immediately after the death of her mother, applied for a suitable post on compassionate grounds, in the office of the Respondent Council, on 3-6-1999.
- 4.7: That the Respondent Council took more than 7 months in making the part-payment of the settlement dues of the deceased, which included Death-cum-Retirement Gratuity, Provident Fund, Pension, etc. The Group Insurance is yet to be paid although a period of more than one year has already elapsed.
- 4.8: That the liabilities left behind by the deceased mother of the applicant as compared to the assets and the income of the family and the family of the deceased is in the dire need of the financial assistance in the shape of compassionate appointment, as there is no regular income, at present.
- 4.9: That the Respondent Council, after a gap of about a year, only informed the father of the applicant, vide their letter that
- 300*

No.3(25)/78-EIII dated 15/22-3-2000, rejecting the appointment on compassionate and stated as under:-

"Keeping in view the factors like number of dependents quantum of payments received by the family of the deceased employee on account of settlement dues, as also the details of other assets held by the family and also the liabilities left behind by the deceased employee, it has been found that the condition of the family cannot be termed as Indigent and accordingly it is regretted that your request for compassionate appointment of your daughter, being not covered under the Rules, cannot be acceded to."

4.10: That the office of the Respondent Council is also a 'State' within the meaning of Article 12 of the Constitution of India and the Respondent Council is under an obligation to act in terms of the avowed objectives of social and economic justice as enshrined in the Constitution.

4.11: That since the Respondent Council, in their aforesaid reply, have not given speaking orders regarding its rejection as it did not specify any calculations of assets and liabilities on the basis of which the application is rejected for appointment on compassionate grounds. The applicant is still in a fix as to what made the Council to reject the application of the applicant.

4.12: That the Hon'ble Supreme Court in its recent judgement delivered by the Division Bench comprising of Justice S.B.Majumdar and Justice U.C. Banerjee, it has been held in the case of Steel Authority of India Ltd. that it is obligatory for every public Sector Undertaking to offer job to the dependents of its employees who die in harness. The Hon'ble Supreme Court has further held that:-

"To deny a compassionate employment opportunity



would neither be fair nor reasonable. The concept of social justice is the yard stick to the justice administration system or legal justice and the greatest virtue of law is in its adaptability and flexibility."

4.13: It has further been held by the Hon'ble Apex Court when the Court has expressed its distress over the plight of the families, whose bread-winners die in harness in a lurch and, therefore, the provision for employment on compassionate grounds must be given its true meaning. A copy of the Hon'ble Supreme Court's decision is annexed as Annexure A/_____.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1: That in terms of a recent judgement, delivered by the Hon'ble Supreme Court, in the case of Steel Authority of India Ltd., it has been held that :-

"To deny a compassionate employment opportunity would neither be fair nor reasonable and it is the Constitutional obligation for every public Sector Undertaking to offer job to the dependents of its employees who die in harness."

It is, therefore, prayed that in terms of the aforesaid judgement of the Hon'ble Supreme Court, this Hon'ble Tribunal may kindly direct the Respondent Council to offer the job to the applicant.

5.2: That even otherwise the circumstances of the family of the applicant are such that due to prolonged sickness of the deceased mother of the applicant, who was treated in Batra Hospital & Medical Research Centre, New Delhi, and more than 15 lakhs of rupees were spent during the period of 2½ years of her sickness, it is therefore, very necessary to offer the applicant a job on compassionate

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grounds, keeping in view the huge expenditure involved in the treatment of the deceased and liabilities left behind, in this case. It is pertinent to note that the deceased was suffering from Chronic Renal Failure and failure of ~~liver~~ liver of the end stage which involved a heavy financial burden on the family and the family is yet to come out of the crisis.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicant declares that she has availed of all the remedies available to the applicant under the relevant rules. However, the family has sent the following representations and the Respondent Council has failed to reply in none of the case:-

<u>Sr.</u>	<u>Particulars of reference</u>	<u>Outcome of the repr.</u>
1.	Representatopm dt-28-3-2000	Nil
2.	Representation dt. 24-4-2000	Nil
3.	Representation dt. 8-6-2000	Nil

7. MATTER NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT:

That the applicant further declare that the applicant had not previously filed any application, writ petition or Suit regarding the matter in respect of which the application has been made, before any Court or any other authority or any other Bench of the Tribunal nor any such application is pending before any one of them.

8. RELIEF(S) SOUGHT:

To direct the respondents that it is obligatory on the part of the Council, to offer job to the applicant, in terms of the Supreme Court's decision, to provide job on compassionate grounds to the dependent of the deceased employee, who had died in harness, irrespective of the fact that the family had been

[Signature]

given the benefit of family pension, provident fund and gratuity etc. The Hon'ble Supreme Court have, in the aforesaid judgement in the case of Steel Authority of India Ltd. (SAIL) directed them to offer jobs to the two families of its deceased employees. It is, therefore, prayed that this Hon'ble Tribunal may kindly direct the Respondent Council to offer the suitable job to the applicant on compassionate grounds. On getting the job, the applicant is likely to be settled in life by getting married to a suitable match.

9. INTERIM ORDERS? IF ANY.

That since the Respondent Council have already taken more than a year to reject the applicant for appointment on compassionate ground on the demise of her mother, who died in harness, it is therefore, prayed that this Hon'ble Tribunal may take the minimum time to decide the present application so that the applicant may settle in life and if she is given a suitable job, the applicant is likely to settle in life comfortably.

10. PARTICULARS OF POSTAL ORDERS FILED IN RESPECT OF THE APPLICATION FEE:

Postal Order No. 18-6-103416 dated 30/6/2000 for Rs. 50/- only.

11. LIST OF ENCLOSURES:

As per Index annexed.

@vashist

VERIFICATION:

I, Aditi Vashist D/o Shri R.A. Vashist, do hereby verify that the contents of paras 1 to 4 are true to my personal knowledge and para 5 to 10 believed to be true on legal advice and that I have not suppressed any material facts.

@vashist

Signature of the Applicant.



वैज्ञानिक तथा औद्योगिक अनुसंधान परिषद्
COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH
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Anusandhan Bhawan, 2, Rafi Marg, New Delhi-110 001

Compilation I Regd A.D.

Annex. A/1

No. 3(25)/78-E.III

Dated 15.03.2000
अश

To.

Shri R.A.Vashist,
C-108, Anand Vihar,
Delhi-110092

Sir.

With reference to your request for compassionate appointment of your daughter Ms. Aditi Vashist, I am directed to state that your request was duly considered by the Competent Authority in consultation with compassionate appointment etc. of CSIR Hqrs. However, keeping in view, the factors like number of dependents, quantum of the payment received by the family of the deceased employee on account of final settlement as also the details of other assets held by the family and also the liabilities left behind by the deceased employee, it has been found that the condition of the family cannot be termed as indigent. Accordingly, it is regretted that your request for compassionate appointment of your daughter being not covered under the rules, cannot be acceded to.

CERTIFIED TRUE COPY

COUNSEL

Yours faithfully,

(B.K.SINGH)
SECTION OFFICER

The spokesman said the Indian troops in Sierra Leone were in the West African state on a "peace-keeping mission and not on peace enforcing mission." They were not to engage in combat or firefight even though they were fully armed. There are 2711 Indian troops deployed on a peacekeeping mission in Sierra Leone.

Jagannath remanded to judicial custody

PATNA: Former Bihar chief minister Jagannath Mishra on Wednesday was remanded to judicial custody for 15 days by CBI judge S K Lal, who rejected his bail application after he surrendered before the designated court in connection with a conspiracy angle case of the odder scam.

Mishra was remanded to judicial custody in Beur jail.

Earlier, he surrendered before the special judge and applied for regular bail following arrest warrant against him in the conspiracy angle case RC 38-A/96 relating to fraudulent withdrawals of over Rs 3.7 crore through forged and fake bills by the state animal husbandry department officials from the Dumka treasury.

The court rejected Mishra's petition for regular bail after hearing his counsel Ranapratap Singh and CBI's special public prosecutor L R Ansari.

