

OA No. 291/595/2017

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/595/2017

Order reserved on 07.01.2021

DATE OF ORDER: 15.01.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Shakti Khatana s/o Late Shri Umesh Khatana aged about 30 years, R/o Plot No. 171, Vijay Singh Pathik Nagar, Gurjar Colony, Kalwar Road, Jhotwara, District Jaipur, Rajasthan.

....Applicant

Shri Kapil Sharma, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, New Delhi-110001.
2. Director, Prashar Bharti, Bhartiya Prasharan Nigam, Doordarshan Kendra, Bundi (Raj.).

....Respondents

Shri Rajendra Vaish, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "i) By an appropriate order or direction the impugned order dated 29.08.2017 may kindly be quashed and set aside and respondent may be directed to give appointment to the applicant on compassionate ground with all the consequential benefits along with interest which create pendency and hardship to present applicant may be awarded.
- ii) Any prejudicial order to the interest of the applicant, if passed during the pendency of the application, the same may kindly be taken on record and after examination the same be quashed and set aside.
- iii) Any other appropriate order or direction which may be considered just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant."

2. The brief facts of the case, as stated by the applicant, are that late Shri Umesh Khatana, father of the applicant, while working on the post of UDC as Head Clerk, HPT in Doordarshan Kendra, Boondi expired on 13.12.2000. He was survived by his mother, wife and son. The whole family was

completely dependent on the deceased Government Servant and the applicant after completion of his graduation in Arts on 11.10.2013 submitted an application dated 29.07.2014 to respondent No. 2 to provide compassionate appointment to the applicant stating that after the death of Late Shri Umesh Khatana, the family is in penury condition and is in urgent need of appointment. It is pertinent to mention that as per the scheme for compassionate appointment, son who is wholly dependent upon the Government Servant dying in harness is eligible to get compassionate appointment. Thus, in the present case the applicant is eligible for compassionate appointment as he is wholly dependent upon his deceased father and he possesses all the educational qualification as he is fully eligible for appointment under the quota of compassionate appointment. The respondents vide their letter dated 08.02.2016 (Annexure A/4) intimated the applicant that his case was considered but not recommended by CAC. Thereafter, several efforts were made by the family for said compassionate appointment to various authorities. The respondents again placed the request

of the applicant before CAC in its meeting held on 5th and 6th April 2017 for Group 'C' & 'D' posts as per DOPT guidelines amended from time to time. He was again informed that his case was not recommended being low in merit vide impugned order dated 29.08.2017 (Annexure A/1). As the impugned order is totally illegal, arbitrary and in clear violation of the principles of natural justice, the applicant has filed the present O.A. for quashing and setting aside the same.

3. After issue of notices, the respondents filed their reply stating that Late Shri Umesh Khatana, expired on 13.12.2000 and the applicant approached the Tribunal seeking compassionate appointment after 17 years, which is not tenable in eyes of law. He had completed 18 years of age in 2005 and even on this count, there is a delay of 12 years after the applicant becoming major. The applicant had approached the respondents seeking compassionate appointment only in 2016 for the first time. The case of the applicant was considered for compassionate appointment in the light of several instructions / guidelines issued from time to time on the said subject and even considered in CAC held on 05/06.04.2017 (Annexure R/2) for the

vacancies of 2015 where there were total 07 vacancies of LDC and 04 vacancies of MTS. The case of the applicant was much lower on the scale of 100 points prescribed under different heads where 123 candidates were considered for 11 vacancies, but the applicant scored much less points compared to the 11 candidates, who were considered for 11 vacancies. It is made clear that appointment on compassionate grounds cannot be claimed as a matter of right. Therefore, as the action of the respondents is just, fair and as per rules, the relief claimed by the applicant deserves no merit and the O.A. is liable to be dismissed.

4. The applicant has not filed any rejoinder rebutting the claim of the respondents but filed an Additional Affidavit bringing on record the Standard Operating Procedure (SOP) in the matters relating to Compassionate Appointments in Prasar Bharti, which was approved by the Prasar Bharti Board in its 113th meeting vide letter dated 07.05.2013. It is the claim of the applicant that he was wrongly awarded 58 marks as the marks awarded to him under the category of 'Dependents' is 5 marks whereas the

deceased had left 3 'Dependents' and, therefore, he should have been awarded 15 marks for the said category. Also the respondents had intentionally and deliberately considered his case only against the vacancy for the post of LDC and not for MTS. He also stated that female candidates were awarded 15 marks as grace points whereas the SOP adopted by respondents had no such provision as they were already awarded marks under the category of unmarried daughter.

5. The respondents also filed Additional Affidavit stating that the applicant was considered both for LDC as well as MTS before the CAC. The respondents further stated that even if the applicant was awarded 15 marks even then he will not come under the select list as he is very low in merit i.e. Sr. No. 59 for both LDC and MTS vacancy. It was further stated that as per revised SOP dated 21.08.2014 in cases where the wife of deceased official has applied for compassionate appointment for herself, she shall get 15 grace points, which was not in the case of the applicant as he is the son of the deceased.

6. Heard learned counsels for the parties through Video Conferencing and perused the material available on record along with judgments.

