

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(THIS THE 22nd DAY OF MARCH, 2012)

PRESENT:

HON'BLE MR. D. C. LAKHA, MEMBER-A

ORIGINAL APPLICATION NO. 1361 OF 2005
(U/s, 19 Administrative Tribunals Act.1985)

- (1) Smt. Shail Devi, Aged about 65 years, Widow of Late Shri Jitender Kumar, Ex-Lascar, Resident of 8, Dilkusha Park, New Katra, Allahabad (UP).
- (2) Miss Rita Sharma, Aged about 35 years Daughter of Late Shri Jitender Kumar Ex-Lascar, Resident of 8, Dilkusha Park, New Katra, Allahabad (UP).

.....Petitioners

By Advocate: Shri Rakesh Verma.

VERSUS

1. Union of India through Secretary, Ministry of Defence, North Block, New Delhi.
2. Air Officer Incharge, Air Headquarters, Dte. of PC, Vayu Bhawan, New Delhi-110 011.
3. Station Commandar, 507, Signal Unit, Air Force, C/o 99 APO.

..... Respondents

By Advocate: Shri Saurabh Srivastava.

(Reserved On 17.12.2011)


ORDER

(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A)

Heard Sri Rakesh Verma, learned counsel for the applicant and Sri Saurabh Srivastava, learned counsel for the respondents.


2. Under challenge in this OA is impugned order dated 24.08.2005 by which the case for compassionate appointment for Petitioner No. 2 has been rejected. The facts about the deceased

having been in service of the respondents, date of death, the relation of the Petitioner No. 2 as daughter to the deceased, the dependents of the deceased are not disputed, hence need no mention. The case in favour of the compassionate appointment is that the Applicant No. 2 is totally dependant on Applicant No. 1 being her mother and two sons of the deceased, though earning members, do not give any support to the family. Both the applicants have to live on the meager sum of Rs. 1,830/- plus Dearness Allowance as monthly pension and there is no any other means of livelihood, both the applicants have no house of their own. The widow of the deceased is suffering from various ailments like Asthama, Bronchitis and Arthritis and on her treatment daily expenses have to be incurred. Then there were outstanding liabilities like payment of loan etc. which had to be borne at the time of death of her husband. The application for compassionate appointment was moved within time but respondents had been taking time to complete the formalities. It is averred in the OA that the receipt of terminal benefits and family pension cannot be taken as the basis for rejection of application for compassionate appointment as per the law of the land laid down by the Hon'ble Supreme Court. The Respondent No. 2 has wrongly rejected the claim on the basis of the two sons of the deceased having been in employment and sufficient terminal benefits being given to the family and the family is not facing a situation of financial distress. The respondents have not given the detail of the other applicants in comparison to whom the case of the applicant has been found less deserving within the available 5% quota of



vacancies meant for compassionate appointment. The reason assigned to the rejection of the case of the applicant in the impugned order with respect to the DOP&T instructions/scheme is also not tenable as these instructions have been referred to in the impugned order without examining the applicability of these instructions/scheme to the case of the applicant. The law laid down by the Hon'ble Supreme Court in the Umesh Kumar Nagpal, Auditor General of India and others Vs. G. Ananta Rajeshwara Rao and Asha Ram Chandra Ambekar does not give any licence to the respondents for rejecting each and every case merely because the Tribunal/Courts are not Competent to issue directions to appoint a dependent of the deceased.

3. The respondents have contested the case by filing the Counter and Supplementary Counter Affidavit. It has been stated on behalf of the respondents that the scheme for compassionate appointment does not mean employment generation. As per the scheme in existing policy does not give guaranteed appointment in case of every deceased employee. The objective assessment of the family has to be taken into account. Only 5% vacancies under direct Recruitment quota are meant for such cases. Where the employment in dying in harness cases for compassionate appointment are considered for 3 times and if as per merits the applicant is not found fit for being given this kind of appointment then the case is closed because as per the Central law of the land the case of the compassionate appointment cannot be kept open for all



times to come. It is also been held by the Hon'ble Supreme Court that compassionate appointment cannot be claimed as a matter of right and it is only a privilege granted to tide over the sudden crisis arising after the death of sole earning member the law laid down by the Hon'ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana & Others vide Judgment dated 04.03.1994. The following principles have been laid down:-

- (1) *Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds.*
- (2) *The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.*
- (3) *Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased on medically retired government servant is legally impermissible.*
- (4) *The 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 provision 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.*
- (5) *Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right, which can be exercised at any time in future.*
- (6) *As a rule, appointment in public services should be made strictly on the basis of open invitation of application and merit. However, to the general rule, there are some exceptions carved out in the interest of justice and one such exception is in favour of the dependent of the employees dying in harness and leaving his family in penury and without any means of livelihood.*

