

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO. 939 OF 2005

Dated this *Monday* the *28* th day of February, 2011

CORAM:

HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER

Smt. Rekha Srivastava w/o
Late Shri Ramesh Chandra Srivastava
S/o Late Shri Devi Pratap Srivastava,
R/o 1133/185 Hamirpur Road,
O Block, Kidwai Nagar, Kanpur.
By Advocate : Shri Satish Mandhiyan

.....Applicant.

VERSUS

1. Union of India through
Secretary, Ministry of Labour,
New Delhi.
 2. Director General, Employees Estate Insurance Corporation
Panchdeep Bhawan, Kotla Road,
New Delhi.
 3. Director, Regional Office, E.S.I.
Panchdeep Bhawan, Sarvodaya Nagar,
Kanpur.
 4. Deputy Director (Administration)
Regional Office, ESI, Panchdeep Bhawan,
Sarvodaya Nagar.Respondents
- By Advocate: Shri P.K. Pandey, Counsel for the Union of India is not present.

ORDER

The applicant herein Smt. Rekha Srivastava w/o Late Shri Ramesh Chandra Srivastava S/o Late Shri Devi Pratap Srivastava, have filed the instant Original Application whereby seeking quashing of order dated 3rd April, 1998, (Annexure A.7) and order dated 13.1.1999 (Annexure A.12) whereby his case for appointment under the Compassionate Scheme has been rejected.

2. Brief facts of the case are that the husband of the applicant when alive filed the instant original application whereby seeking an appointment on compassionate ground on the death of his father, who was working as Daftary

He

died on 10.4.1996 while he was in service. Immediately without loss of any time, the mother of the applicant moved an application on 15th of May, 1996 seeking appointment under the Compassionate Scheme for his son (Applicant) at that time. She stated to have submitted another application on 14.6.1996 on the direction of the respondents. It is further submitted that the Deputy Director (Administration) wrote a letter on 19th of July, 1996 requiring the applicant to give actual position with regard to points enumerated therein. In compliance of that, the applicant submitted the entire record as desired on 19.7.1996 which was received in the office of the respondents at Kanpur on 22.7.1996. On 29th October, 1996 the case of the applicant for appointment has been rejected by the respondents as there was no vacancy in Class III and consent was sought from the applicant for giving appointment in Group 'D' post for which he consented. On 7th October, 1997 the applicant again received a letter written by respondent No.4 requiring the applicant to submit the position with regard to their survival and employment if any. The said letter was stated to be replied by the applicant in which the applicant specifically stated the hardship faced by the applicant's family and requested the respondents Department to consider his case for appointment even in Group D. The claim of the applicant was rejected by the impugned order dated 3rd April, 1998 (Annexure A.7). Subsequently also vide order dated 13.1.1997 (A.12), the claim of the applicant was again rejected by respondent No.2 on appeal and hence the instant O.A.

3. During the pendency of the O.A. the husband of the present applicant died and she moved application for amendment for substituting her name as Legal Heir in place of her late husband which was allowed by this Tribuna.

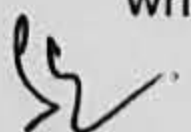
4. Upon notice, the respondents filed their detailed counter affidavit and contested the claim of the applicant. Firstly, they have raised objection with regard to the limitation and has stated that the case of the husband of the applicant was rejected by the respondents in the year 1999. The instant Original Application has been filed after a period of six years. Therefore, in terms of Sec.

32

21 of the Administrative Tribunal Act 1985, the O.A. deserves to be dismissed outrightly on this count. Secondly, on merit it is stated that at the time of death of the father of the husband of the applicant he was 32 years old and was also married. Therefore, he cannot be considered to be dependent. They also submitted that the family of the applicant had also received sufficient terminal benefits besides the monthly family pension. After considering the case of the applicant viz-a-viz the other candidates in terms of the O.M. issued by the Nodal Agency viz. Department of Personnel & Training (DOPT), the case of the applicant was rejected when found not in merit viz-a-viz other similarly situated persons. The applicant has also filed rejoinder affidavit in which she has stated that once the respondents have sought consent of her husband for appointment in Group 'D' post then the respondents cannot be allowed to say that the case is time barred because delay was on this part as they not decided the case keeping in view the urgency and linger on the same. Thereafter by the impugned order the case of the applicant has been rejected by single line order without giving any reason.

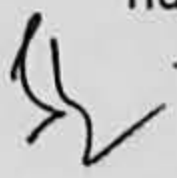
5. On the date fixed i.e. on 21.2. 2011, the Counsel for the respondents Shri P.K. Pandey circulated the adjournment slip on the ground of illness which is opposed by the counsel for the applicant on the ground that one pretext or other respondents delaying the matter. Therefore, the instant case was heard and the order was reserved.

