

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00067/2019**

Dated the 29 ^{Mon/Asy} day of June, Two Thousand Twenty

CORAM : HON'BLE MR. T. JACOB, Member (A)

Aswaghosh,
S/o Rahul Chander,
No. 54, Swaminagar Main,
Murugappa Street,
Ullagaram, Chennai 600091.

....Applicant

By Advocate M/s. S. Selvathirumurugan

Vs

1. Union of India rep by its
Secretary to Government,
Ministry of Finance,
Dept of Revenue,
Central Board of Excise and Customs,
Ground Floor, Hudco Vishala Building,
Bhikaji Cama Place, New Delhi 110066.

2. The Chief Commissioner of Customs,
New No 60, Rajaji Salai, Custom House,
Chennai 600001.

3. The Commissioner of Customs,
New no 60, Rajaji Salai, Custom House,
Chennai 600001.

4. The Additional / Joint Commissioner of Customs,
New No 60, Rajaji Salai, Custom House,
Chennai 600001.

....Respondents

By Advocate Mr. Rajnish Pathiyil



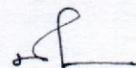
O R D E R
(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To call for the records on the file of the 1st respondent in connection with the order passed by him in this proceeding is F. No. A 12012/31/2016 Ad III B dated 03.01.2018 served on 22.01.2018 and also on the file of the 3rd respondent in connection with the order passed by him in his proceedings F. No. S14/86/2011-Estt dated 27.08.2018 and quash the same and direct the respondents to consider the case of the applicant for compassionate appointment to a post commensurate his qualification and pass such further or other orders as this Hon'ble Tribunal may deem fit in the circumstances of the case and thus render justice."

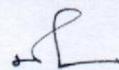
2. The brief facts of the case as stated by the applicant are as follows:

The applicant is the son of C. Rahul Chander who died in harness on 26.03.2008 leaving behind his wife, Sridevi (aged 33 years), his minor son, Selvan Ashwaghosh (aged 13 years) and minor daughter, Selvi Srimathi (aged 2 years). At the time of death of his father, the applicant had already passed 10th standard and was undergoing his Higher Secondary Course. Immediately after death of the employee, the mother of the applicant applied for appointment on compassionate ground to her son in 2011. However, the respondents vide letter dt 03.01.2018 rejected her claim on the ground that the applicant did not fulfil the terminal benefits criterion of Rs.4,50,000/- prescribed for Group 'C' post as per the C&AG Circular/guidelines relating to compassionate appointment whereas, he had received Rs.2,43,528/- as DCRG, Rs.40,000/- towards



CGEGIS, Rs.60,000/- towards DLI to which the respondents added Rs.3,58,857/- towards General Provident Fund which was paid to the applicant's family to arrive at a figure of Rs.6,42,413/- which is over and above the prescribed limit. Aggrieved by the above, the applicant had earlier filed OA.607/2018 wherein this Tribunal by order dated 08.06.2018 directed the respondents to consider and pass a reasoned and speaking order on his representation. Pursuant to the above, the respondents vide order dated 27.08.2018 had rejected his representation dated 27.06.2018. Meanwhile, the applicant had successfully completed his Higher Secondary course and also Engineering graduation from Anna University. Hence, the applicant has filed this OA seeking the above reliefs, inter alia, on the following grounds:-

- i. The impugned order is unsustainable in law and on facts and is liable to be set aside.
- ii. The act of the respondents is tainted with malafide motives and illegalities.
- iii. The reason assigned in the 1st impugned order by the Board was that as per guidelines relating to compassionate appointment, the prescribed terminal benefit limit is Rs.4,50,000/- for Group 'C' post and since the terminal benefits received by the applicant exceeded the prescribed limit, the applicant has been held to be ineligible for compassionate appointment as he does not fulfil the terminal benefit criterion of the circular. The applicant has demonstrated that the

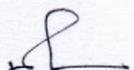


terminal benefit limit had not crossed Rs. 4,50,000/-.

iv. The 3rd respondent rejected the claim of the applicant on some other grounds and purposely added the General Provident Fund to the death retiral benefits. When the respondent department itself has stated that GPF will not come within the definition of retiral benefits (death) on the basis of the judgment of the Hon'ble Supreme Court, the Board which is the superior authority than the 3rd respondent ought not have rejected the claim of the applicant on the ground of terminal benefits criteria.

v. Without appreciating the fact that the applicant had been paid only Rs. 3,43,556/- as the terminal benefits of his father, the respondent had taken a wrong stand that the applicant had been paid more than Rs.4,50,000/- as terminal benefits and that there is no necessity to provide compassionate appointment to the family.

