

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00836/2019

Thursday, this the 23rd day of September, 2021

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member

Hon'ble Mr. K.V. Eapen, Administrative Member

M.R. Rajeev Nair, aged 27, S/o. (late) P. Madhavan Nair,
 Sarada Sadanam, Ayira PO, Parassala, Thiruvananthapuram,
 695 502, Mobile – 9497772240.

Applicant

(By Advocate : Mr. R.T. Pradeep)

V e r s u s

1. The Union of India, represented by the Secretary,
 Ministry of Home Affairs, New Delhi – 110 001.
2. Intelligence Bureau, represented by its Director,
 Ministry of Home Affairs, Government of India,
 IV Floor, AGCW&M Building, IP Estate,
 New Delhi – 110 002.
3. Additional Deputy Director, Subsidiary Intelligence Bureau,
 Ministry of Home Affairs, Government of India,
 29, Papanasam Sivan Salai, Mylapore, Santhome,
 Chennai – 600 004.
4. Joint Deputy Director, Subsidiary Intelligence Bureau,
 Ministry of Home Affairs, Government of India,
 29, Papanasam Sivan Salai, Mylapore, Santhome,
 Chennai – 600 004.
5. Joint Deputy Director, Subsidiary Intelligence Bureau,
 Thiruvananthapuram – 695 001.

Respondents

(By Advocate : Mr. N. Anil Kumar, SCGSC)

This application having been heard on 07.09.2021 through video conferencing, the Tribunal on 23.09.2021 delivered the following:

ORDER

Hon'ble Mr. P. Madhavan, Judicial Member –

This is an OA seeking the following reliefs:

- “i. To quash Annexure A5;*
- ii. To direct the respondents to provide compassionate appointment to the applicant according to his educational qualification within such time fixed by this Hon'ble Tribunal;*
- iii. To pass such other order or direction as may be deemed just, fit and necessary in the facts and circumstances of the case.”*

2. The case of the applicant is that his father was working in the Subsidiary Intelligence Bureau (SIB) under the Ministry of Home Affairs and he died untimely on 18.8.2017 while working as ACIO/EC in SIB at Chennai. The deceased father had in his credit Army service and after retirement he was employed in the SIB. The deceased employee is survived by his wife, son and a daughter. The daughter was married during the life time of the deceased but her husband has no regular income and his sister and husband were also residing along with the deceased. The applicant as well as his family was wholly dependent on the deceased for their livelihood. The applicant sought appointment in dying in harness scheme with full details of moveable and immoveable property and no objection certificate from his sister. The applicant found it very difficult to pull on himself, his sister and sister's family who were dependent on his mother for the livelihood now. The 4th respondent had sought for the details of the family pension and his mother has forwarded the details of the pension received by her to the 4th respondent as per Annexure A4. On 6.6.2019 the 3rd respondent had issued a communication rejecting the demand for compassionate appointment stating that the family was not found indigent.

According to the applicant Annexure A5 impugned order is not a speaking order and the applicant was not heard before issuing the said order. The grant of pension to the wife of the deceased and the quantum received by the wife of the deceased cannot be considered for compassionate appointment. It was also contended that the unmarried and unemployed son of the deceased i.e. the applicant is wholly dependent on the deceased for the livelihood and is entitled for compassionate appointment.

3. The respondents filed a detailed reply statement. They admitted the employment of the deceased with the SIB at Chennai and they also admitted the sudden demise of the employee on 18.8.2017 leaving behind his son and married daughter. They had also admitted that the applicant had applied for compassionate appointment in the SIB. According to them the application for compassionate appointment was considered in the meeting of the Compassionate Appointment Committee (CAC) on 12.4.2019 but the committee did not recommend the applicant for appointment since the family was not found indigent. While taking a decision in this case the CAC had considered the fact that the family had received terminal benefits of Rs. 9,32,760/- and a pension of Rs. 53,952/- per month (Rs. 23,863/- + dearness relief from SIB) and Rs. 30,089/- from the Army. The family of the deceased also possesses a newly constructed house which values around Rs. 16 Lakhs and a property of 60 cents which values around Rs. 8.55 Lakhs. The claim of the applicant was considered in the light of the DoP&T OM dated 16.1.2013 which clearly states that only dependents of an employee dying in harness leaving the family in penury and without any means of livelihood can be appointed on compassionate grounds. In this case the