4. Other Judgments relied upon in the counter reply are Himanchal Road Transport Corporation Vs. Dinesh Kumar [JT 1996 (5) SC 319] dated 07.05.1996 and Hindustan Aeronautics Limited



Vs. Smt. A Radhika Thirumalai [JT 1996 (9) SC 197] decided on 09.10.1996 in which it has been held that appointment on compassionate ground can be made only if a vacancy is available for that purpose within 5% of the total vacancies for direct recruitment in Group C and D. The following orders passed in different OAs by the CAT, Bench of Chandigarh and Calcutta are also referred to in the Counter Affidavit:-


- “(iii) *Amar Nath Vs. Union of India and Others.*
- (iv) *Smt. Sakuntala Devi Vs. Union of India and others.”*

5. The instructions of the DOP&T issued after the Judgment of the Hon'ble Supreme Court are clear to decide the some cases clearly providing that this kind of compassionate appointment is to enable the family to tide over the sudden crisis. It is not a matter of right and can be provided only after a balanced and objective assessment of the total circumstances of each case. Accordingly, the case of the Applicant No. 2 has been well considered and the impugned order has been passed taking into view all the circumstances of the case, the assets and liabilities etc. of the family. In the Supplementary Counter Affidavit filed on behalf of the respondents the list of 11 applicants has been attached as Annexure No. SC A-3. In this list the name of the Applicant No. 2 is reflected at Serial No. 3 obtaining 50 merit points whereas 61 and 59 respectively are obtained by the Applicant Nos. 1 and 2.




6. I have heard learned counsel for both the parties and have also perused their pleadings as submitted in the OA and counter replies. The learned counsel for the applicant has reiterated, in support of the pleas taken in the OA, that the two sons of the deceased, even though employed, do not support the family. Applicant No. 2 is daughter of the deceased. She has to dependent on her mother i.e. on meager family pension. The family is facing an acute problem ever since the employee Shri Jitender Kumar died on 16.10.2000. The case of the applicant has been kept pending in order to complete formalities and the delay occurred only because of process which the respondents have taken.

7. The learned counsel for the respondents has contended in support of the counter reply and Supplementary Counter reply, that as per the DOP&T instructions and various Judgments passed by Hon'ble Supreme Court on the issue involved. The matter of the applicants has been considered and the impugned order has been passed which does not suffer from any legal lacuna. Total circumstances have been examined. This case her compassionate appointment has been under consideration for three times and every time the Applicant No. 2 was placed (with 50 merit points) at lower place whereas the vacancy used to be only one. Only the candidate with higher merits points had to be considered and that is why the case of the applicant, after keeping the same pending for three times has been rejected by the impugned order finally. The learned counsel for the

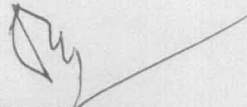


respondents has relied on the law laid down by the Hon'ble Supreme Court in this connection stating that the case for compassionate appointment cannot be kept pending for ever. The compassionate appointment can be provided just to tide over the sudden crisis. In the facts and circumstances, the deceased employee died in 2000 and the family has survived, thereafter, for many years even though the respondents kept the case of the Applicant No. 2 pending and it has certainly been considered but since the case does not meet the required criteria on merit it has been rightly rejected.

8. Having heard both the counsels, I have given thoughtful consideration to their arguments and have also gone through their pleadings. The law of the land as laid down by the Hon'ble Supreme Court in various Judgments on the subject of compassionate appointment is very clear and, accordingly, the DOP&T guidelines issued from time to time, latest being of 09.10.1998. The case for compassionate appointment can be considered only in very-very exceptional circumstances and only when the family is facing the immediate crisis due to acute poverty after the death of the sole earning member of the family who died in harness while in Government service. If the dependent of the family is eligible otherwise, then the case for compassionate appointment is considered and decision may be taken in his favour just to tide over the immediate crisis. It means that this dispensation is not available as a matter of



right. The financial crisis leading to the immediate need of the family is the sole criterion. The family was never under distress out of penurial condition. And it has sustained for so many years after the death of the employee. I have perused the impugned order and the facts and circumstances of the case and have also taken into view the points and counter points of both the parties and I am inclined to accept the view of the learned counsel for the respondents with respect to the counter reply and various Judgments of the Hon'ble Supreme Court and orders of the two Benches of CAT (Supra) and I am convinced that the case of the Applicant No. 2 has been rightly considered and rejected by the Respondent No. 2 and it does not call for any intervention. Accordingly, the OA is dismissed. No order as to cost.


MEMBER (A)

/S.V./