Lal also directed the jail authorities to produce relevant papers relating to the Mishra's health. **PTI**

dance secretary K P Gieethakrishnan, who has also served as the op-

expressed in or to its own website
<http://expenditurereforms.nic.in>.

on the heels of a victory over
the Centre of Kurukh Militancy
for territorialisation
Lanka on ethnic lines

Replying to a question, V. said India has been emphatic that devolution of power to the provinces in Sri Lanka could lead to resolution of the going conflict.

SC upholds jobs on compassionate grounds

By Rakeesh Bhatnagar

NEW DELHI: Expressing its distress over the plight of the families whose breadwinners die in harness leaving behind their dependents in a lurch, the Supreme Court has said that the provision for employment on compassionate grounds must be given its true meaning.

"To deny a compassionate employment opportunity would neither be fair nor reasonable," the court said, adding that it is the constitutional obligation for every public sector undertaking to offer job to the dependent of its employees who die in harness.

The judgment relates to the petitions seeking a direction to the Steel Authority of India Limited (SAIL) to provide jobs on compassionate ground to the dependents of employees who had died in harness.

The dependents' petition was earlier dismissed by the high courts. SAIL said it could not give such jobs as the families of the deceased employees had been given the benefit of family pension.

In addition, SAIL **CERTIFIED TRUE COPY**

fund and gratuity were also paid the families.

Rejecting its arguments, a Bench comprising Justice S B Majumdar and Justice U C Banerjee referred to the constitutional philosophy and said: "The concept of social justice is the yardstick to the justice administration system or the legal justice and the greatest virtue of law is in its adaptability and flexibility. 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."

The judges asked SAIL to offer jobs to the two families of its deceased employees.

Holding that SAIL is a "state" within the meaning of Article 12 of the Constitution, the court said it is under an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution.

Gopalganj bans wines world

The Times of India News Service

NEW DELHI: The three-year-old around in the functioning of a previously moribund regional rural at Gopalganj, Bihar, has got architect a world prize in organic development.

B. G. Mukhopadhyay, a member of the Bankers Institute for Rural Development, Lucknow, a body sponsored by the National Bank for Agriculture and Rural Development (NABARD), has awarded an annual competition for O.D. projects conducted by the organisation Development Institute, the U.S.A.

Reserve Bank of India (RBI). NABARD began a revamp project of 49 regional rural banks (RRBs) in 1991, as a sequel to which a project was begun in 1995, at Gopalganj Kshatriya Gramin Bank.

Study in USA Hawaii Pacific University



University Highlights

- Issuance of 1-20 for F-1 student visa for selected candidates within a short period of time.
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- Optional 1-year working permit after graduation.
- All Tution fee payable Per Semester basis
- Tuition fee is less than one-half the U.S. national average.

HPU Entry Requirements:

- Bachelor's Degree : High School diploma or international equivalent.
- Master's Degree : Bachelor's Degree or equivalent from a recognized university.

Admission Information Session

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STEPHEN M. CASE
COUNSEL



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FOR STUDENTS OF CONVERSE SERIAL

The Director General,
Council of Scientific & Industrial Research,
Rafi Marg,
New Delhi.

Annex: A/

Compilation II

Sir,

Application for appointment on
compassionate grounds of Miss
Aditi Vashist, daughter of Smt.
Sudha Vashist, who was working
as Asstt.(F&A), in C.S.I.R.

My mother, Smt. Sudha Vashist was working in your
Organisation as Asstt.(F&A), in CSIR Headquarters. She
also officiated as Section Officer for sometime. My
mother expired on 10th May, 1999, after a prolonged
sickness for two years due to Chronic Renal Failure,
in Batra Hospital & Medical Research Centre, New Delhi.

Enclosed, please find, herewith, the proforma
regarding employment of dependants of Government
Servants dying while in service, duly filled in, for
your sympathetic consideration. In this proforma, I have
given the complete details, as per the requirements of
the proforma, including the assets and liabilities of
the deceased and her family. So far the liabilities are
concerned, the proforma is self-explanatory and no
further details are required.

In this proforma, I have given the correct infor-
mation, which will give you a detailed position of the
liabilities of the family and these liabilities could
not be discharged earlier due to serious sickness of
my mother and since there was no regular source of
income, the same could be paid back only when there is
regular source of income.

Under these circumstances, the whole of the remaining
members of the family are completely in a mess and needs
immediate help to pay off the outstanding liabilities
and this can only be possible if I am given an employment
in your esteemed organisation.

I hope you will kindly consider my application
sympathetically and offer me a suitable job according to
my qualifications.

Thanking you,

Yours faithfully,

(Miss Aditi Vashist)
D/o Smt. Sudha Vashist
R/o C-108, Anand Vihar
Delhi-110092.

Dated: 3rd June, 1999

CERTIFIED TRUE COPY

COUNSEL

-14-

Joint Secretary(Admin),
Council of Scientific & Industrial Research,
Rafi Marg,
New Delhi-110001.

Sir,

Application for appointment of
Miss Aditi Vashist, daughter of
late Smt. Sudha Vashist, working
as Asstt.(F&A) in CSIR(Hq).

In continuation of my application dated 3-6-1999, for appointment of my daughter Miss Aditi Vashist, on compassionate grounds on the sad demise of my wife Smt. Sudha Vashist expired on 10th May, 1999, I wish to bring to your kind notice the following facts for your sympathetic consideration in view of the facts that the family, at present, is passing through a very serious phase because of the non-payment of certain liabilities which have been accrued due to serious sickness of my wife involving heavy expenditure in her treatment:-

- a) Dy. Assessor & Collector of Municipal Corporation of Delhi has raised Bill No. SHS/6578 dt. 31-8-99 amounting to Rs. 1,15,445/- for House Tax of the property of the family bearing No. C-108, Anand Vihar, Delhi.
- b) Union Bank of India, Connaught Place, New Delhi has issued final notice No. CP:ADV:1997/99 dated 4-10-1999 amounting to Rs. 60,168/- for non-payment of loan taken by the family for education of their son studying abroad.
- c) Besides the above, the family is yet to pay an amount of Rs. 79,000/- a personal loan taken from friends and relatives, raised during the sickness of my wife involving heavy expenditure for her treatment.

Copies of the above notices are annexed for your necessary action.

I shall be much obliged if my daughter Miss Aditi Vashist is offered a suitable appointment not below the post of Upper Division Clerk, in your esteemed organisation. I shall appreciate if the appointment of my daughter is made at the earliest, as the family is passing through a serious phase.

Thanking you,

Yours faithfully,
R. A. Vashist
(R. A. Vashist)
C-108, Anand Vihar,

CERTIFIED TRUE COPY


COUNSEL

-15-

Joint Secretary(Adm),
Council of Scientific & Industrial Research,
Rafi Marg,
New Delhi.

Sir,

Sub:-Application for appointment of
Miss Aditi Vashet, daughter of
late Smt. Sudha Vashist, working
as Assistant (F&A), in CSIR.

As desired, I am enclosing, herewith, the photocopies of various educational certificates, for your information and necessary record:-

- a) Certificate showing date of birth of passing All India Secondary Examination, 1989 from AISSE Board.
- b) Provisional & Character Certificate of passing B.A.(English) Hons. Examination from Delhi University.
- c) Copy of Degree for Bachelor of Education Examination from Kurukshetra University of having B.Ed. Examination.
- d) Copy of Mark-Sheet of having passed the B.A.(English) Hons. from Delhi University.

I hope you will find the same in order and will request you to kindly process the case early for appointment on compassionate grounds as my family is passing through a serious phase due to liabilities to be liquidated, accrued due to serious sickness of my late mother, involving heavy expenditure.