vi. Undoubtedly, as per the Handbook of Personnel Officers issued by the Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Clause 9.7(c) an application for compassionate appointment should not be rejected merely on the ground that the family of the government servant has received the benefit under the various welfare schemes and that while considering a request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and

A handwritten signature in black ink, appearing to be a stylized 'R' or a similar character, followed by a horizontal line.

liabilities and all other relevant factors. While so, the application for compassionate appointment of the applicant had been rejected on a wrong ground that he had not satisfied the terminal benefits limit of Rs.4,50,000/- whereas as per the documents furnished by the respondents, the family of the applicant had received only Rs. 3,43,556/-.

vii. This must be the result of wrong proposals sent by the officers in the establishment section giving false particulars regarding the terminal benefits received by the family of the applicant.

viii. In any event the denial of compassionate appointment to the applicant by the impugned proceedings dated 03.01.2018 served on 22.01.2018 and 27.08.2018 is unconstitutional, unreasonable, unjust and arbitrary which require interference of this Hon'ble Tribunal. Admittedly the application for compassionate appointment was considered and rejected very belatedly by the Department in the month of January 2018 only and thereafter on 27.08.2018. Hence this application is very well within the time limit.

3. The applicant has relied on the following decisions of the Hon'ble Supreme Court in support of his contentions.

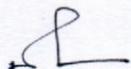
"i. Bibhudatta Mohanty v. Union of India & Ors. reported in (2002) 4 SCC 16; and

ii. Govinda Prakash Verma vs. Life Insurance Corporation of India & Ors. Reported in (2005) 10 SCC 289."

4. Per contra, the respondents have filed a detailed reply statement in which



they have stated that there were 42 pending requests for appointment under compassionate grounds from the dependents of the family of officials who died/went on VRS on medical grounds. The Departmental Screening Committee (DSC) held on 02.06.2016 perused the details of 42 pending requests for compassionate appointment submitted by the department on the financial status of the deceased official's family from whom application for appointment on compassionate grounds were received. Thereafter, the committee commenced the assessment about the extent of the financial destitution and the emergency to be displayed in helping the applicant to tide over the situation created by the demise of the Government employee. On the first count, the committee, after extended deliberations, assigned the weightages for various measurable factors indicating the financial status. The Committee assessed all the 42 requests based on their financial status on the condition of penury and the direness of need for compassionate appointment. The entire data set on the financial status of the family of deceased were taken for analysis with the purpose of validating the factors and inter-se weightages. A chart was prepared on the basis of identification of relevant factors and assigning inter-se weightages for each of them. The committee then proceeded to sort the saic chart on the basis of the total points arrived. The Committee revisited this compilation as well as the facts of each case and came to a conclusion that the identification of factors and the weightages assigned to them were appropriate. The committee arrived with a

A handwritten signature in black ink, appearing to be a stylized 'S' or 'L' shape, is located at the bottom right of the page.

list of names in descending order of need, derived at by the Committee through a combination of factors, viz, financial destitution and need/scope for emergency assistance. In cases where the numerical scores have come out as the same, the per-capita income of the dependents were calculated as the sum of monthly pensions and other income reported on verification divided by the number of dependents.

5. Since the balance 10 applications were falling under belated request category and/or not immediately meeting the minimum education standards they were referred to Board vide this office letter dated 08.06.2016 for clarification. The CBEC vide letter dated 03.01.2018 had rejected the request for compassionate appointment of applicant among others based on C & AG guidelines relating to compassionate appointment wherein the prescribed terminal benefits limit is Rs.4,50,000/- for Group "C" posts. The C&AG guidelines (viz. C & AG Circular No.2/NGE/2006 and No.09/NGE (DISCY29-2005/Vol.V dated 09.01.2006 downloaded from C & AG website referred by CBEC and circulated among the field offices of the Indian Audit and Accounts Department seeks to maintain uniformity among their field offices. The DSC held on 02.06.2016 has followed the DoP&T instructions issued in Office Memorandum (OM) F.No.14014/2/2012-Estt (D) dated 16.01.2013 and F.No.14014/02/2012- Estt.(D) dated 30.05.2013 and assessed the extent of the financial destitution and the emergency to be displayed in helping the



dependent/applicant to tide over the situation created by the demise of the Government servant wherein apart from Retirement/Death benefits other factors like pension, land, house property, remaining years of service and period elapsed from the date of V.R.S. on medical grounds / death were also taken into account. Meantime the applicant filed O.A.607/2018 and in the said OA., the applicant has informed that the total amount of terminal benefits works out to Rs.3,43,556/-.