6. Learned counsel for the applicant Shri Satish Mandhiyan has vehemently argued that the impugned order (Annexure A.7) is non speaking as no reason whatsoever has been given by the respondents while rejecting the case of applicant. He further submitted applicant's husband also died awaiting appointment. After his death all the responsibilities/burden to maintain the family shifted to the shoulders of the applicant. Therefore, the applicant is having more deserving case than others as she is facing financial crises and there is nobody who has to earn bread for her family. He further submitted that the family



condition of the applicant family is more indigent condition therefore, in terms of O.M., the case of the applicant could have been considered by the respondents in view of the subsequent developments. He further submitted that after the death of her husband the applicant has already moved an application seeking her claim for appointment because of the death of her husband in lieu of her father in law. He submitted that daughter-in-law is also held to be entitled for doing compassionate appointment. He placed reliance on the judgement passed by the Hon'ble Jurisdictional High Court at Allahabad to the effect that the daughter in law is also entitled for seeking appointment on compassionate ground i.e. Urmiladevi vs. U.P. Power Corporation, Lucknow and Ors. 2003 (2) SAC 460. On the strength of the above judgement of the Hon'ble jurisdictional High Court he submitted that the case of the applicant has to be considered for appointment on compassionate ground. On merit he argued that in terms of judgement passed by Hon'ble jurisdictional High Court in the case of Rahul Tandon vs. Regional Manager, Allahabad Bank and Ors. 2003 (2) UPLBEC 172 and Smt. Rajodevi and another vs. State of U.P. and Ors. (2004) 1 SAC 703 and the order passed by this Tribunal in O.A. No. 1222/05 decided on 21.8.2007 in the case of Pravin Kumar vs. UOI & Ors the impugned order is liable to be set aside and the matter be remanded back to the concerned authority to consider the case of applicant afresh

7. I have considered the submissions made by the Ld. Counsel for the applicant and have also perused the Counter Affidavit, other relevant documents and have gone through the judgement cited by the Counsel for the applicant. From the Counter Affidavit it is clear that they have taken the preliminary objection with regard to limitation and secondly, that the applicant is not dependent on his father, when his father expired on 10th April, 1996 as he was already married. Moreover they have also received terminal benefits besides monthly family pension. It is nowhere whispered in the Counter Affidavit that the husband of the applicant was employed and earning. No documents to this



effect has been placed on the file. Moreover the applicant at that time i.e. husband of present applicant even died leaving behind the family. Admittedly no reason whatsoever has been stated in the impugned order. The impugned order is to be termed as *Laconic Order*. The basic principle of Constitution makers, it is imperative for administrative authorities clothed with the duty to decide something on consideration of policy of a Scheme, to act judicially as hedge against arbitrariness. It is in this conspectus that reasons are the imperative requirements for an administrative authority and in the instant case, the authorities having not assigned any reason acted in antagonism of the basic principle of the Constitution and as such the order cannot be sustained.

8. Moreover, the benefit of employment by way of Compassionate Appointment under Die-in-Harness Rule should flow liberally unless there be clinching evidence to demonstrate that the family of the deceased had sufficient means to fall back upon. The Scheme for appointment on Compassionate Ground is a Scheme in the nature of beneficial legislation to those on whom the destiny has inflicted the unkind. The underlying object of this beneficial legislation is to alleviate the suffering and to wipe tears to the extent possible of the grief stricken family. If the family is left to find on this own and is not extended the fruits of this beneficial legislation, it would be a negation of social protection and consequences, the social justice, the key short-anchor conceived in our Constitution as a welfare state. I find support from the Judgement of Hon'ble Jurisdictional High Court in the case of Rahul Tandon vs. R.M. Allahabad Bank, Regional Office, Allahabad (2003) 2 UPLBEC 1172 the Hon'ble jurisdictional High Court has observed as under:

"6. While considering the case of compassionate appointment, competent authority is to address itself to the aspect of livelihood and a duty is enjoined on him to consider whether applicant has sufficient means of livelihood to pull on the family with human dignity. The aspect as to the right of life and to live with human dignity after the death of the sole bread earner, to all appearances, was the consideration, which evoked benefactory observation of the Apex Court in *Balbir Kaur and Anr. Vs. Steel Authority of India Ltd. And Ors.* 2000 (3) ESC 1618 (SC). In this case, the Apex Court being at

5

its solicitous best observed that the feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find solace to the mental agony and manage its affairs in the normal course of events. In the ultimate analysis, it was equipped that it was not that monetary benefit would be replacement of the bread earner but that would undoubtedly bring some solace to the situation. The distillate of the above decision would appear to be that the lump sum amount alone received by the family of the deceased couldn't be a substitute for employment to be offered to any eligible member of the family of the deceased in order to keep the pot of family boiling after the death of the sole bread earner. It thus, follows that right to livelihood and consequentially the right to live with human dignity have to be reckoned into consideration while delving into tenability of the claim by surviving member of deceased family for compassionate appointment.

9. For the reasons stated above the impugned order rejecting the claim of the husband of the applicant is set aside. The matter is remanded back to the respondents to reconsider the matter in the light of what has been stated above within a period of two months from the date of receipt of certified copy of this order.

10. In the result, the Original Application is allowed. No order as to costs.


(Sanjeev Kaushik)
Member (J)

Sj*