Thanking you,

Encls: Four

Yours faithfully,

Aditi Vashet

CERTIFIED TRUE COPY

[Signature]
COUNSEL

-16-

UNION BANK OF INDIA
F-14/15 CONNAUGHT PLACE
NEW DELHI 110 001
Phone : 3314777, 3310119, 3354234, 3326648
Telegraphic Address : 'Sankunion' New Delhi
Telex: 031-65422 Fax : 3323809

Ref: CP/ADV/1997/99

Dated : 04.10.99

Dr. Suresh Kumar Vashisht,
C-101, Anand Vihar,
DELHI 110 092.

legd

Re: YOUR EDUCATION LOAN A/C WITH US

Dear Sir,

You had been sanctioned an education loan of Rs.1.00 lac in Sept.97 for meeting expenses of higher studies at Tashkent. Out of the above loan you have availed of Rs.24000/- as first instalment on 24.9.97 and since then you have never submitted your performance results for 3rd year onwards, as per terms of sanction.

Further you got it completion of your MBBS and obtaining employment abroad. However, the same has not been conveyed to the bank despite our Regd. letter no. CP/AD/1145/98 dt. 11.8.99 addressed to Dr. Ram Kishan Vashisht, your parents, who stood as borrower and guarantors as well. On making inquiry, over telephone on several occasions, it has been reported that you have since started working as a medical officer with Deepak Hospital, Faridkot, Punjab, India 15. It is further informed that you shall deposit overdue loan instalments within 10-15 days time and submit all the required papers for our records.

We are sorry to inform you that despite several promises you have not cared to deposit any sum towards liquidation of your sanctioned education loan a/c which is presently showing Dr. balance of Rs.50149/- with int. charge upto 30.6.99, out of which a sum of Rs. 27000/- has become overdue.

We, therefore, once again request you to call on us and deposit the overdue amount immediately to regularise your above loan account and submit copy of degree obtained alongwith LIC policy bond (in original) taken on your life at the time of availing of loan. Please note that we do not meet you within 5 days period. We shall be compelled to recall the advance and take necessary action for recovery of loan & dues.

Thanking you,

Yours faithfully,

(Sd/-) SURESH KUMAR VASHIST,
ASSTT. GENERAL MANAGER,
CC/Dr. Suresh Kumar Vashisht, C-101, Anand Vihar, Delhi 110 092.
Hospital, Faridkot, Punjab, India 15.
For Sh. Ram Kishan Vashisht, C-101, Anand Vihar, Delhi - for information.

CERTIFIED TRUE COPY
Sd/-
COUNSEL

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

O.A.NO. 1194/2000.

IN THE MATTER OF :

Miss Aditi Vashist.

....Applicant.

Vs.

Union of India through
Council for Scientific
& Industrial Research.

....Respondents.

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Shawar Singh

Per [Signature]

13-10-2000

Filed on 12/10/2000.

Filed by

(M/s. Sikri & Company)
Advocates for the Respondents.
229, lawyers Chambers,
High Court New Delhi.

मान्य न्यायाधीश/CAI (FB)
बाज दाखिल किया
Filed Today
13 OCT 2000
दाखिल नं./Filing No. 10629
स्वीकृत/By Registrar

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1194/2000

IN THE MATTER OF:

Miss Aditi Vashist

... Applicant

Versus

Union of India through
Council for Scientific &
Industrial Research

... Respondent

REPLY ON BEHALF OF THE RESPONDENT TO THE
APPLICATION FILED BY THE APPLICANT UNDER
SECTION 19 OF THE ADMINISTRATIVE
TRIBUNALS ACT.

MOST RESPECTFULLY SHOWETH:

PRELIMINARY OBJECTIONS:

1. That the applicant has filed the abovementioned application praying for a direction to the Respondent to offer a suitable job to the applicant on compassionate grounds. At the outset it is submitted that the present application filed by the applicant is frivolous, untenable and devoid of any merit and hence liable to be dismissed.

4N 2. That the Hon'ble Supreme Court has held in a catena of decisions that the appointment on compassionate ground cannot be claimed as a matter of

1/2

right and various other factors need to be considered for the same. On the other hand the applicant is trying to make out a case that she should be given compassionate appointment in all circumstances and the respondent is bound to give her compassionate appointment. It is submitted that the applicant has a right only to be considered for the said post which has been done. Hence the present application is liable to be dismissed on this ground.

3. That without prejudice to the above, it is submitted that the mother of the Applicant was working as Assistant with the Respondent till her death in 1999. Thereafter, the Applicant submitted an application dated 3.6.99 for her appointment on compassionate grounds with the Respondent and thereafter through her father. The request of the applicant was considered with reference to the O.M. dated 26.9.95, according to which the son/daughter/near relative of the deceased may be considered for compassionate appointment where a government servant dies in harness :

- GH
- (i) subject to the availability of vacant post under compassionate appointment quota, and
 - (ii) in exceptional cases where a department is satisfied that the condition of the family is

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indigent and is in great distress as there is no other earning member in the family of the deceased government servant.

A copy of the D.M.s is enclosed hereto and marked as ^(not annexed) Annexure R-1. Further as per the Government of India instructions, the Appointing Authority has to exercise a selective approach specially keeping in view that the scheme for compassionate appointment was conceived as far back as 1958. Since then a number of other welfare measures have also been introduced by the Government of India the effect of which is to make a significant difference to the financial position of the families of government servants dying in harness and avoid the hardship that might have resulted from the death of an earning member of the family. These benefits received by the family have to be kept in view while considering cases for compassionate appointment.

4. That it is submitted that in view of the above, the son/daughter/widow of the deceased Govt. servant can be given compassionate appointment only if the condition of the family is indigent and distressing needing immediate assistance. There is no inherent right of the family members to get appointment as per the Recruitment Rules.

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In the present case, it is submitted that the condition of the deceased's family is not indigent and distressing as is tried to be made out so as to make the applicant eligible for compassionate appointment. It is submitted that the father of the applicant and husband of the deceased is a retired Railway employee and is in receipt of Rs.4,284/- + DA as pension per month and it is understood that he is a practising Advocate. In addition to his pension, he is also in receipt of family pension @ Rs.2175/- + DA. Moreover he has received Rs.4,48,036/- towards final settlement of dues in respect of his wife. The applicant's brother is holding an MBBS degree as per the applicant's own admission and as per the Respondent's information is employed in Deepak Memorial Hospital. Moreover he is living separately and is married and it cannot therefore be claimed that he was dependent on the deceased and quite clearly he has been doing some work or the other so as to support the family. The applicant herself is also professionally qualified having a B.Ed. degree. Admittedly the family has a house in its name. As regards the liabilities, the statements given by the family members vary at different places and different points of time. Moreover the DCRG, Provident Fund, Pension and other death cum retirement benefits have already been paid to the family of the deceased. All these aspects were considered by a Committee constituted for the purpose.

LF

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That the matter is considered by a Committee to dwell upon the assets and liabilities declared by the family to decide if the financial condition could be termed as indigent and appointment provided as per the rules. It is submitted that all these factors were duly considered by the Respondent and only when it was found that the condition of the family was not so indigent and distressing as to require immediate assistance through appointment on compassionate grounds that the application for appointment on compassionate grounds was rejected.

PARAWISE REPLY

1. That the contents of this para have already been suitably replied to above and the submissions made above may be read as part and parcel of the reply to this para. However the parawise reply is as under :

SP ✓ 1.1 That in reply to this para it is submitted that the mother of the applicant joined CRRI on 9.1.70 and CSIR Headquarters on 8.5.85.

1.2 That the contents of this para are matter of record.

1.3 That in reply to this para it is submitted that the Respondent was informed about the same.

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1.4 That in reply to this para it is submitted that the mother of the applicant Smt. Sudha Vashisht was a member of Central Government Health Scheme (CGHS) as CSIR is covered under that Scheme. As per this Scheme, no expenditure is to be incurred by the beneficiary on the treatment of self or his/her dependants for treatment undergone in CGHS dispensaries/hospitals. Further to this, the expenditure incurred for treatment undergone in other Govt. hospital(s) recognised under CGHS is reimbursible. It may be pointed out that an amount of Rs.6,23,216/- was reimbursed to Smt. Sudha Vashisht, mother of the applicant for her treatment undergone in Batra Hospital, New Delhi since 1997. Hence the contents of this para are denied to this extent.