family of the deceased employee was not found in destitution as a family pension of Rs. 53,952/- is received by the wife of the deceased. According to them the daughter of the deceased government servant is settled with her own family and living separately. So the contention of the applicant that his sister is also living along with them is incorrect. According to the respondents the husband of the sister of the applicant is gainfully employed as a software engineer in Techno Park at Trivandrum. Even though the Department has full sympathy with the family due to the untimely demise, they cannot be considered for the appointment due to the above facts. As per the DoP&T scheme dated 16.1.2013 a balanced and objective assessment of the financial condition of the family of the deceased has to be assessed, taking into account the sustainment of life and other aspects especially the needs of the family etc.

4. We have heard the counsel for the applicant as well as the counsel for the respondents in this case. The main contention raised by the counsel for the applicant is that the family pension received by the wife of the deceased employee cannot be taken into consideration for considering the compassionate appointment. It was also contended that Annexure A5 impugned order is not a speaking order and the applicant was not heard before issuance of Annexure A5. So he seeks to set aside Annexure A5 and seeks compassionate appointment. It was also contended that the respondents have not calculated the income from landed property also for taking a decision.

5. We have gone through the pleadings and contentions raised in this case. There is no dispute between the parties regarding the employment of the applicant's father in the SIB and there is also no dispute regarding the untimely death of the applicant's father. There is also no dispute regarding the dependents of the deceased employee. On going through the reply statement filed by the respondents Department, it appears that the CAC had taken into consideration the gratuity, family pension, etc. for coming to the conclusion that they are not in penurious circumstances in this case. In ***Govind Prakash Verma v. Life Insurance Corporation of India & Ors.*** – CA No. 452 of 2004 dated 23.1.2004 [(2005) 10 SCC 289] the Hon'ble Supreme Court held as under:

“6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as be 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. 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 member 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. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.”

6. From the above it could be seen that the pension and the retirement benefits received by the widow of the deceased employee cannot be considered as a reason for rejecting the claim of the applicant for compassionate appointment. It may be true that the family pension and gratuity given to the family of the deceased employee can be considered for the compassionate appointment when the scheme of the Department permits it. Here in this case on going through the DoP&T OM No. 14014/02/2012-Estt.(D), dated 16.1.2013 it can be seen that there is no specific mention regarding the family pension and gratuity for consideration of income of the dependent family. It is also not clear how the respondents had ascertained the income from landed property. From the above discussion it can be seen that the respondents were not expected to consider the family pension and gratuity received by the family of the deceased for rejecting the claim of the applicant for compassionate appointment. The finding of the CAC in this respect is not proper and cannot be accepted in this case. They are also expected to give a reasoned order in these types of cases. In such circumstances the order passed by the CAC as Annexure A5 is not proper and the question requires to be considered again.

7. In the light of the above illegality committed by the respondents Department, we hereby set aside Annexure A5 order and direct the respondents to consider the claim of the applicant for compassionate appointment in the light of the relevant scheme on the subject and various decisions of the Courts in this respect and pass a reasoned and speaking order within a period of six months from the date of receipt of a copy of this order.

8. The Original Application is disposed of as above. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00836/2019

APPLICANT'S ANNEXURES

- Annexure A1** – True copy of communication dated 21.8.2017 from 2nd respondent to the mother of applicant.
- Annexure A2** – True copy of communication dated 12.9.2017 by 4th respondent to the mother of applicant.
- Annexure A3** – True copy of representation dated 17.10.2017 by the mother of applicant to 5th respondent.
- Annexure A4** – True copy of communication dated 17.1.2018 from 4th respondent calling the details of family pension for the Army service of deceased.
- Annexure A5** – True copy of communication dated 6.6.2019 by 3rd respondent.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-X-