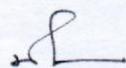
The Public Information Officer of the respondent Department issued a letter dated 21.12.2018 in F.No.RTI/219,2018-RTI (Comm VIII) had categorically informed the applicant that the death terminal benefits include only Death Gratuity, Leave Encashment, Group Insurance and the Monthly Pension. The Public Information Authority had also enclosed the copy of the judgement of the Hon'ble Supreme Court in Civil Appeal No.6224/2008 (Union of India and another -Vs- Shashank Goswami).

However, as per the data obtained by this department, the applicant's terminal benefits works out to Rs.6,42,413/- which includes GPF. Terminal benefits include DCRG, GPF, and Leave Encashment & Pension viz., DCRG amounting to Rs. 2,43,528/-, CGEIS - Rs.40,028/-, G.P.F-Rs.3,58,857/- (inclusive of Death Link Insurance - Rs.60,000/-) as per the DoP&T instructions. The Prasar Bharati, which is also a Central Government department (downloaded from Website) vide their File No.Misc. 1/335/2012-PPC dated 06.05.2013 have also followed only the Department of Personnel & Training Instructions latest being DoPT OM No.



14014/02/2012-Estt.(D) dated 16th January, 2013. In that Standard Operating Procedures also it is clearly given that Terminal Benefits includes DCRG, GPF, Leave Encashment and Pension Commutation. The same guidelines have been referred in other departments viz., Prasar Bharati and C&AG (Audit department). Hence, the same guidelines have been followed by Commissionerate also and as per the guidelines, the compassionate applications were considered and appointments given for 7 applicants (4 Tax Assistants and 3 Havildars) as reported by the DSC who did not require any relaxation from Board. The decision to make compassionate appointment in case of belated requests can be taken only at the level of Secretary to the department. The instant case is also one such as the death of the father of Mr. R. Ashwagosh, the applicant herein was on 26.03.2008 and the application for compassionate appointment was submitted on 01.06.2011. At the time of the application, the applicant was a minor and was only 15 years of age and hence could not be considered for appointment. Though the request for compassionate appointment was made within one year from the death of the Government employee by the dependent, the request could be considered only after 5 years from the date of death for want of vacancies under compassionate appointment. Hence, the respondents pray for the dismissal of the OA.

6. Respondents have relied on the judgement of the Hon'ble Apex Court in the case of 'State Bank of India and Anr. v. Somvir Singh' in Civil Appeal No.



743 of 2007 (arising out of SLP (C) No. 802 of 2006) in support of their contentions.

7. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

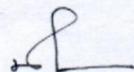
8. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non-statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family to get over the immediate



crisis due to the loss of the sole bread winner.

9. The Department is following a weightage point system to judge the indigent condition of the family in an objective manner for qualitative and non arbitrary assessment and to bring uniformity in assessment of the indigent condition of the family for offering compassionate ground appointment under the overall policy guidelines of the Department of Personnel and Training vide OM dated 09.10.1998 [consolidated circular]. As per the policy guidelines, the applications for compassionate appointment should not be rejected merely on the ground that the family of the government servant has received the benefit under the various welfare schemes and that while considering a request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities and all other relevant factors.

10. Admittedly, this is the second round of litigation before this Tribunal. The applicant after death of his father in harness on 26.03.2008 had applied for compassionate appointment but his request was rejected vide communication dated 31.01.2018 on the ground that he did not fulfil the criteria of C&AG guidelines relating to compassionate appointment which prescribed the terminal benefit of Rs.4,50,000/- for Group 'C' posts. It could be seen vide communication dated 05.04.2018 that the applicant had received Death-cum-Retirement Gratuity (DCRG) Rs.2,43,528/-, CGEGIS Rs.40,028/- and



Insurance (DLI) Rs.60,000/- . Thus the total amount of terminal benefits works out to Rs.3,43,556/- which is far less than the criteria stated by the respondents in the impugned order dated 31.01.2018. Challenging the said rejection order, the applicant had earlier filed OA.607/2018 to consider his case for compassionate appointment to a post commensurate with his qualification and this Tribunal by order dated 08.06.2018 granted liberty to the applicant so submit a detailed representation and the respondents were directed to consider and pass a reasoned and speaking order on the said representation thereafter. Pursuant to the above, the third respondent has passed the impugned order dated 27.08.2018 again rejecting the claim of the applicant on the ground that the applicant did not fulfil the prescribed terminal benefit criteria limit of Rs.4,50,000/- for Group 'C' posts stipulated in the C&AG Guidelines.