1.5 That in reply to this para it is submitted that the application for compassionate appointment made by the applicant was received on 3.6.99. However it is denied that the father of the applicant is getting a meagre pension and the submissions made above in this respect may be read as part and parcel of the reply to this para.

1.6 and 1.7 That the submissions made above may be read as part and parcel of the reply to these paras and the same is not being repeated herein for the sake of brevity. It is submitted that various factors have to

JP

be looked into for appointment on compassionate grounds and the same cannot be claimed as a matter of right or be given merely on the grounds of sympathy.

1.8 That the contents of this para are matter of record. It is submitted that the said order was issued keeping in view all the factors and the same is in accordance with the rules.

1.9 That the contents of this para are wrong and denied since it has been held by the Hon'ble Supreme Court that CSIR is not 'state' within the meaning of Art. 12 of the Constitution (Sabhajit Tiwari v. CSIR AIR 1975 SC 1329). However it is submitted that the Respondent has to act in accordance with the rules which has been done in the instant case.

1.10 to 1.11 That in reply to these paras it is submitted that each case has to be decided on its own merits in accordance with the rules keeping in view the law as enunciated by the Hon'ble Supreme Court and the action of the Respondent in the instant case is proper and just as it has been held by the Hon'ble Supreme Court in a catena of decisions that compassionate appointment cannot be claimed as a matter of right.

2. That the contents of this para are matter of record.

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3. That the contents of this para need no reply.

4. **REPLY TO FACTS OF THE CASE**

4.1 That in reply to para 4.1 it is submitted that the mother of the applicant joined CRR I on 9.1.70 as LDC and CSIR Headquarters on 8.5.85.

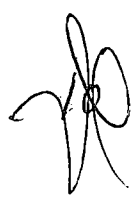
4.2 That the contents of para 4.2 need no comments.

4.3 That in reply to this para it is submitted that the mother of the applicant Smt. Sudha Vashisht was a member of Central Government Health Scheme (CGHS) as CSIR is covered under that Scheme. As per this Scheme, no expenditure is to be incurred by the beneficiary on the treatment of self or his/her dependants for treatment undergone in CGHS dispensaries/hospitals. Further to this, the expenditure incurred for treatment undergone in other Govt. hospital(s) recognised under CGHS is reimbursible. It may be pointed out that an amount of Rs.6,23,216/- was reimbursed to Smt. Sudha Vashisht, mother of the applicant for her treatment undergone in Batra Hospital, New Delhi since 1997. Hence the contents of this para are denied to this extent.

VB

4.4 That the submissions made above may be read as part and parcel of the reply to this para as well and the same are not being repeated herein for the sake of brevity. However it is submitted that as per the application dated 16.11.99 authenticated by the father and brother of the applicant, the brother of the applicant is employed in a private hospital. It is therefore submitted that the condition of the applicant and her family is not as indigent and pathetic as is portrayed to the Hon'ble Tribunal and the applicant cannot be said to be going through any hardship. It is further submitted that the statement given by the members of the family vary at different points of time for instance, in one proforma submitted, Rs.5.15 lakh has been shown as personal loan, Rs.4.5 lakhs towards House Tax to MCD and DDA and Rs.60,000 to Union Bank of India, while in letter dated 16.11.99, it has been stated that Rs.65,000/- are payable to DDA and MCD and personal loan of Rs.1 lakh and further in letter dated 22.10.99, personal loan has been shown to be Rs.79,000/- while there is no indication of charges to MCD. In the application submitted by the applicant on 3.6.99 for appointment on compassionate grounds, the brother is said to be unemployed whereas in a letter dated 16.11.99 he is said to be employed in a Private hospital. Further he is married and has been living separately and it cannot be presumed that he has no source of income.

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Further as per the information given by the applicant in her application for compassionate appointment she is employed in a private company on temporary basis and getting a salary of Rs.3000/-. Moreover the application of appointment has been submitted by the applicant after the death of her mother. Hence, her statement in this para that her services have been terminated due to excess leave taken by her cannot be taken on face value.


C

That it is submitted that a duly constituted committee has considered the above facts and has come to the view that the case was not of indigence and could not be recommended for compassionate appointment.

4.5 That the contents of this para have no relevance with the issue of compassionate appointment.

C

4.6 That the contents of this para are matter of record.



4.7 That in reply to this para it is submitted that the payment of the retirement cum death benefits was made to the applicant and her family on 10.11.99 while the RGIS payment matter is being pursued with LIC through various reminders.

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4.8 That the contents of this para are wrong and denied. It is submitted that the condition of the family has been ascertained after considering all the factors and the condition of the family of the deceased is far from being indigent and distressing. It has been held that the purpose of compassionate appointment is to tide over economic crisis arising out of the death of the earning member of the family but the instant is not a case where the family of the deceased can be said to be suffering any economic hardship.

4.9 That in reply to this para it is submitted that as the statements submitted by the family did not tally and varied from time to time, more information was called for. The Committee considered all these factors which took some time. It is submitted that the said order was issued keeping in view all the factors and the same is in accordance with the rules.

4.10 That the contents of this para are wrong and denied since it has been held by the Hon'ble Supreme Court that CSIR is not 'state' within the meaning of Art. 12 of the Constitution (Sabhajit Tiwari v. CSIR AIR 1975 SC 1329). However it is submitted that the Respondent has to act in accordance with the rules which has been done in the instant case.

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4.11 That the contents of this para are misconceived, wrong and denied. It is submitted that the impugned order clearly states the various factors that have been kept into consideration and that the condition of the family was not found to be such as could be termed indigent and accordingly the request for compassionate appointment was rejected.

4.12 to 4.13 That in reply to these paras it is submitted that each case has to be decided on its own merits in accordance with the rules keeping in view the law as enunciated by the Hon'ble Supreme Court and the action of the Respondent in the instant case is proper and just as it has been held by the Hon'ble Supreme Court in a catena of decisions that compassionate appointment cannot be claimed as a matter of right.

5. **REPLY TO GROUNDS PARAS**

That the contents of the grounds paras are misconceived, wrong and denied. The same are merely repetitive in nature and have been suitably replied to in the detailed submissions made above which may be read as part and parcel of the reply to these paras as well. There is no force in any of the grounds. It is reiterated that the condition of the family is not

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indigent and the action of the Respondent is proper and in accordance with the rules.

6. That the contents of para 6 need no reply.

7. That the contents of this para are matter of record and need no reply.

8. That the relief clause is misconceived, untenable and hence denied. In view of the submissions made above the applicant is not entitled to any relief from this Hon'ble Tribunal moreso in view of the fact that compassionate appointment cannot be claimed as a matter of right and the application is liable to be dismissed with costs.

9. In view of the submissions made above, the applicant is not entitled to any interim relief.

10-11
reply.

That the contents of these paras need no

बी० डी० वशिष्ठ / B.D. VASHISTH
अवर सचिव / Under Secretary
वे. ओ. अं०. प्र. / C.S.I.R.
एफी नं० / New Delhi-1
नई दिल्ली / New Delhi-1
RESPONDENT

THROUGH SIKRI & COMPANY

ADVOCATES

NEW DELHI

DATED : 12/10/2000

VERIFICATION

I, BD Vashisth working as Under Secretary with the Respondent do hereby verify that the contents of the above reply relating to facts is true and correct to the best of my knowledge based on records and the legal submissions are as per the legal advice received and believed to be true and nothing material has been concealed therefrom.

Verified at New Delhi on this 10th day of October September, 2000.


RESPONDENT

बी० डी० वशिष्ठ /B.D. VASHISTH
अवर सचिव /Under Secretary
वे. ओ. अनु. परि./C.S.I.R.
राफी मार्ग/Rafi Marg
नई दिल्ली-11/New Delhi-1

2

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI.

O.A. No. 1194 of 2000

In the matter between:

Ms. Aditi Vashist

...Applicant

Versus

Union of India through: -

Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi.

