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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.529 of 2004

New Delhi, this the 4th day of January, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (JUDICIAL)

Shri Rajesh Kumar Gautam
S/o Late Shri M.C. Gautam
31-C, Una Enclave,
Mayur Vihar-I,
Delhi-110091.
(By Advocate : Shri V. Sudeer)

....Applicant

VERSUS

1. The Chief Commissioner of Income Tax,
C.R. Building, I.P. Estate,
New Delhi.
2. The Commissioner of Income Tax
Office of the Income Tax, Delhi-VI,
6th Floor, Mayur Bhawan,
Connaught Circus,
New Delhi-110001.
3. The Income Tax Officer
(Hqrs. Personnel)
Office of the Chief Commissioner of Income Tax,
C.R. Building, I.P. Estate,
New Delhi.
4. Union of India
(through the Secretary)
Ministry of Finance,
North Block,
New Delhi-110001.

.....Respondents

(By Advocate : Shri V.P. Uppal)

ORDER (ORAL)

Learned counsel heard.

2. It is trite law that compassionate appointment cannot be claimed as a right but only a right is of consideration for the same in accordance with the laid down guidelines of the Govt. of India for this purpose.

3. Applicant is an elder son of the deceased Govt. employee, who died five months earlier to his superannuation, is seeking quashing of the orders passed by the respondents rejecting the case of the applicant for compassionate appointment.

A request was made by the widow of the deceased Govt. employee for appointment of her elder son (applicant), which was forwarded to the

Commissioner. Accordingly, a meeting was held by the Committee for Compassionate Appointment on 20.3.2002. Apart from the case of the applicant, other cases were also considered. Though few of them have been recommended for compassionate appointment, but the case of the applicant after meticulous consideration and having regard to the report of the Inspector was turned down on the ground that a sum of Rs.13,00,000/- has been received by the family of the deceased Govt. servant.

4. Learned counsel of the applicant placed reliance before me to the decision of the Hon'ble Himachal Pradesh High Court in the case of **Arun Kumar Vs. Union of India and Others**, 2003 (1) SLR 505. I find that in the aforesaid cited case a reference has been made to the decision in the case of **Smt. Sushma Gosain Vs. Union of India**, 1989 (4) SLR 327 (SC) wherein it was held that if no suitable post is available, supernumerary post is to be created. Further reliance has been placed by the learned counsel of the applicant to the decision of Jaipur Bench of this Tribunal in the case of **Nirmala Devi vs. Union of India and others**, 2002 (2) (CAT) 17 wherein a reference has been made to the decision of the Apex Court in the case of **Balbir Kaur and another vs. Steel Authority of India**, 2000 SCC (L&S) 767, to contend that the grant of financial benefits cannot be the sole criteria to reject the claim of compassionate appointment.

5. Learned counsel by referring to joint family concept in Hindu family contended that son is married and coupled with children is still unemployed. As such the family is indigent.

6. Shri V.P. Uppal, learned counsel appearing for the respondents contended that the family consists of widow, three married sons aged 38, 35 and 32, one married daughter and six grandchildren. Applicant is the eldest son aged 38 years with two children. The family is not indigent having received G.P.Fund of Rs. 7.19 lakhs and family pension of more than 5,000/- per month, apart from other benefits. Learned counsel stated that the very purpose of grant of compassionate appointment is not to provide appointment to everyone where the Govt. servant dies before superannuation. It is only with a view to mitigate the hardship and to redress the family of the deceased Govt. employee from financial crisis.



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

8. No doubt in **Balbir Kaur's** case (supra), the Apex Court has ruled that terminal benefits cannot be the sole criteria for rejecting the claim of compassionate appointment, but I find that the facts of the present case are distinguishable with the facts of the case of **Balbir Kaur** where there was separate scheme for such consideration and as such the aforesaid decision would not be applicable.

9. Moreover, I find from the minutes of the meeting of the Committee for Compassionate Appointment held on 20.3.2002, a copy of which was produced by the learned counsel of the respondents, that there were more deserving cases where not only the financial benefits given were less but the liabilities were more and the families were indigent than the applicant's family.

10. Moreover, compassionate appointment is not a right of the person because it is restricted to only 5% of the direct recruitment quota meant for this purpose. At this stage, learned counsel of the applicant invokes Article 14 of the Constitution of India. According to him, discretion has not been exercised as compared to others who had been accorded compassionate appointment.

11. Consideration for compassionate appointment is a fact situation depending upon the norms laid down by the Govt. which, inter alia, includes several factors like retiral benefits, liabilities. When persons are not situated equally, Article 14 of the Constitution of India has no application. Moreover, compassionate appointment cannot be a mode of indirect entry into Govt. service. The fact that the family has ^{been} ~~been~~ ^{been} for couple of years and has no liability. A person of 38 years of age is supposed to discharge his own liability and having failed to do so till this age ^{his} attempt to secure employment by this mode is not sustainable.

11. Having failed to establish any malafide, I do not find that the action of the respondents is violative of Article 14 of the Constitution of India.

12. Moreover, in the present situation when the conditions are different, comparison between the applicant and others cannot be accepted. As such when the persons are not equal, ~~equity~~ ^{equity} cannot be claimed as a right.

13. In the result, OA is bereft of merit and the same is accordingly dismissed.
No costs.

S. Raju
(SHANKER RAJU)
MEMBER (JUDICIAL)

/ravi/