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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 496 of 2005

Wednesday, this the 5th day of December, 2007.

Hon'ble Mr. K.S. Menon, Member (A)

Rajendra Kumar Chaudhary, Son of Late Shri Jung Bahadur, R/o 43/3-E, Shivkuti, Allahabad.

Applicant

By Advocate Sri Shesh Kumar

Versus

1. Union of India through Controller and Accountant General 10, B.S. Jafar Marg, New Delhi.
2. Accountant General (Audit)-1, U.P. Indian Audit & Accounts Department Satyanishtha Bhawan, 15-A, Dayanand Marg, Allahabad.
3. Dy. Accountant General Administration, Office of Accountant General (Audit)-1, U.P., Allahabad.

Respondents

By Advocate Sri Amit Sthalekar

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed challenging the order/letter dated 17.06.2003 issued by respondent No. 3 rejecting the claim of the applicant for grant of compassionate appointment under dying in harness rules on the ground that the family circumstances cannot be deemed as indigent, justifying such an appointment. The applicant has sought by way of relief directions of this Court to quash and set aside the impugned order/letter dated 17.06.2003 and to direct the respondents to offer compassionate appointment to the applicant.

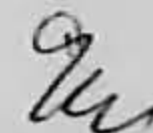
2. The facts and circumstances leading to the filing of this O.A. are that the father of the applicant Shri Jung Bahadur had been suffering from Cancer and ultimately expired in harness on 12.01.1998 barely seven months from the date of superannuation. The applicant's mother submitted a representation on 29.01.1998 to the respondents seeking compassionate appointment for her third son (the applicant). This claim was rejected by the respondents on 05.03.1998 without assigning any reason. She therefore submitted another representation which the

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respondents once again rejected on 19.11.1999 and 10.04.2000 without assigning any reasons. Being aggrieved, the applicant and his mother filed O.A. No. 35 of 2001 before this Tribunal. The Tribunal vide its Order dated 05.03.2003 quashed and set aside the impugned order and remitted the case back to the respondents with a direction to pass a reasoned and speaking order within a period of two months from the date of communication of the said order. In reply to the applicant's representation and in compliance of the Tribunal's order dated 05.03.2003, respondents passed the impugned order dated 17.06.2003. The applicant's main grievance is that despite the Tribunal's directions the case has been rejected on the ground that the applicant's family was in receipt of terminal benefits of Rs.4.12 lakhs and monthly pension of Rs.3679/-. The respondents have not taken into consideration the facts stated in the representation regarding the other two brothers staying separately and the discharge of the loan taken for his deceased father's treatment with the terminal benefits received. He has also cited the Judgment of the Allahabad High Court in Subhash Chandra Yadav Vs. State Bank of India and another reported in 2004 (5) AWC 4887 by which it was held that compassionate appointment cannot be denied just because the family is in receipt of family pension and two sons of the deceased employee are earning. The High Court had also observed that

"In our opinion the judgment cannot be sustained. It has been held by the Supreme Court in Balbir Kaur and another v. Steel Authority of India Ltd. and others, 2000 (6) SCC 493, that the grant of family pension does not disentitle one to get compassionate appointment. A similar view was taken by a Division Bench of this Court in State Bank of India and others v. Ram Piyarey, 2001 (2) AWC 1508."

3. The respondents' counsel denies the averments made by the applicant. His contention is that the case of the applicant was considered earlier but was not recommended by the Committee for grant of compassionate appointment. However, the representation of the applicant was once more considered in compliance of this Tribunal's order dated 05.03.2003 and rejected. Respondents argue that the applicant's family received Rs.4.12 lakhs towards terminal benefit besides Rs.3679/- as family pension which they felt were sufficient to hedge the family against any hardship, besides apart from the widow out three sons, two were already employed. In view of this the respondents concluded that the Departmental Selection Committee (DSC) did not consider the applicant's family to be in indigent circumstances and therefore not eligible for compassionate



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appointment. Respondents have relied on the Supreme Court's Judgment in the case of Umesh Kumar Nagpal reported in (1994) 4 SCC 138 in support of their stand. They therefore contend that the O.A. is devoid of merit and deserves to be dismissed.