...Respondents

I N D E X

<u>Sl.</u>	<u>Particulars</u>	<u>Annex.No.</u>	<u>Page Nos.</u>
1.	Reply, on behalf of the applicant to the written statement of the Respondents.		1-9
2.	Copy of the Judgement cited in AIR 2000 SC 1596, in the case of Babir Kaur & Others Vs. Union of India(S.A.I.L.)	AA/1	10-15

THROUGH THE COUNSEL

R A Vashist
(R.A. Vashist)
165-Patiara House,
New Delhi.

Filed Today

30 NOV 2000

30 NOV 2000
Filing No. 122
Dy. Registrar

Received
on 30/11
Amritha
for Sikin & Co.

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- 1 -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI

O.A.No. 1194 of 2000

In the matter between:

Ms. Aditi Vashist

...Applicant

Versus

Union of India through: -

Director General, Council of
Scientific & Industrial Research,
Rafi Marg, New Delhi.

...Respondents

Reply, on behalf of the applicant,
to the written statement of the
respondents.

The applicant submits as under:-

PRELIMINARY OBJECTIONS:

1. That the Respondent Council, while rejecting the application for appointment on compassionate grounds, vide their letter No. 3(25)/78-EIII dt. 15/22-3-2000, the Respondent Council have taken the main factor for rejection, besides other pleas, that:-

"Keeping in view the quantum of payment received by the family of the deceased on account of final settlement, it has been found that the condition of the family cannot be termed as Indigent."

In this regard the Hon'ble Supreme Court, in their recent judgement delivered in the case of Barbir Kaur and T.K. Meenakshi, cited in AIR 2000 1596, it has been held that there is mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death. The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the Gratuity is payable to the heirs of the nominees of the concerned employees, therefore the Gratuity and


Provident Fund etc. are payable to the ~~the~~ family of the deceased, under the provisions of a statute and this Statutory obligation cannot possibly be deferred in the event of the untimely death of a worker or an employee. The family needs the money in lump-sum and availability of this amount is only insulating factor in such a grief stricken family. Therefore, the lump-sum amount of Gratuity and Provident Fund and other settlement dues, paid to the bereaved family, cannot be in any way be a ground to refuse benefit of compassionate appointment.

2. That the Hon'ble Supreme Court have further opined that in terms of the aforesaid judgement, ^{and also} ~~that~~ in terms of Article 16 of Constitution, the benefit of Compassionate Appointment cannot be negatived on grounds of introduction of Schemes assuring regular monthly income to disable employee or dependants of the deceased employee and it is the sudden jerk in the family of a bread-earner can only be absorbed by some lump sum amount being made available to the deceased's family. This is rather unfortunate but this ^{is a} reality. The feeling of security drops to zero on the death of the bread-earner and it is at this juncture if some lump-sum amount is made available with Compassionate Appointment, the grief stricken family may find some solace in the mental agony and manage its affairs in the normal course of events. Therefore, the introduction of Family Pension Scheme, Gratuity and Provident Fund etc. cannot be a ground to refuse the benefit of compassionate appointment.
3. That there are several examples in the office of the Respondent Council where on the death of an Officer/staff the deceased's family had received more than Rs.8.0 lakhs as lump-sum amount by way of his settlement dues,

including Provident Fund, Pension, Gratuity etc, the daughter of the deceased employee was provided the compassionate appointment in the office of the Respondent Council. Moreover, this Council is known for such favours, having been given from time to time, differing from person to person. The Council believes in the concept "Show me the person, I will show the Rules". The Respondent Council have shown such disparities in the past as well. The deceased mother of the applicant, who had put her soul and life for the sake of the Council by dint of her hard work, her daughter is being denied the benefit of Compassionate Appointment.

REPLY TO THE PRELIMINARY OBJECTIONS:

1. That the contents of para 1 are wrong and denied. It is wrong to suggest that the present application, filed by the applicant is frivolous, untenable and devoid of any merit. Instead of having any sympathetic attitude towards the bereaved family, whose bread-earner has died in harness, the officials of the Respondent Council have forgotten that tomorrow their ward may pass through the same ordeal. However, the fact is that the Council is known for such types of attitudes towards their employees. In most of the cases the attitude of the Council is "Show me the face, I will show you the Rules". There are examples in the Council itself where the daughter of the deceased staff, wherein the family had received more than Rs.8.0 lakhs by way of ^{his} her settlement dues, even then the daughter was offered a job on compassionate grounds, whereas the applicant whose family have got only about Rs.4.0 lakhs has been denied the opportunity of getting benefit of compassionate appointment, in total disregard to the rules

on the


-4- (36)

on the subject. Therefore, there ~~is~~ total disparity has been adopted in the case of the applicant. In fact, the family had ~~paid~~ spent more than Rs.15.0 lakhs on the treatment of the deceased mother of the applicant and only partial amount has been paid being the member of the C.G.H.S., which has caused the family a great hardship and thus the family has yet to pay ~~not~~^{of} amount in regard to the loans raised by the family during the sickness of the mother of the applicant.

- 2: That the contents of para 2 are wrong and denied. That the Hon'ble Supreme Court, in their recent judgement, cited in AIR 2000 SC 1596, have clearly laid down the principle for appointment on compassionate grounds, which has been reproduced in the preceeding paragraphs and according to which the applicant is entitled to be appointed on compassionate grounds. It is, therefore, ~~it is~~ wrong to suggest that the appointment on compassionate grounds cannot be claimed as a matter of right and various other factors need to be considered.
3. That the contents of para 3 are wrong and denied. It is wrong to suggest that the mother of the applicant was working as Assistant but, in fact, the deceased officiated as Section Officer for a considerable period. Admittedly, the applicant had submitted her application for compassionate appointment on 3-6-1999 i.e. immediately after the death of her mother and it is almost a year when the Resp. Council replied in negative to the application of the applicant. It is pertinent to note that the copy of the Annexure dated 26-9-1995, have not been annexed with the reply of the Respondent Council, so that the truth may not come to the knowledge of the applicant. Moreover, the Respondent Council have failed to give a speaking and
- 20*

reasoned order and thus the applicant has been totally and deliberately ignored for appointment on compassionate grounds. However, the fact is that the father of the applicant who has started his practice as an Advocate after his retirement, is having no income from the profession. Besides this, the father of the applicant has filed several litigations against the Council, without charging any fee from the litigants and the Respondent Council have been put in problems by implicating the Officers in corruption charges and therefore the Council is quite prejudiced against the applicant. However, the Hon'ble Supreme Court, in their recent aforesaid ~~judgement~~ Judgement have clearly stated that:-

"The introduction of family benefits Schemes like Provident Fund, Gratuity and Family Pension etc. cannot be in any way equated with the benefits of compassionate appointment opportunities."

Therefore, the introduction of family benefits Schemes ~~can~~ cannot be a ground to refuse benefit of compassionate appointment.

- 4: That the contents of para 4 are wrong and vehemently denied. It is wrong to suggest that the son/daughter/widow of the deceased Government servant can be given compassionate appointment only if the condition of the family is indigent and distressing needing immediate assistance. In terms of the recent judgement of the Hon'ble Supreme Court that the Provident Fund, Gratuity and other factors cannot be in any way equated with the benefit of compassionate appointment and if it is so the family of the deceased automatically becomes entitled to appointment on compassionate ~~on~~ grounds and the family

the family can be called as Indigent. Therefore, in view of the aforesaid judgement of the Hon'ble Supreme Court, the family is indigent and needs immediate assistance to the bereaved family of the deceased.

PARA-WISE REPLY:

1.1 } That the contents of paras 1.1 to 1.3. have been suitably
to }
1.3 } replied to in the preceeding paragraphs and may be read as
part and parcel of the reply under these paras.

1.4: That part of the contents of this para are wrong and denied.

