

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.785 OF 2005.

Allahabad this the ^{9th} day of May 2006.

Hon'ble Mr. K.B.S. Rajan, J.M

Hari Pratap, S/o late Sri Gopi Nath Yadav, Resident
of Village Maksudana, P.O. Chaka, Saidabad, District
Allahabad.

.....Applicant.

(By Advocate: Sri R.K. Singh)

Versus.

1. Union of India through Posts & Telegraph
Department, New Delhi.
2. Chief Post Master General, U.P. Circle,
Lucknow.
3. Senior Supdt. of Post Offices, Allahabad.
4. Post Master General, Allahabad Region,
Allahabad.

.....Respondents.

(By Advocate : Sri S. Singh)

ORDER

Certain inconsistencies and inappropriate propositions
could be smelt in the policy relating to grant of compassionate
appointments, especially with reference to the yardstick being
adopted to ascertain, what is called, 'the more deserving cases'.

These are -

- (a) The larger the number of family members the greater
is the prospect of Compassionate appointment.

- (b) The larger the quantum of terminal benefits, the bleaker the prospect of compassionate appointment.
- (c) The larger the area of landed properties in possession of the family the less the prospect of compassionate appointment to the family member of the deceased government servant.
- (d) If there is any earning member in the family, irrespective of whether he is with the family and maintains the family or living separately and neglects the family, the same would be almost a bar for compassionate appointment for any other member.

2. Now the reasons as to why the above are inconsistent and inappropriate.

- (a) Family Planning has been one of the prime programs and national schemes (**State of Haryana vs Santra, (2000) 5 SCC 182**) of the Government which is also evident from the fact that maternity leave is not admissible for delivery of the third child (even if it be the second delivery, when first one was of twin children), ironically, in the event of unfortunate and untimely death of that government servant, who adopted the family planning and had only one child or two children, the family is deprived of the benefit of compassionate appointment, as, for such compassionate appointment the yardstick is that greater the number of family members, more the

GH ✓

(10)

prospect of compassionate appointment! A clear Dichotomy !!

- (b) Provident fund is meant for saving for the future and as long as the same with the Government, it is used by the Government for its constructive purposes; and if, with frugal living, a government servant saves more in his provident fund, the same costs his family the prospect of compassionate appointment in the event of his unfortunate and untimely demise, for, the larger the terminal benefits, the less the possibility of such appointment! This kills the intention to save for the future!

3. Again, it has been held in the case of **Govind Prakash Verma v. LIC of India, (2005) 10 SCC 289** a very recent case, *"The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules."*

4. Similarly, in **Balbir Kaur v. Steel Authority of India Ltd., (2000) 6 SCC 493** the apex Court on the contention of the employer that compassionate appointment in addition to Family Benefit Scheme would mean more benefits, held, *"We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a*



compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

(c) Possession of landed property is one thing; yield from the same is another. The Apex court has held in the case of **Orissa Cement Ltd. v. State of Orissa, 1991 Supp (1) SCC 430** as under:-

" The income from the land may be more or less due to a variety of reasons. In the case of agricultural lands, it may depend on the fertility of the soil, the sources of irrigation available, the nature of crops grown and other such factors."

Thus, while considering a case for compassionate appointment, irrespective of whether the land in possession is wet land or dry land, if only the extent of area of land possessed is taken into account, without any consideration of the exact annual yield out of it, the same may not reflect the correct position. Again, more often than not, such landed property would be hereditary one with only undivided share to the family concerned, in which event, even sale of that property would not be that easy.

(12)

(d) "A son is a son until he gets a wife. A daughter is a daughter throughout her life."

Savita Samvedi v. Union of India, (1996) 2 SCC 380

If the son of a deceased government lives separately and is earning, what is the benefit to the other family members?


5. The above involves honest heart searching and perhaps it is time that the Rule making authorities reconsider the yardstick for compassionate appointment keeping in view the above dicta of the Apex Court.

6. Now the facts of the case

(a) The applicant's father Gopi Nath Yadav, a sub post Master died in harness on 26.10.2000 leaving behind him his mother Abhiraji Devi, mother of the applicant and four sons and one daughter.