4. Heard the learned counsels for both parties and perused the pleadings on record. The main points that the applicant reiterates in the rejoinder affidavit are that: -

- {i} The respondents have not shown any material to come to the conclusion that the financial crisis of the applicant has been diluted.
- {ii} Receipt of family pension cannot deprive the applicant of his right to get compassionate appointment.
- {iii} The terminal benefits the family received have been adjusted against the loan taken for treatment of the applicant's father.
- {iv} The applicants two brothers are married and living separately and are not providing any support to the applicant and his mother who were solely dependent on the income of the deceased Jang Bahadur.

5. It is a fact that the Counter Affidavit filed by the respondents has not addressed the above points in detail in an effort to rebut the same and hence justify the rejection of the applicant's claim. The respondents while relying on the point that the family of the applicant has been paid terminal benefits of Rs.4.12 lakhs hence the family is not in indigent circumstances, have apparently ignored whether the family had any liabilities to discharge thus nullifying the advantage of the terminal benefits. In this case the applicant has submitted that since his father died of cancer, the medical expense liability was covered by a Bank loan. Respondents have not indicated whether any part of the medical expenses so mentioned by the applicants have been reimbursed by the respondents as per rules in force. Normal expectation is that the respondents would examine all these issues wherein in a situation like this both the assets accruing and the liabilities to be discharged would be factored to arrive at the real financial condition of the family. This exercise has apparently not been carried out or if it has been, there is no reference to it in the counter affidavit or the impugned order dated 17.06.2003, despite this Tribunal's direction dated 5.3.2003. Supreme Court has repeatedly held that wherever representations or appeals are filed to higher authorities they should apply their mind to the facts given and they should pass a detailed and reasoned speaking order so that the order may satisfy the employee concerned and dissuade him from approaching the Court unnecessarily. The respondents have not abided

by this when they rejected the applicant's claim on previous occasions on 05.03.1998, 19.11.1999 and 10.04.2000 and again on 17.06.2003 despite this Tribunal's directions.

6. On the issue of the applicant's two brothers living separately and not supporting the family the respondents submit that one brother has his own business while the other is in Government service. They have however not elaborated on the basis of Government policy/rules or judicial pronouncements how this would adversely affect the applicant's claim. Here I would like to refer to the Supreme Court's ruling in State of H.P. and another Vs. Smt. Jasli Devi 1997 (5) SCC 301. 1996 (3) SLJ 88 (CC) wherein it has held that

"Where, a son of the deceased employee was already in Government service, held, the High Court erred in interfering with the denial of compassionate appointment by the department to another son of the same deceased employee."

In State of H.P. and Ors. v. Rajesh Kumar, 2002 SCC (L&S) 185, the Supreme Court has held as under: -

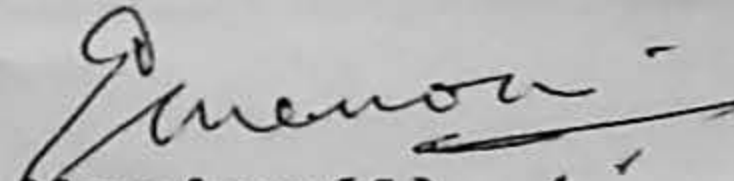
"Compassionate appointment-Widow seeking appointment of respondent, the third son of her deceased husband, on compassionate grounds when elder son already in govt. service but not supporting her- There being no provision in the Govt. policy framed on 18.01.1990 for the grant of employment to the second or third member of the family when one or more members of family are already in service, held, High Court was not justified in directing the grant of employment to the respondent-Right to claim employment assistance under such circumstances, held, vests only in widow and that too in accordance with the said Govt. policy."

Since one son of the deceased employee i.e. the brother of the applicant was already in Government service, the action taken by the respondents does not call for any interference by this Court on this count. However, the rejection of the case by the respondents was not conclusively shown to be on account of this factor.

7. Before I conclude, I must observe that I am aware of the fact that compassionate appointment cannot be claimed as a vested right nor can this Tribunal direct compassionate appointment be given to the applicant. Having observed thus, I must also observe that it is the bounden duty of the respondents to consider the case of the applicant

strictly in accordance with existing rules in force governing such cases and based on the outcome of such an examination pass a detailed and reasoned, speaking order, which is what they have not done in this case.

8. In view of the above, the impugned order dated 17.06.2003 is quashed as set aside. The case is remitted back to the respondents to reconsider the claim of the applicant taking into account all the parameters which govern such appointments as contained in the D.O.P & T Office Memorandum dated 09.10.1998 and pass a detailed, reasoned and speaking order within a period of three months from the communication of a certified copy of this order. With these directions, O.A. stands disposed off. No order as to costs.


Member (A)

/M.M./