It is admitted that the mother of the applicant was the member of C.G.H.S. It is correct that the expenditure incurred for treatment in Govt. Hospitals recognised under C.G.H.S is reimbursible. However, the Respondent Council have concealed the fact that there are other private Hospitals which are called 'Referal' Hospitals where the employees can have their treatment in those hospitals on payment and the reimbursement of the expenditure can be incurred on the rates prescribed by the C.G.H.S, the rates prescribed by the C.G.H.S. are much lower than the rates charged by the private Hospitals. Generally, the employees are paid 40 to 45% of the total incurred by the employee. A few examples of the nature are given below:-

Sn.	Particulars of treatment	Payment charged by the Hospital	Paid by CGHS
1.	Room Charges	Rs.1,000/- per day.	Rs.250-00
2.	Haemodialysis charges	Rs.550-00 per dia.	Rs.200-00
3.	Blood Transfusion charges.	Rs.400-00	Rs. 50-00
4.	O.T. Charges	Rs.720-00	Rs.100-00
5.	Disposables	Rs.900-00	Nil
6.	Charges of AV Fistula	Rs.2400-00	Rs.200-00
7.	Consultancy charges	Rs.200-00	Rs. 50-00
8.	Liver Profiles	Rs.500-00	Rs.100-00
9.	Blood Culture	Rs.120-00	Rs. 50-00
10.	Arterio Ven	Rs.2200-00	Rs.150-00
11.	Sodium & pot	RS.160-00	Rs. 50-00

It is pertinent note that the CGHS/CSIR thus paid only 40 to 45% of the total expenditure incurred by the deceased mother of the applicant. Thus the family of the applicant had to pay approximately an amount of Rs.15.0 lakhs during the entire period of her treatment whereas the C.G.H.S. paid only a part amount of Rs.6.0 lakhs to the family. It is absolutely wrong to suggest that the CSIR had reimbursed the total expenditure incurred on the treatment of the mother of the applicant. It is to mis-guide this Hon'ble Tribunal.

1-5^{kg} That the contents of para 1.5 are wrong and denied. It is again reiterated that the father of the applicant is only getting a meagre Pension which is not sufficient to support the family.

1.6 to 1.7: That the contents of para 1.6. to 1.7 are repeated of the same thing again and again and hence no comments.

1.8: That the contents of this para are again repetitive of the facts again and again and needs no comments.

1.9: That the contents of para 1.9 are wrong and denied. However, the Hon'ble Supreme Court in the aforesaid judgement have asserted that the statutory obligation cannot be left high and dry on the whims of the employer being an authority within the meaning of Article 12 of the Constitution or not.

1.10 That the contents of para are wrong and denied. However,

&
1.11: the Hon'ble Supreme Court have entirely changed the concept and have asserted that the compassionate appointment can be claimed as a matter of right.

Para 2

and 3: That the contents of para 2 & 3 are admitted correct.

Para 4.1: That the contents of para 4.1 and 4.2 are a matter of record.
4.2:

4.3: That the contents of para 4.3 are again a repetitive of

of facts which have already been replied to by the Council. However, the Batra Hospital and Medical Research Centre, New Delhi is a referral Hospital in terms of letter No. 37-1/94-C&P Section/CGHS/6466-6766 dated 31-7-1996, the Respondent Council have concealed this fact in their reply. In this Hospital the applicant was undergoing her treatment of Chronic Renal Failure and Liver failure of the end stage and the rates prescribed were very much low as compared to the rates actually charged by the aforesaid Hospital.

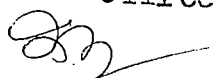
4.4: It is again wrong to state under Para 4.4 that the brother of the applicant is employed. It is again reiterated that the brother of the applicant is still unemployed. Rest of the contents of this para are again reiterated to be correct. Therefore, the constituted Committee have not considered all the relevant facts before giving their verdict of denying the compassionate appointment. Therefore the said Committee had been prejudiced against the applicant and her family.

4.5: That the contents of para 4.5 are wrong and denied. The educational qualification of the applicant have been mentioned, under this para, to enable the applicant to be considered for a suitable post on compassionate grounds.

4.6: No comments.

4.7: That the contents of para 4.7 are wrong and denied. It is wrong to suggest that all settlement dues have been paid by the Respondent Council. The Group Insurance has yet to be paid by the Council to the applicants's family.

4.8: That the contents of para 4.8 are wrong and denied. It is very easy and simple while sitting on the chair that the condition of the family is not indigent and therefore the compassionate appointment is refused. The responsible Officers of the Council will only realise when they



face the same situation in their lives, on their demise.

4.9: The contents of para 4.9 are a matter of record.

4.10: That the contents of this para no longer holds good in view of the recent Supreme Court's decision as cited aforesaid.

4.11: That the contents of para 4.11 are wrong and denied. The Respondent Council have failed to take into all consideration all the factors.

4.12: & 4.13: That the contents of para 4.12 and 4.13 are again a repetitive of facts and hence needs no comments.

REPLY TO GROUNDS:

That the applicant has already explained her position and grounds for relief(s) are the same as mentioned in the Preliminary Objections mentioned above.

6&7: No comments.

8: That the contents of para 8 are wrong and denied. In view of the recent judgement of the Hon'ble Supreme Court, cited in AIR 2000 SC 1596, the concept of appointment on compassionate grounds has already been changed and now the applicant has become entitled to appointment on compassionate grounds.

9: In view of the above, the Hon'ble Tribunal is, therefore, prayed that this Hon'ble Tribunal may kindly direct the Respondent Council to order for her appointment on compassionate appointment.

10-11: No comments.

@vashist
Applicant

Verification:

Verified at New Delhi this day 21st November, 2000, the contents of the above reply are true to the best of my knowledge and belief.

@vashist
Applicant

RAVASHIST
Adv.

36. Therefore, we set aside the order passed by the Special Court discharging respondent J. Jayalalitha and that of the High Court which confirmed the said order. We direct the Special Judge to proceed against the respondent as one of the accused in the case. Regarding the witnesses already examined by the prosecution we permit the prosecution to treat the examination-in-chief already done as part of the evidence recorded in this case with all the accused on the array. Prosecution can elicit from those witnesses any further materials and they can be recorded as the remaining portion of the examination-in-chief. Thereafter the respondent shall have full opportunity to cross-examine such witnesses as though the entire chief examination was conducted with her on the array of the accused. This provision is made by us for avoiding unnecessary delay and repetition of re-recording the evidence already recorded. On completion of examination of such witnesses prosecution can examine any remaining witnesses. Thereafter, trial can proceed in accordance with law.

37. If respondent Jayalalitha seeks permission to dispense with her presence in the trial Court it is open to her to file an application for the same before the Special Judge. The Special Judge shall exempt her from personally appearing after recording her plea, if she agrees to abide by the following conditions:

- (1) A counsel on her behalf would be present in the court whenever the case is taken up.
- (2) She would not dispute her identity as the particular accused in the case.
- (3) She would be present on any day when her presence is required by the court.

38. It is needless to say that if she fails to abide by any of the above conditions it is open to the Special Judge to revoke the aforesaid benefit granted to her.

39. The appeal is disposed of accordingly.

Order accordingly.

AIR 2000 SUPREME COURT 1596

(FROM : ORISSA)

S. B. MAJMUDAR AND
UMESH C. BANERJEE, JJ.

Civil Appeal Nos. 11881 and 11882 of
1996, D/- 5-5-2000.

Balbir Kaur and another, Appellants v.
Steel Authority of India Ltd. and others.
Respondents

AND

Smt. T. K. Meenakshi and another,
Appellants v. Steel Authority of India Ltd. and
others, Respondents.

Constitution of India, Art. 16 — Compassionate appointment — Benefit of — Cannot be negated on ground of introduction of scheme assuring regular monthly income to disabled employee or dependants of deceased employee — Terms of scheme compelling deposit of Gratuity and Provident Fund amounts with employer — Violates S. 4 of Gratuity Act and Provident Fund Act.

O. J. C. No. 3161 of 1994, D/- 5-4-95
(Orissa), Reversed.

Employees Provident Fund and Miscellaneous Provisions Act (19 of 1952), S. 1.