(b) The deceased first son Lal Pratap was living separately while other three sons are unemployed. The applicants's sister was married. However, during the course of pregnancy, applicant's sister became and ultimately her husband divorced her. The applicant's sister alongwith minor son Rajnish aged about 5 years is living with her mother Sita Devi.

(c) After the death of applicant's father, the applicant's mother has received a sum of Rs. 5,33,504/-, but on account of financial scarcity on prolonged and major ailment of daughter, the amount has been spent till the date. There is only 2 Biswa 10 dhoor agricultural land in the applicant's family.

 (d) The applicant's mother is receiving Rs. 4909/- way of pension. Except this, there is no other source of

13

income. The applicant has Kachcha residential house in the village.

- (e) The applicant in prescribed proforma has moved an application for getting compassionate appointment. Subsequently, the respondents have issued letter dated 6.3.2003 and 7.4.2004 requiring the applicant to submit income certificate issued by the competent authority, list of dependent of the deceased's family including major and minor, certificate about residential house.
- (f) The entire documents as required by respondents have been submitted. The respondents passed the orders dated 25.4.2005 refusing to give compassionate appointment to the applicant.

7. The reasons for rejection of the case of the applicant by the department are as under:-

- (a) Compassionate appointment cases are considered by the Circle Relaxation Committee (in short CRC) as per the scheme circulated by the Department of Personnel & Training O.M. dated 9.10.1998. The compassionate appointment can be made up to 5% vacancies fallen under direct recruitment quota in Group 'C' and 'D' posts.
- (b) The grounds which can justify compassionate appointment are primarily condition of the family and it should be offered as relief against the destitution. In addition, the objective of the scheme is to help the family to get out the emergency, which is indigent and deserves immediate assistance.
- (c) The limit of 5% has been fixed in pursuance of order of Apex Court in the case of U.K. Nagpal Vs. State of Haryana & Others reported in JT 1994 (3) SC 525 in which Hon'ble Supreme has held that "as a rule appointment in Public service should be

Gh

made strictly on the basis of open invitation of applications and merit and appointment on compassionate grounds is an exception to the Rule. Any such exception should, therefore, be made to the minimum possible extent say one or two percent or maximum of five percent. Hon'ble Supreme Court has further held that the compassionate appointment cannot be granted after lapse of reasonable time.

- (d) Hon'ble Supreme Court in Himanchal Road Transport Corporation Vs. Dinesh Kumar reported in JT 1996 (5) SC 319 and Hindustan Aeronautics Limited Vs. Smt. A. Radhika Thirumalai JT 1996 (9) SC197 has held that appointment on compassionate grounds can be made only if a vacancy for that purpose.
- (e) Vide O.M. dated 3.12.1999, it was further clarified by the DOPT that the committee should also take into account the position regarding availability of vacancy for such appointment.
- (f) However, the case of the applicant was not recommended for appointment by the CRC, Lucknow taking into account the inter se merit of all cases in terms of assets and liabilities and indigence of the family like total number of dependents minor children marriage of daughters, aged parents with prolonged ailments financial condition and other relevant factors.

8. Arguments were heard and documents perused.

9. The records produced by the Department have also been gone through and the entry in respect of the applicant is as under:-

Gh

15

No	Appl.	Date of Death	Family pension	Amount of Terminal Benefits	No. of Dependents	No. of Un-married Daughters	No. of minor Children	No. of Earning Member	Details of landed property and Income thereof	Recommendation of CRC
/2002/7 Sri Pratap (Son) OB 23.11.1976		26.10.2000	4909	5,79,504	(5)including widow	NIL	NIL	(1)One Elder Son is employed as EDMC utrawan	2Biswa 10 Dhoor Agricultural Land	Not Recommended (One Son employed)

The reasons for rejection are thus, more terminal benefits, possession of some agricultural lands and one son having been employed.

10. As regards terminal benefits, the decision of the Apex Court in the case of Govind Prakash Verma (Supra) negates the proposition that terminal benefits would bar compassionate appointment.