7. The applicant, besides reiterating the facts, stated that the object of compassionate appointment is to enable the family of the deceased employee to tide over the crisis resulting due to the death of the bread-earner who has left the family in penury and without any means of livelihood. The applicant pointed out that he is fully dependent on his father and has no other source of livelihood. The applicant also stated that immediately after completing his graduation, he applied for compassionate appointment. The applicant relies on the latest judgment of the Hon'ble Apex Court in the case of **Bharat Coking Coal Limited & Ors. vs. Ruda Devi & Ors.** [SLP (Civil) Diary No. 8963/2020], wherein the Hon'ble Apex Court had observed that the family of the deceased was made to run from pillar to post for twenty years after the death of the employee and was granted compassionate appointment. As per the applicant as his case is identical to the said case, he too deserves to be granted compassionate appointment. He also added

that the action of the respondents in not awarding additional grace marks to him is highly unjust, illegal and arbitrary. Therefore, the respondents have not rightly considered the claim of the applicant as he deserves appointment on compassionate grounds.

8. The respondents, on the other hand, pointed out that the submission of the applicant is totally incorrect. The respondents have considered the case of the applicant in accordance with the rules and policy in vogue at that point of time and the applicant was not found fit as per the guidelines specified for issuance of appointment on compassionate grounds. The applicant was awarded appropriate marks but due to the fact that he was lower in merit, his case though considered but was not recommended by CAC. The respondents relied on several judgments of the Hon'ble Apex Court including in the case of **State of Himachal Pradesh & Another vs. Prakash Chand** reported in (2019) 1 SCC (L&S) 621, which clearly pointed out that compassionate appointment cannot be claimed as a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the

family of a deceased government employee. It was also pointed out that in exercise of judicial review under Article 226 of the Constitution of India, it was not open to the High Court to rewrite the terms of the Policy. Therefore, the respondents pointed out that they have rightly considered the case of the applicant but due to his being lower in merit, the applicant could not be appointed. It was also pointed out that the family is able to maintain themselves till date i.e. for around seventeen years after the death of Late Shri Umesh Khatana from 13.12.2000, which shows that the family is not in penury condition and cannot be said to be dying in harness. Therefore, the present O.A. has no merit and the same deserves to be dismissed.

9. The factual matrix of the case is that the father of the applicant, Late Shri Umesh Khatana, expired on 13.12.2000 while working on the post of UDC as Head Clerk, HPT with the respondents and his son after attaining majority applied for appointment on compassionate grounds. It is his submission that immediately after completion of his graduation in Arts on 11.10.2013, he sought compassionate appointment

in place of his deceased father. His grounds for challenge was two folds; firstly, he was given less marks under the caption of 'Dependents' and that he should have been awarded 15 marks instead of 5 and that several female candidates were given 15 grace marks though the SOP dated 07.05.2013 relied by the applicant did not have any such provision. The said two grounds raised by the applicant cannot be accepted as the persons appointed towards 11 vacancies (07 for LDC and 04 for MTS) got much higher marks and, therefore, were much higher in merit compared to the applicant. Even assuming that under 'Dependents' caption he is given 15 marks then too, the persons appointed had got much more marks than the applicant. Now coming to the second ground raised by the applicant that female candidates were given 15 grace marks also cannot be accepted in view of the Revised SOP dated 21.08.2014, wherein it is clearly stated that 'in cases where the wife of deceased official has applied for compassionate appointment for herself, she shall get 15 grace points'. It is also seen that the case of the applicant was considered along with 123 candidates by the CAC in

its meeting held on 5th and 6th April 2017 strictly taking into consideration all the parameters given in DOPT guidelines and SOP for compassionate appointments issued by Prasar Bharti were strictly followed while assessing the cases and the minutes clearly show that the cases of the candidates were considered for Group 'C', LDC & MTS.

10. As seen, the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread-earner in the family. The applicant has only a right to be considered for appointment against a specified quota even if he fulfils all the eligibility criteria and the selection is made of the most deserving amongst the several competing applicants to the limited quota of posts available. Moreover, appointment on compassionate grounds cannot be claimed as a matter of right. If seen from the record, father of the applicant expired on 13.12.2000 and the family is maintaining themselves for more than 17 years as the applicant has approached this Tribunal only on 16.11.2017 since the death of Late Shri Umesh Khatana and in whose place applicant seeks appointment on compassionate

grounds. It is also clear that the family cannot be said to be either in penury nor can be said to be dying in harness as the applicant has waited nearly 14 years after the death of his father for even making an application. Also the mother of the applicant could have immediately made an application and should not have waited for her son to become major and complete his graduation and then apply for compassionate appointment if their condition was in such a penury state. Also in compassionate appointment, the respondents have also to consider the most deserving cases among all the candidates as per merit and marks awarded as per rules and give appointment to such deserving cases under compassionate grounds. After going through the O.A. of the applicant, it is not disputed that the case of the applicant was not considered by the respondents for appointment on compassionate grounds but due to the fact that he was lower in merit as compared to others, he could not be recommended for compassionate appointment. The case of Ruda Devi (supra) relied by the applicant cannot be said to be identical to the present case as the facts and circumstances of the

said case for grant of compassionate appointment is completely different.

11. The Hon'ble Apex Court in the case of **Indian Bank & Others vs. Promila & Another** reported in (2020) 1 SCC (L&S) 312 has held that though Court has sympathy with respondents for predicament they faced on the death of employee but sympathy alone cannot give remedy to the respondents. Courts cannot substitute a scheme or add or subtract from terms thereof in exercise of judicial review.

12. In view of the observations made above, there deserves no interference in the impugned order dated 29.08.2017 as the same is just and legal. As the present Original Application suffers from merit, the same is, accordingly, dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER