

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 10 DAY OF July 2011)

Hon'ble Mr. D. C. LAKHA, Member (A)

Original Application No. 1589 of 2005

(U/S 19, Administrative Tribunal Act, 1985)

Mukul Bajpai, son of Late Sri Krishnavtar Bajpai, resident of 69/124, Danakheri, Moti Mahal Road, District- Kanpur Nagar. .

..... *Applicant*
By Advocate : Shri V.P. Sharma

Versus

1. Union of India through its Secretary Ministry of Labour, Govt. of India, Shram Shakti Bhawan, New Delhi.
2. Central Provident Fund Commissioner, Employees Provident Fund Organization, 14, Bhikaji Cama Place, New Delhi-11006.
3. Regional Provident Fund Commissioner (II), Admn. Employees Provident Fund Organization, Regional Office, U.P. Nidhi Bhawan, Sarvodaya Nagar, Kanpur- 208005.

..... *Respondents*
By Advocate : Shri N.P. Singh

O R D E R

This O.A has been instituted for seeking the following relief/s:

"(i). to issue a writ in the nature of certiorari quashing the order dated 24.04.2002 and 09.03.2005

(ii). The opposite parties /respondents concern may be commanded to issue letter of appointment in favour of the applicant as Clerk on Data Entry Operator on compassionate grounds under the Dying in harness Rules 1973."

2. This is a case for compassionate appointment. Undisputedly applicant's father Late Krishnavtar Bajpai was an employee with the

Employees Provident Fund Organization, Regional Office, Kanpur. He died ~~x 2001~~ on 07.01.2011. An application for compassionate appointment was moved ~~x 2001~~ by the applicant on 07.03.2011 seeking appointment under dying in harness rules. Said application was rejected on 24.04.2002 and the applicant moved several representations/ applications on ~~x 04~~ 22.05.2002, 03.11.2002, 17.06.2004 and 21.09.2004 for reconsideration of his case and the case was rejected by the respondents on 09.03.2005 against which the present O.A is filed.

3. In support of his case the applicant has averred in the O.A at para 4(3) as under :-

"That the father of the applicant was only earning member in the family and after his death there is no other family member to maintain his family."

He has also stated that he is B.Sc and holding diploma in Computer and is thus eligible for appointment. As per his qualification he requested for appointment as Clerk i.e. Date Entry Operator. It is also stated in the O.A that the case of the applicant is fully covered under the circular of DOPT, Govt. of India issued vide O.M. No. 14014/19/2002-Estt (D) dated 05.05.2003 and O.M. dated 09.10.1998. Referring to the indigent status of the family at the time of death of father of the applicant it is stated in the O.A that after the death of the applicant's father Rs. 66,900/- as gratuity, Rs. 2,54716/- as S.P.F, Rs. 66,000/- as D.L.I and Rs. 83,056/- towards leave encashment were paid to the family of the deceased. In addition the family pension was fixed at Rs. 3025/- per month upto 07.01.2008 and thereafter at the rate of Rs. 1815/- per month, which was not sufficient to maintain the family. Inspite of these facts the bonafide

~~x~~ *Conveyed kind regards*
~~dated~~ 17.12.2011, on
conveying application
Re J. 17.12.11.

claim of the applicant was rejected ignoring the circulars of DOPT , as referred to above.

4. The respondents have contested the case and filed Counter Affidavit. Preliminary objection is raised in the CA that the O.A having been filed against the order dated 24.04.2002 is time barred for which no delay condonation application has been filed. This objection is not sustainable because after the order dated 24.04.2002 applications for reconsideration of the decision dated 24.04.2002 were moved one after the other. Respondents after having considered the case rejected the same on 09.03.2005. Thus the case from 2002 to 2005 was pending with the respondents. The date for reckoning the limitation would be counted from 09.03.2005, therefore, this argument is not sustainable that the O.A is time barred.

5. The other pleas taken in the C.A include that the case of the applicant has been well considered in view of the DOPT's Circular No. HRM III/II(6) 2001/UP/48478 dated 28.01.2005 and having not being found eligible the same has been rejected. In para 10 of the Counter Affidavit it is stated that mother of the applicant was teacher in a Government school after the death of the father and she was the earning member in the family and, therefore, the averment made in para 4.3 of O.A is wrong. The respondents organization has considered the case of the applicant in the light of instructions and guide lines issued by the D.O.P.T and after consideration the case of the applicant has been rejected. As provided under rules, appointment on compassionate grounds, to a dependant family member of a deceased government employee , dying in harness leaving his family without any means of livelihood and thereby leaving the family in financial destitution, can be

considered. The compassionate appointment is provided only to tide over the immediate emergency after the death of the government employee. Since the applicant did not fulfil the criteria for compassionate appointment, his case for the same was rejected.

6. Rejoinder Affidavit is also filed on behalf of the applicant.

7. Counsel for both parties are heard and their written submissions alongwith other pleadings are also perused.

8. The learned counsel for the applicant has repeated and has laid emphasis on para 4.3 of the O.A saying that there was no earning member left at the time of death of the applicant's father. The family was facing situation of financial destitution. In view of the retiral benefits given to the family after death of applicant's father, it was not possible for sustenance of the family with that amount. It has also been argued on behalf of the applicant that the order dated 24.04.2002 and 09.03.2005 rejecting the case of the applicant are non-speaking and passed in contravention of the circular of DOPT dated 09.10.1998. The applicant's counsel has also contended that the O.A is not time barred as both the orders dated 24.04.2002 and 09.03.2005 are under challenge and after the order dated 24.04.2002 upto 09.03.2005 the cause of action was continuous.

9. Learned counsel for the respondents has argued that the case of the applicant was not considered deserving in view of the circular of D.O.P.T dated 28.01.2005. The applicant has not come before this Tribunal with clean hand. In para 4.3 of the O.A it is stated that 'the father of the applicant was only earning member in the family and after

his death there is no other family member to maintain his family', which is totally wrong as the mother of the applicant was a teacher in a Government School and she was the earning member in the family, as already stated in para 10 of Counter Affidavit and this fact has not been denied by the applicant in Rejoinder Affidavit. As per the circular of D.O.P.T dated 09.10.1998 (referred to above), the intent of the policy of the Government is that the case for compassionate appointment can be considered only if the family of the deceased employee faces immediate economic crisis and there is no means of livelihood after the death of the employee. It is settled law of land that the compassionate appointment can not be treated as a source of recruitment.

10. I have given thoughtful consideration to the averments and the arguments advanced by learned counsel for both sides and also perused the documents on file.

11. As per the policy of the Government the case for appointment on compassionate grounds can be considered only if the family is facing indigent situation at the time of death of the government employee. Hon'ble Supreme Court in the case of **State of U.P. Vs. Paras Nath (1998 SCC (L&S) 570]**, has clearly held that the appointment on compassionate ground is not a source of recruitment but merely an exception to the recruitment regarding appointments being made on open invitation of application on merits, the basic intention being that, on the death of the employee concerned, his family is not deprived of the means of livelihood. The objective is to enable the family to get over sudden financial crisis. It is also settled principle of law that appointment on compassionate grounds can be considered only if the family is in indigent circumstances and not as a matter of right, which can be executed at any time in future

(Umesh Kumar Nagpal Vs. State of Haryana and others - JT 1994(3)

SC 525). In the said judgment, Hon'ble Apex Court has further held that the compassionate appointment cannot be granted after lapse of a reasonable period. In the instant case, the mother of the applicant was working as School Teacher after the death of applicant's father, which clearly shows that the family was not in indigent condition. There was certainly an earning member in the family. It is a matter of serious concern that while moving and pursuing his case for appointment on compassionate grounds the applicant did not disclose this fact. However, the applicant's case was considered by the respondents and as he was not found more deserving hence they rejected his claim.

12. In view of the settled principle of law laid down by the Hon'ble Apex Court in **State of U.P. Vs. Parasnath (1998 SCC (L&S) 570]** and **(Umesh Kumar Nagpal Vs. State of Haryana and others - JT 1994(3) SC 525 (Supra)**, this O.A lacks merit and deserves to be dismissed.

13. Accordingly I find that both orders passed by the respondents dated 24.04.2002 and 09.03.2005 are legally correct. Hence the O.A is dismissed. No costs.



Member-A

/Anand/