

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 1674 OF 2004

Allahabad this the 11th day of *August*, 2011

CORAM:

HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER

1. Smt. Vidhyawati, wife of late Shiv Prasad.
2. Vinod Kumar Son of Late Shiv Prasad.

Both are resident of House No.35/148, Etawah Bazar,
Kanpur Nagar.

.....Applicants.

By Advocate : Shri Satish Dwivedi

V E R S U S

1. Union of India through the Secretary,
Ministry of Labour, Government of India,
New Delhi.
2. The Director General,
Employees State Insurance Corporation,
Head Quarter Office, Panchdeep Bhawan, C.I.G. Marg,
New Delhi.
3. The Regional Director,
Employees State Insurance Corporation,
Regional Office, Kanpur Nagar.

.....Respondents

By Advocate: Shri P.K. Pandey

ORDER

By way of this instant Original Application filed under section 19 of the Administrative Tribunal's Act, 1985 the applicants seeks quashing of order dated 20.09.2004 (Annexure A-1) vide which the claim of applicant No.2 for seeking appointment on compassionate grounds has been rejected.

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2. The brief facts of the case are that the husband of the applicant no.1 and father of applicant No.2 Late Shiv Prasad was working as class IV employee in Employees State Insurance Corporation at Regional Office, Kanpur. He died on 21.08.1996 leaving behind his wife (Applicant no.1) two sons namely Ashok Kumar and Viond Kumar (Applicant no.2) and two daughters namely Anita and Sunita. Immediately after the death of her husband the applicant moved an application in the month of August, 1996 for seeking appointment for his son i.e. applicant no.2 (Annexure A-3). By letter dated 13/17.09.1996 the respondents informed the applicant no.1 to submit application for appointment on compassionate grounds on prescribed form along with requisite certificates (Annexure A-4). It is submitted that the applicant no.2 submitted an application in the prescribed form along with all desired documents to respondent no.3. In para No.16 of the OA, it is submitted that the claim of the applicant was rejected by the respondents. After that, the applicant moved a representation to respondent no.3 for reconsideration of matter. Vide letter dated 12.01.1999 the applicant has been informed by Dy. Director (Administration) that the Regional Director has reconsidered the matter and there is no justification for forwarding the case of the applicant to Headquarter (Annexure A-5). Another representation was also moved to respondent no.2 for passing appropriate orders regarding employment of applicant no.2 on compassionate grounds. Vide letter dated 05.02.1999 the applicant no.2 was informed that his case was not found fit for appointment on compassionate grounds. Thereafter another representation was also moved by the applicant no.2 on

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12.02.1999 to respondent no.2 that they are facing financial hardship on the death of her husband Shiv Prasad, therefore, their case be reconsidered for appointment of her son i.e. applicant no.2 on compassionate grounds which was followed by another representation dated 28.03.2000 (Annexure A-8). By an order dated 22.11.2000 (Annexure A-9) the applicant has been informed by the Assistant Director (Administration) Regional Office, Kanpur that the case of applicant no.2 was considered by the Director General and the same has been rejected. The applicant also approached this Tribunal by way of OA No.231 of 2001, Smt. Vidhyawati and Others Vs. Union of India and Others challenging the rejection of her claim. This Tribunal vide an order dated 22.7.2004 disposed of the matter with a direction to the respondents to pass a reasoned and speaking order within a period of two months from the date of receipt of a certified copy of this order (Annexure A-10). In compliance of the directions contained in order dated 22.07.2004, the respondents considered the case of the applicant and rejected the same by the impugned order dated 20.09.2004 (Annexure A-1), hence the OA.

3. Pursuance to the notice issued respondents appeared and filed detailed counter affidavit. In reply to para 4.4 of the OA, in para 6 of the counter reply the respondents have submitted that the applicant no.2 cannot be said to be dependent upon deceased as he is having his own family with two children aged about 11 and 6 years. In para 25 of the counter affidavit, it is submitted that the compassionate appointment is given only to tide over the certain crisis on the death of bread earner. Since more than five

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years lapsed, therefore, it cannot be said that the family of the deceased is living in financial hardship.

4. I have heard Shri Satish Dwivedi, learned Counsel for the applicant and Shri S.K. Pandey holding brief of Shri P.K. Pandey counsel representing the respondents. Shri Satish Dwivedi, learned counsel for the applicant has vehemently argued that the impugned order of rejection is totally illegal, arbitrary and unsubstantial as the respondents have not taken into account the pecuniary circumstance of the family. He submitted that after the death of bread earner the applicants are facing financial crisis, therefore, they are making successive representations whereby requesting for considering the case of applicant no.2 on compassionate grounds. He further argued that the respondents have not considered that the applicant no.1 is having unmarried daughter, the responsibility of her marriage is also on the shoulder of applicant no.2, therefore, keeping in view the family circumstance, the case of the applicant has to be considered but the respondents have rejected the same on the ground that his elder son Ashok Kumar Rawat is already employed and the applicant no.2 is married and having his own family and, therefore, cannot be termed as dependant upon the Government servant. Therefore, he prayed that the impugned order be set aside and the respondents be directed to appointment the applicant on compassionate grounds. Sri P.K. Pandey appearing on behalf of respondents argued that the case of the applicant was considered by the respondents in terms of the instructions issued by the Government of India. He further argued that the applicant no.2 is

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a married son of the deceased and, therefore, cannot be termed as dependant upon the deceased employee as he is having his own family. He further argued that the applicant died in the year 1996 and now more than five years has lapsed, therefore, under the dying in harness rule the applicant cannot be given appointment as the purpose of compassionate appointment is only to support the family whose bread earner had died and to recover from the sudden crisis.