11. As regards landed property, the mere extent of agricultural land would not go to show that the same is yielding. Orissa Cements Ltd case (supra) is relevant.

12. As regards one of the son's earning, if he is already married, he has his own family and the observation of the Apex Court in the case of Savita Samvedi would answer the same. A son, who is married and lives separately fulfils the definition of 'son' as given in the above case. He having left the family of his parents, his income would be of least

16

assistance to the family. True, it is the social obligation and duty of the son to look after his parents, yet, pragmatism is something otherwise. Again, in the instant case the individual is employed in a low grade and the decision of the Apex Court in the case of **Govind Prakash Verma v. LIC of India, (2005) 10 SCC 289**, as reproduced hereunder would show that gainful employment should be something substantial.

"So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also."

13. In view of the above, interest of justice would be met, if the Respondents are asked to have a re-look in the entire matter, in consultation with the Department of Personnel to arrive at **a just conclusion** (and not just a conclusion).

14. In addition, while considering the terminal benefits and pension (if the Govt. feels that the same is justified even after the delivery of the above cited judgments in the cases of Balbir

(17)


Kaur and Govind Prakash Verma), what is to be seen is not the mere total quantum paid to the family of the deceased. There may be cases where the family would have spent a huge amount (by borrowing) on the medical treatment of the deceased during his life time which the family had to repay. The deceased, it is possible, would have left a huge debt behind him, which it is only the family that has to liquidate and the terminal benefit is the lone source to bank upon for such liquidation. For, social respect to the family would be in tact when the family repays such debts. Hence, while taking into account the extent of terminal benefits, it must be ensured as to what is the balance available with the family at the time of applying for compassionate appointment and whether the amount withdrawn from out of the terminal benefits was satisfactorily accounted for.

15. As regards the number of dependents, a mentally retarded person should be considered as a minor. Again, an unmarried daughter is with the parents, till she gets married and starts living in her matrimonial home. At the same time, if for any reason she is divorced or unfortunately, she becomes a widow, she is again back home. Pragmatism and social customs compel for such a situation and as such, just as an unmarried daughter is considered as a dependent, so should be a daughter who is back home either as a divorcee or a widow.

16. One more aspect. The limitation in the number of vacancies earmarked for compassionate appointment is

understandable. 5% of the direct recruit vacancies may not perhaps be increased, as the same together with other quota should be restricted to that level as provided for by the Apex Court in various judgments. However, one aspect could well be considered by the Government. Though 'descendents' cannot be a consideration in matters of employment, borrowing the spirit of compassionate appointment, that the family of the deceased may be provided some assistance, in matters of employment in Group C or D, other things being equal, preference may be given to the wards of deceased government employees in the same Ministry or Department. This would to a substantial extent, give relief to the families of the deceased employees and moreover, while grant of compassionate appointment might have to be given even to an otherwise a non-efficient individual, this kind of preference is given without diluting the efficiency of the organization, since, such a preference would be given only when other things are equal. Of course, the preference cannot be for more than one family member.

17. There are of course, a few judgments, which stipulate that while considering the case of compassionate appointment, the fact that it is to meet the immediate financial crisis and these cannot be lost sight of. However, since the latest judgment i.e. Govind Prakash Verma (supra) has prescribed certain features, consideration of the same would be more appropriate.



19

18. The OA is, therefore, disposed of with the direction to the respondents to take into account the decision of the Apex Court and make out a proper case to the Department of Personnel for their consideration and decision and have the decision of the Department of Personnel communicated to the applicant and if the applicant is eligible for compassionate appointment, he be, subject to availability of vacancies given the appointment. In case of rejection of the case, the detailed reasons, as may be communicated by the Department of Personnel, be conveyed to the applicant.

19. In view of the fact the matter involves in-depth consideration at different ministries and at different levels, calendaring any time schedule would not be appropriate as the respondents may require adequate time to consider the matter. This Tribunal is certainly confident that the authorities would not unnecessarily delay the matter and would accord due and reasonable priority. Under the circumstances, no costs.


MEMBER-J

GIRISH/-