Payment of Gratuity Act (39 of 1972), S. 4.

The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family — This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner 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 bread earner, but that would undoubtedly bring some solace to the situation. The introduction of the family benefit scheme vide tripartite agreement, which enabled the employees family to receive regular monthly payment equivalent to the basic pay together with dearness allowance last drawn by the de-

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ceased or disabled employee till the normal date of superannuation of the employee in question in lieu of depositing the lump sum provident fund and gratuity amount with the employer cannot be in any way equated with the benefit of compassionate appointments. The introduction of family benefit scheme cannot be a ground to refuse benefit of compassionate appointment.

(Para 13)

Moreover compassionate appointment cannot be refused since the Tripartite Agreement expressly preserves the earlier circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and the earlier rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments.

(Para 17)

There is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependents in the event of his early death. The introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of or the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. The Provident Fund, is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. The family needs the money in lump-sum and availability of this amount is the only insulating factor in such a grief stricken family.

(Paras 15, 16)

Cases Referred : Chronological Paras
 Dharwad District PWD Literate Daily Wage Employees Assn. v. State of Karnataka, AIR 1990 SC 883 : 1990 Lab IC 625 : (1990) 2 SCC 396 8
 Daily Rated Casual Labour Employee under P & T Dept. through Bhartiya Dak Tar Mazdoor Manch v. Union of India, AIR 1987 SC 2342 : 1988 Lab IC 37 : (1988) 1 SCC 122. 8
 Surinder Singh v. Engineer-in-Chief, CPWD.

AIR 1986 SC 584 : 1986 Lab IC 551 : (1986) 1 SCC 639 8

D. S. Nakara v. Union of India, AIR 1983 SC 130 : 1983 Lab IC 1 : (1983) 1 SCC 305 8

C. Mohan Rao, Prashant Bhushan, Manoj Kumar Mishra, Jayant Bhushan, G. M. Misra, A. S. Bhasme, Advocates, for the appearing parties.

BANERJEE, J. :— The core question which falls for determination before this Court in these Civil Appeals pertain to the interpretation of Family Benefit Scheme as introduced in NJSC Tripartite Agreement of 1989 and the consequences thereof on the existing welfare measure as contained in NJSC Agreement in 1983 : Whereas the Orissa High Court in the judgment impugned held that by reason of introduction of Family Benefit Scheme in terms of NJSC Tripartite Agreement in 1989, question of compassionate appointment would not arise — the appellant herein contended that by reason of clause 8.14.1 in the 1989 Agreement; the requirement of compassionate appointment cannot possibly be given a go by : It is an existing obligation and has been expressly saved. The appellant contended that having regard to constitutional obligation as regards Egalitarian society, the issue of compassionate appointment cannot and ought not to be trifled with — the question therefore does not seem to be so simple as suggested by Mr. Bhasme the learned Advocate appearing for the respondents and the issue undoubtedly is one of the 'live issues' to be decided by this Court, more so having regard to the constitutional mandate.

2. Incidentally be it noted that the appeal No. 11882 of 1996 (Smt. T. K. Meenakshi and another v. Steel Authority of India Ltd. and others) has been tagged on to the main appeal as argued before this Bench (CA No. 11881 of 1996; Balbir Kaur and another v. Steel Authority of India Ltd. and others) by reason of the consideration of the issue pertaining to the Family Benefit Scheme but the factual contexts are however at variance and it is in this perspective we deem it fit to advert to the factual matrix of both the matters briefly.

3. In Civil Appeal No. 11881 of 1996 : (Balbir Kaur and another v. Steel Authority of India and others) it appears that the appellants before this Court are the dependants of a deceased employee Hari Singh, who happened to be a technician working in the

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department of Captive Power Plant-II belonging to Steel Authority of India. The deceased employee was admitted to Ispat General Hospital on 4th August, 1992 and was treated for cancer till 24th September, 1992. At the same hospital the deceased employee however underwent surgery and subsequent thereto the latter was advised to undergo treatment at Meharbhai Tata Memorial Hospital and accordingly was admitted therein on 25th September, 1992 but was discharged on 10th November, 1992 when he was asked to report further on 7th December, 1992. The employee Hari Singh, however, expired on 22nd November, 1992.

4. Further factual score in the matter in issue depicts that on 22nd January, 1993 a request for compassionate employment to the appellant No. 2, who is the holder of a valid heavy vehicle driving licence, was made but unfortunately of no effect. Having, however, being denied of any consideration, the appellant herein moved the High Court and the latter upon a reasoned judgment negated the plea as raised in the writ petition before the High Court and hence the appeal before this Court.

5. The other appeal (T. K. Meenakshi and another v. Steel Authority of India, CA No. 11882 of 1996) though pertain to the similar issue of Family Benefit Scheme, but since the factual score is at variance with Balbir Kaur's matter, it would be convenient to advert to the same briefly at this juncture. The appellants herein are the dependants of one M. Kesavam the deceased employee of respondent No. 1. Kesavam during his life time was working as an operator in Coke Oven (Operation) of Rourkela Steel Plant of the Steel Authority of India. The appellant No. 1 being the wife of the deceased employee developed certain complications after a surgery at Ispat General Hospital and was advised to proceed to Christian Medical College, Vellore vide movement order dated 3rd January, 1994. The Service Conduct Appeal Rules read with Circular issued from time to time by the respondent No. 1, entitles a lady patient for an escort as also travelling allowance and in terms therewith the deceased employee applied for grant of advance travelling allowance for himself as an escort and his wife as patient and was sanctioned an advance travelling allowance of Rs. 3,280/-. The factual score depicts that the appellant No. 1 being accompanied by the deceased

employee went to Vellore for medical treatment on 20th January, 1994 but whilst at Vellore the deceased employee fell ill somewhat seriously by reason wherefore the latter was admitted at the Christian Medical College, Hospital at Vellore on 25th January, 1994 and 28th January, 1994 the deceased employee breathed his last. The factual aspect therefore depicts rather a sad and dismal picture — a person with a desire to have his wife treated at the Christian Medical College Hospital, goes to Vellore and there dies within three days after admission to the hospital.

6. It is on this count that the widow of the deceased employee made a request to the Steel Authority of India for providing compassionate employment to the appellant No. 2 since the bread-earner of the family unfortunately met with pre-mature death resulting into untold financial sufferings for the entire family. The representations went unheeded by reason wherefore a writ petition was moved before the High Court. The decision of the High Court as noticed above upheld the validity of the Family Benefit Scheme and answered the question of compassionate employment in the negative by reason of introduction of such a scheme. It is this order which has been impugned in this appeal before this Court and since issues involving in both these two matters being identical as dealt with presently this matter has been tagged on to the other matter of Balbir Kaur as noted above.

7. Before however, embarking on an inquiry in regard thereto it would be convenient to note however the necessary provisions of the NJSC Tripartite Agreement of 1983 as also of 1989. The same are set out herein below :—

"Cl. 7.16 NJCS Agreement, 1983

"Cl. 7.16 : Employment

Employment would be provided to one dependant of workers disabled permanently and those who meet with death. One dependant of the retiring employee would be provided employment, but in case of TISCO, the same would be subject to their Certified Standing Orders."

1989 Tripartite Agreement :

Cl. 8.10.4 : In case of death due to accident arising out of and in course of employment, employment to one of his/her direct dependant will be provided.

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Cl. 8.10.5 : A Scheme would be introduced by NJCS for employees who die while in service or who suffer from permanent total disablement to receive monthly payments after the death/permanent total disablement of the employees, in case the widow/employees deposit P. F. amount and Gratuity dues with the Company's separate trust constituted for this purpose. When finalised, the Scheme would be effective from 1-1-1989.

Cl. 8.14.1 : Benefits provided under the previous NJCS Agreement will continue, unless otherwise specified in this Agreement.

Cl. 8.14.2 : Merely as a consequence of the implementation of this Agreement, any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practice or usage, shall not be withdrawn, reduced or curtailed except to the extent and manner as provided for in this Agreement."