5. I have considered the rival submissions, gone through the pleadings and the judgment cited by the respective parties. It is an admitted fact that after the death of the father of the applicant no.2 and the husband of applicant no.1, an application for appointment under the compassionate appointment was moved in the month of August 1996 which was turned down by the respondents in the year 1996 itself as averments has been made in para 16 of the OA but no date has been given. Subsequent to that a representation was made by the applicant for reconsideration of his matter which was replied vide its letter dated 12.1.1999 showing their inability to refer the matter to the Headquarter for reconsideration (Annexure A-5). Though the respondents reconsidered the claim of the applicant in pursuance to the directions given by this Tribunal in OA No.231 of 2001 and have passed the impugned order on 20.09.2004, it is a hard fact that compassionate appointment is to be given to poor family whose bread earned has died to support the family. It is held in various judicial pronouncements that the compassionate appointment cannot be claimed as a matter of right. It is to be

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given after considering the family circumstances of the deceased employee. It is exception to the main rule. In the present case, the employee died on 21.08.1996 and his case was also rejected by the respondents in the year 1996. Though no order has been appended but subsequent to that also his case was reconsidered in terms of directions given by this Tribunal on 22.07.2004 but the same was rejected as the applicant no.2 was major at that time and he was having independent family and, therefore, cannot be termed as dependant upon the deceased. It was incumbent upon the respondents at that time to ask the applicant no.1 to submit the claim of herself or her unmarried daughter for considering the claim under the compassionate grounds. Repeated representations were made by the applicant that her financial condition is measurable and she cannot support the family for which she is claiming the appointment for her son i.e. applicant no.2. If the respondents rejected the claim of the respondents then they have to consider the claim of applicant no.1, the wife of the deceased employee.

6. It is also now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who died in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate

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scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. In case of "**Umesh Kumar Magpal Versus State of Haryana, (1994) 4 SCC 138**, their Lordships of the Supreme Court held as under:-

"The whole object of grant of compassionate employment is, thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

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The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

As has been held by Hon'ble the Supreme Court in the cases of **National Hydro Electric Power Corpn. Vs. Nanak Chand, (2004) 12 SCC 487** and **Hindustan Aeronautics Limited Vs. Smt. A Radhika Thirumalal, JT 1996 (9) SC 197**, such an appointment cannot be secured as a matter of right as it is an exception to Articles 14 and 16(1) of the Constitution.

7. The similar view has been taken in the case of **State of J & K and others Vs. Sajad Ahmed Mir (2006 (5) SCC 766** wherein the Hon'ble Apex Court observed as under:-

11. It is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and

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compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This General rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the set back. Once it is proved that inspite of the death of the bread winner, the family survived and substantial period is over, there is no necessity to say !! goodbye !! to the normal rule of appointment and to show favour to one at the come of the interests of several others ignoring the mandate of Article 14 of the Constitution."

The Apex Court in **I.G. (Karmik) Vs. Prahalad Mani Tripathi**

[(2007) 6 SCC 162] carved out an exception to the ordinary rule of recruitment, stating:-

"6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

The same view is again reiterated by the Hon'ble Supreme Court in recent decision in Civil Appeal No.3242 of 2009 titled as State of Chhatisgarh & Ors. Versus Dhirjo Kumar Sengar decided on 5.5.210 reported as 2010(1) Recent Service Judgment 22. The Hon'ble Apex Court in number of cases has repeatedly held that the compassionate appointment is not a mode for appointment.

Not only this it is further lay down by the Hon'ble Apex Court that the vacancy under the said quota is referred from the quota of direct recruitment. Therefore, especially in these circumstances the appointment cannot be made casually as right of general public in seeking appointment in public employment has been affected. Therefore, they have formulated a scheme under different headings and thereafter to make a comparative merit of those candidates who were seeking appointment under the said quota and to give them appointment to a family whose case is more indigent then others because each family cannot be accommodates/given appointment as against the limited quota of vacancy.

8. The respondents have rejected the case of the applicant by the impugned order on the ground that he cannot be termed as dependant upon the deceased as he is having an independent family. He was also major at the time of death of the deceased employee. Moreover, the deceased employee died in the year 1996, his claim was firstly rejected in the year 1996 and subsequently in pursuance of the directions given by this Tribunal in the year 2004, therefore, more than 15 years has lapsed from the date of death.

9. In view of the above, I feel that the impugned order does not deserve any interference by this court. No order as to costs.



MEMBER (J)

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