

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2203/2004

New Delhi this the 23rd day of February, 2005.

Hon'ble Shri Shunker Raju, Member(J)

Smt. Amarjit Kaur,
W/o late Sh. Mohinder Singh,
R/o 12 NPL Kingsway Camp,
Delhi.

Manjit Singh,
S/o late Sh. Mohinder Singh,
R/o 12 NPL Kingsway Camp,
Delhi.

.... **Applicants**

(through Sh. M.K. Bhardwaj, Advocate)

Versus

Govt. of NCT of Delhi & Ors.
Through

1. Commissioner of Police,
Police Headquarters (PHQ),
New Delhi.

2. Joint Commissioner of Police,
SIP Police Headquarters,
Delhi.

3. Deputy Commissioner of Police,
Licensing, Headquarters, PHQ,
New Delhi.

.... **Respondents**

(through Sh. Ajesh Luthra, Advocate)

O R D E R

Applicants impugn respondents' order dated 3.7.2003 as well as 10.8.2004 whereby the request of applicant No.1 for appointment of applicant no. 2 on compassionate basis was turned down.

2. Applicant No.1 is wife of late Sh. Mohinder Singh, who was working as Head Constable in Delhi Police and died in harness on 30.8.1999. When the applicant no. 1 made a request of appointment of applicant No.2 vide letter dated 6.12.1999, it was observed by the respondents that the claim for compassionate appointment of applicant No.2 would be considered on attainment of majority.

3. Local police made enquiries into the assets of the applicant whereby an agriculture land of 1 acre was found in the name of the family. The request of the applicant in this regard was turned down twice, which gives rise to the present OA.

4. Learned counsel of the applicants Sh. M.K. Bhardwaj contended that the report of Senior Superintendent of Police about the condition of the family, which was found to be an indigent, has not been taken into consideration and the request was turned down in a mechanical manner without application of mind.

5. Learned counsel further stated that the persons, with lesser merit, have been accorded compassionate appointment, which is discriminatory under Articles 14 and 16 of the Constitution of India. A reliance has been placed on a decision of Apex Court in Phoolwati Vs. U.O.I. (AIR 1991 SC 469).

6. On the other hand, respondents' counsel produced the record showing that the case of the applicant was considered in the meeting held on 22.1.2003, 12.7.2004 and 13.9.2004 and it was found that the wife of the deceased employee was having 1 acre agriculture land valued

Rs. 2.00 lakhs a total payment of about Rs. 6.00 lakhs as retiral benefits and also the family pension with DA of Rs. 2280/-, therefore, the family was not found to be indigent and was less meritorious to the other cases keeping in view the assets and liabilities. Having considered the case in accordance with the Scheme, relying upon the decision in Sanjay Kumar Vs. State of Bihar (AIR 2000 SC 272), learned counsel of the respondents contended that no vacancy can be reserved till person attains majority as it would be against the Scheme of compassionate appointment.

7. In the reply, respondents have contended that on receipt of the request of applicant No.1 and on attainment of majority of applicant No.2, keeping in view the decision of Apex Court in Umesh Kumar Nagpal Vs. State of Haryana & Ors decided on 4.5.1994, the case of the applicant was meticulously considered and keeping in view the assets and liabilities in comparison to others and having constraint of 5% quota for compassionate appointment, the request of the applicants for appointment of compassionate grounds was not acceded to.

8. Learned counsel states that sympathy cannot be substituted in the light of decision of the Apex Court in ***Life Insurance Corporation of India vs. Ram Chandra Ambekar & Anr.***,(AIR 1994(2)SC 183.

9. It is also stated that applicant was allowed to retain the accommodation upto 30.9.1999 and rent free upto 30.8.2000 on licence fee and 1.9.2000 to 30.4.2002 at the damage rate @ Rs. 75/- per sq. metr. P.M. and from 1.5.2002 to 15.9.2004 at the damage rate @ Rs. 150/- per sq. metr. P.M.

11

10. In the rejoinder, applicant vehemently opposed the pleas. It is stated that applicant does not possess any agriculture land. The deceased was only 45 years of age and children are minor, as such, the family was indigent.

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

12. In my considered view, compassionate appointment cannot be claimed as a right. The only right is for consideration that too in accordance with DoP&T O.M. of 1998 as amended from time to time. As held by the Apex Court in **Director Defence Metal Reserach Laboratory & Anr. Vs. G.Mulari**, 2003(9)SCC 247, a belated claim for compassionate appointment is not legal. Moreover, compassionate appointment cannot be a legacy or an inherited right. All the factors have to be taken into consideration while according compassionate appointment to a deserving candidate. In **Punjab National Bank & Ors. Vs. Ashwani Kumar Taneja**, 2004(SCC)L&S 938, the Hon'ble Supreme Court has held that appointment on compassionate ground is not a source of recruitment but an exception. The retiral benefits have to be taken into consideration.

13. Moreover, for want of any averment to the fact that the applicant has been discriminated in the matter of compassionate appointment or less meritorious persons have been appointed, on production of record, I have gone through it and find that the persons, who were appointed ^{after} ~~three meetings,~~ were more deserving candidates to the applicant.

14. As regards retention of the applicants in Government accommodation is concerned, after death of the employee, his family has a right to continue to retain the accommodation for the permissible period only. I find that a sum of Rs. 1.88,000/- has been charged upto 15.09.2004 as damage rent. The government accommodation was retained by the applicants when their right for compassionate appointment was under consideration. In this view of the matter, I observe that the respondents would take a sympathetic and equitable view and consider charging normal rent for the aforesaid period, which would not divest of the family of the retiral benefits paid to them.

15. Except for the above observations, O.A. is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)

Member (J)

23/2/05

1001