11. In this regard, the India Audit & Accounts Department issued Circular dated 09.01.2006 with regard to enhancement of existing limit of terminal benefits which reads as follows:-

“A reference is invited to the Headquarters Circular No. NGE/11/2003 issued under letter No.121-NGE (APP)21-2003/Vol.I dated 19.02.2003 prescribing inter alia parameters to bring uniformity in cases of compassionate appointment in the field offices of the India Audit & Accounts Department. The scheme for compassionate appointment as contained in Department of Personnel & Training's OM dated 09.10.1998 envisages financial position of the deceased employee as one of the eligibility condition for consideration for appointment. The Courts have also repeatedly held that object of compassionate appointment is to enable the family to get over sudden



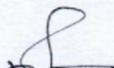
financial crisis. Keeping the above in mind the matter has been reviewed. It has been decided to enhance the existing limit of terminal benefits received by the family members of the deceased Government servant in cases of death of the Government servant in harness from Rs. Five lakhs, three lakhs and Two lakhs for Group 'B' 'C' & 'D' posts to Rs. Seven lakhs (Rs.7,00,000/-), Four lakhs & fifty thousand (4,50,000/-) and Rs.Three lakhs (Rs.3,00,000) respectively.

2. The monetary limit shall not be taken as the sole criteria for assessing the eligibility of the candidate for appointment of the compassionate ground. It will be only one of the criteria/conditions as envisaged in the Department of Personnel and Training's OM No.14014/6/94-Estt(D) dated 09.10.1998 issued under Headquarters letter No.678/N (App.1/18-99/Vol.V dated 10.06.1999.

3. The above mentioned enhanced monetary limit will be effective from the date of issue of this circular. The compassionate appointment cases which have already been considered and rejected by the field offices / Headquarters need not be reopened for reconsideration based on the enhanced monetary limit.

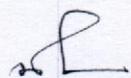
4. The other instructions mentioned in the Headquarters Circular dated 19.02.2003 will remain unchanged.”

12. Learned counsel for the applicant invites the attention of this Tribunal to the RTI query of the applicant dated 22.11.2018 and the reply from the Department dated 21.12.2018. It could be seen on perusal of the above that the respondents contrary to their own statement in their reply affidavit have stated that the “GPF does not come under death terminal benefits as per the Judgement of the Hon'ble Supreme Court in Civil Appeal No.6224/2008- Union of India vs. Shanshank Goswami.



13. The Hon'ble Supreme Court in the said case has dealt with similar issue wherein the scheme for compassionate appointment lays down that the total income of the family from all sources including terminal benefits after death, excluding G.P.F., should be taken into consideration in the case of compassionate appointment. So far as the post of Group 'C' is concerned, the scheme provides that in case the family gets more than Rs.3 lakhs (now revised), the dependent of the deceased would not be eligible for employment on compassionate ground. Referring to the guidelines/circular issued by the Comptroller and Auditor General of India dated 19.02.2003 that the total income of the family from all sources including terminal benefits after death, excluding G.P.F should be taken into account, the Hon'ble Supreme Court allowed the said SLP in favour of the appellant therein.

14. The GPF amount which accumulates every month can be withdrawn by the employee for which they have a vested right. The GPF amount for any employee depends upon how much GPF an employee could save enabling to a larger amount while retirement. Though the deceased employee is a Group C employee because of the non drawal or least drawal, GPF had grown up to Rs.3,58,857/- due to the saving effort put forth by the deceased employee and as such GPF drawn after the death of an employee cannot be a right yard stick to award compassionate points. So GPF amount ought to be removed while calculating the terminal benefits. In so far as provident fund accumulation is



concerned, depriving the family of the deceased any benefit of compassionate appointment on the ground of accumulation being there, would tantamount to penalizing the deceased family for having saved through provident fund, a purpose always encouraged by the government. Hypothetically, grant of appointment to another similarly situated but who has not saved his PF accumulation would amount to premium for not saving through provident fund which if permitted will go against the the spirit of the very existence of the PF scheme.

15. In the conspectus of the above facts and circumstances of the case, the guidelines/circular issued by the CAG and the judgement of the Hon'ble Supreme Court (supra), the OA is allowed. The impugned orders passed by the 1st respondent dated 03.01.2018 and the 3rd respondent dated 27.08.2018 are hereby set aside and quashed. The respondents are directed to consider appointment of the applicant on compassionate grounds to a post commensurate with his qualification and pass orders within a period of three months from the date of receipt of a copy of this order.

16. The OA is allowed to the extent indicated above. No costs. -