8. The employer being Steel Authority of India, admittedly an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer — It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life — the answer cannot however but be in the negative — what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied, as "It is likely to open a Pandora's Box" — This is the resultant effect of our entry into the new millenium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of

the bread-earner. It is in this context this Court's observations in Dharwad Distt. PWD Literate Daily Wage Employees Assn. v. State of Karnataka (1990) 2 SCC 396 : (AIR 1990 SC 883 : 1990 Lab IC 625) seem to be rather apposite. This Court upon consideration of Randhir Singh v. Union of India (Daily Rated Casual Labour Employed under P & T Dept. through Bhartiya Dak Tar Mazdoor Manch v. Union of India) (1988) 1 SCC 122 : (AIR 1987 SC 2342 : 1988 Lab IC 37) as also Surinder Singh v. Engineer-in-chief (1986) 1 SCC 639 : (AIR 1986 SC 584 : 1986 Lab IC 551) and D. S. Nakara v. Union of India (1983) 1 SCC 305 : (AIR 1983 SC 130 : 1983 Lab IC 1) observed in paragraphs 14 and 15 as below :

"14. We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic while dreaming of elevating the lot of the common man of this country once stated :

"Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible; forcibly if necessary, and there seems to be little doubt that coercion will often be necessary."

These were his prophetic words about three decades back. More than a quarter of century has run out since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote :

"The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing."

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Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional ethos. It has still remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami :

"It is imperative that all this various yogas should be carried out in practice. Mere theories about them will not do any good. First we have to hear about them; then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of an intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion never changes. Religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming, not hearing or acknowledging. It is the whole soul's becoming changed into what it believes. That is religion."

9. As a matter of fact the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach everyone and the ideals of the Constitution framers would be achieved since the people would be nearer the goal set by the Constitution — an ideal situation but a far cry presently.

10. Unfortunately, the High Court has completely lost sight of this aspect of the matter.

11. Turning on to the factual aspects once again, it is not that compassionate appointments have never been effected. Steel Authority of India was in fact providing compassionate employment to one dependant of an employee dying in harness or permanently disabled. As a matter of fact on 22nd September, 1982 the respondent-Steel Authority, further issued the Circular pertaining to appointments on compassionate grounds. The Circular however for the first time introduced categorisation of compassionate employment as First Priority Cases;

Second Priority Cases and Third Priority Cases. The Circular reads as below :

"The system of compassionate appointments was reviewed in a meeting of the Advisory Committee recently. On the lines of the discussions, the system may be operated in future as given below :

1. First Priority Cases

(a) Employment of a dependent of an employee who dies owing to an accident arising out of and in the course of employment;

(b) Employment of a dependent of an employee who dies in a road accident while on duty or while coming to or going back from duty.

The existing practice will continue.

2. Second Priority Cases

i.e. employment of a dependent of an employee whose services are terminated in accordance with order 23 of the Standing Orders, i.e. on his being found permanently medically unfit for his job by the Director M & HS.

(a) Dependents of only those employees would be considered for employment on compassionate grounds whose services are terminated on the ground of being declared permanently unfit for their job before they enter 56th year of age, that is, they have a balance of at least three years of service.

(b) The minimum period of service of the employee, whose dependent is to be considered for employment, will be 10 years, as against 5 years under the existing rules.

3. Third Priority Cases

i.e., Cases of death for reasons not covered under (I) above. The existing rules will continue.

The above will be subject to the following general conditions :

(i) The eligible dependents for consideration for such employment would continue to be wife/husband/son/daughter.

(ii) No employment would be provided to a second dependent, i.e., if the husband/wife or a son/daughter of the deceased or of the employee whose services are terminated on his being found medically unfit is already in employment of RSP, no employment will be provided to another dependent.

(iii) The employee covered under the 2nd and 3rd priorities—

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(a) should not have been awarded a major punishment during the last 5 years of their service and

(b) should have at least good grading in the CCR for the last 3 years

This has the approval of the Managing Director."

12. The requirement of such an insertion in the body of the judgment was felt expedient by reason of the introduction of the priorities and in any event special reference may be made to clause 7.16 of the Circular which expressly records cases of death for reasons not covered under (I) above and in that event the existing rules will continue. The existing rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments.

13. Mr. Bhasme, learned Advocate appearing for the Steel Authority contended that the Family Benefit Scheme was introduced on 21st November, 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, the 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 Employees' Union, question of any departure therefrom or any compassionate appointment does not

and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family — This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner 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 bread earner, but that would undoubtedly bring some solace to the situation.

14. It is significant to note that the Employees Provident Fund and Miscellaneous Provisions Act of 1952 is a beneficial piece of legislation and can amply be described as social security statute, the object of which is to ensure better future of the concerned employee on his retirement and for the benefit of the dependants in case of his earlier death. As regards the provisions of the Payment of Gratuity Act, 1972 (as amended from time to time) it is no longer in the realm of charity but a statutory right provided in favour of the employee. Section 4 of the Act is of some significance and as such the same is set out hereinbelow:

"4. Payment of gratuity.— (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

- (a) on his superannuation, or
- (b) on his retirement or resignation, or
- (c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

[Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who

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shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.]"

15. It is upon consideration of the above noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the Provident Fund but as regards the Gratuity amount, be it noted that there is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death — the introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs or the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

16. Adverting to the Provident Fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump sum and availability of this amount is the only insulating factor in such a grief stricken family. The amount is payable in one lump and as a matter of fact it acts as a butter to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the

same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise.

17. In any event as appears in the contextual facts, the NJCS Agreement being a Tripartite Agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and on the wake of the same we do not see any reason to deny the petitioner the relief sought for in the writ petition.

18. On the wake of the afoesaid, we do feel it convenient to record that the option should have been made available either to have a compassionate appointment provided, however, the deceased employee's representative is otherwise competent to hold the post or the adaptation of the family pension fund by way of deposit of provident fund and gratuity amounts. In fact, however, there was no option taken from the employees, at least no records have been produced therefor, neither any submissions made in that regard. Mr. Bhasme, further pointed out that though the present appeals related to two individual cases but any interpretation contrary to the one canvassed by the respondent "is likely to open a pandora's box," since in the huge "empire" of the respondent, several such cases would be existing which would have to be reconsidered.

19. Mr. Bhasme further contended that family members of 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 concerned employee. 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 (respondent) pointed out that 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 whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due

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(Para 9)

Where in a case of death by electrocution on account of improper maintenance of electric wires by Electricity Board, the electricity Board has refuted allegation of negligence on its part and has pleaded that the deceased did not die as a result of the coming into contact with the live electric wire but he met his death due to lightening, the entertainment of writ petition for compensation by High Court was not proper. The further action of the High Court to refer the matter to arbitrator, make the award rule of

Appeals allowed.

(From : Madras)*

Civil Appeals Nos. 2981-82 with 2983-2995 of 2000 (arising out of S.L.P. (C) Nos. 11723-11724 with 13277-78, 13293, 14421-23 and 21883 etc. etc. of 1997), D/-27-4-2000.

**Tamil Nadu Electricity Board, Appellant
v. Sumathi and others, Respondents.**

Constitution of India, Art. 226 — Death due to tortuous act — Writ to award compensation — Not maintainable when disputed question of fact arises and tortuous liability is clearly denied — Entertain-ment of petition and reference of matter to arbitrator by High Court — Not proper.

Arbitration and Conciliation Act (26 of 1996), S. 8.

In cases of death due to tortuous acts when disputed question of fact arises and there is clear denial of any tortuous liability remedy under Article 226 of the Constitution may not be proper. However it cannot be understood as laying a law that in every case a tortuous liability recourse must be had to a suit. When there is negligence on the face of it and infringement of Article 21

*W. P. No. 545 of 1996 and W.M.P. No. 910 of 1996. D/- 12-3-1997 (Mad).

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Cases Referred : Chronological Paras

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