

OA No. 291/285/2019

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/285/2019

Order reserved on 08.09.2021

DATE OF ORDER: 15.09.2021

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Kuldeep Singh Tailor Son of late Shri Nemi Chand Verma, age about 19 years, (Late Nemi Chand Verma was working as U.D.C. at Branch Office, Panchdeep Bhawan, Employees' State Insurance Corporation through its Branch Manager, Pur Road, Bheelwara, Rajasthan), Resident of 678, Ambika Colony, Bihari Ganj, Ajmer (Rajasthan). (Mob. No. 9001709660).

....Applicant

Ms. Anima Jain with Ms. Mahima Kirori, counsel for applicant (through Video Conferencing).

VERSUS

1. The Director (E-II), Employees State Insurance Corporation, "Panchdeep Bhawan," C.I.G. Marg, New Delhi, Pin Code-110002.
2. The Regional Office, employees' State Insurance Corporation, through its Regional Director, Panchdeep Bhawan, Bhawani Singh Marg, Jaipur, Rajasthan, Pin Code-302001.
3. The Sub-Regional Office, Employees' State Insurance Corporation through its Assistant Director, 5, Bhupalpura, R.K. Plaza, Udaipur, Rajasthan, Pin Code-313001.

OA No. 291/285/2019

4. The Branch Office, Panchdeep Bhawan, Employees' State Insurance Corporation, through its Branch Manager, Pur Road, Bheelwara, Rajasthan, Pin Code-311001.

.... Respondents

Shri T.P. Sharma counsel for respondents (through Video Conferencing)

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- i. Issue and appropriate order or directions thereby quashing and rejecting the order / letter dated 30-01-19 declaring the action of the respondents in declining appointment to the applicant on compassionate ground in place of his late father Shri Nemi Chand Verma, to be wholly illegal, arbitrary, unreasonable, unjustified and unconstitutional;
- ii. issue an appropriate order or directions thereby declaring the applicant entitled/eligible for his appointment on compassionate ground in place of his late father, who died while in their services;
- iii. By an appropriate order or directions, the respondents be directed to forthwith give appointment to the applicant on compassionate ground in place of his late father who died while in their services;
- iv. by an appropriate order or directions, the cost of the original application (OA) may kindly be awarded in favour of the humble applicant.

- v. Issue such other order as may be deemed just and proper by this Hon'ble Tribunal in the facts and circumstances of the case and in favour of the humble applicant."

2. The brief facts of the case, as stated by the applicant, are that late Shri Nemi Chand, father of the applicant, expired on 06.06.2016 while he was in service and he was the only bread earner in the family and he left behind him his widow, Smt. Renu Verma, his two daughters, the present applicant and two sisters of ex-employee, (late Shri Nemi Chand), who are mentally disabled and who all were dependent on late Shri Nemi Chand. At the time of death of the ex-employee, the present applicant was minor and was about 17 years of age. The mother of the applicant applied for compassionate appointment of the applicant on 19.07.2016 stating that there are financial liabilities to maintain several members of the family and their condition is pitiable, so appointment may be given to the son in place of her late husband Nemi Chand. As per letter dated 21.06.2017, applicant's mother was informed that as per DOPT, Govt. of India instructions dated 16.01.2013, no relaxation can be granted in compassionate appointment before 18 years of age and, hence, name

OA No. 291/285/2019

of other family member be sent for compassionate appointment in the office, so that proceedings can be done. In the year 2018, when the applicant completed 18 years of age, he again applied for compassionate appointment. In between, there were several correspondences with regard to particulars and details to be provided by the applicant along with several documents. As per letter dated 18.06.2018, all deficiencies were cleared and Affidavits along with application form was submitted. The respondent No. 1 issued an order/letter dated 30.01.2019 to applicant's mother in reference to letter dated 22.11.2018 rejecting the claim of the applicant for compassionate appointment. As it is highly unjust on the part of the respondents in not considering his case for compassionate appointment as their family is still in indigent condition and as he has a legitimate right to be considered for the said appointment but the respondents are not considering his genuine claim. Therefore, the applicant is forced to file the present Original Application seeking compassionate appointment.

3. The respondents filed their reply stating that late Shri Nemi Chand Verma, was survived by his wife, two

OA No. 291/285/2019

daughters (out of which one is married), one minor son, mother and two sisters (both mentally retarded). Widow of the deceased employee is working as a government teacher at Ajmer, Rajasthan. The applicant was minor at the time of death of his father. Therefore, there are no indigent circumstances for the family of deceased employee to seek compassionate appointment immediately after his death. After attaining majority, the applicant again applied for compassionate appointment and the same was referred for consideration through letter dated 09.02.2018, (Annexure A/8). It is further stated that appointment on compassionate grounds cannot be claimed as a matter of right. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. In the present matter, the case of the applicant was carefully examined and considered in the light and keeping in view the instructions issued by DOPT and it was found that the applicant is not eligible for appointment on compassionate grounds not merely because of age limit but also that there was no indigent circumstances and that the family was having sufficient means of

OA No. 291/285/2019

livelihood to get over the emergency. Thus, as the action of the respondents is just and fair, the relief claimed by the applicant deserves no merit and the Original Application is liable to be dismissed.

4. The applicant has filed a rejoinder rebutting the claim of the respondents and stated that though respondents were aware of the fact that the applicant was a minor and thereafter as and when he attained majority, he continuously followed up for compassionate appointment. He further stated that though his sisters were eligible for getting a job but as their marriage had already been fixed, so they were not in a position to get the job. The applicant has responsibility of two sisters of his late father who are mentally disabled who were fully dependent on his late father. Looking to these facts, it is clear that the mother of the applicant has more financial liability to maintain all of them and their condition is pitiable, so denying appointment to the applicant is totally unjustified as it is very difficult in the present time to maintain the family by a single earning person. The respondents in a cursory manner have rejected the claim of the applicant without considering the actual position of the family of the deceased employee,

ignoring the facts and circumstances of the case and in clear violation of Article 14 of the Constitution of India. Though his case has been considered but yet he has not been given compassionate appointment. Therefore, his genuine claim still exists and he prays for compassionate appointment.

5. Heard learned counsels the parties through Video Conferencing and perused the material available on record along with judgments.

6. The applicant besides reiterating the facts stated that the object of compassionate appointment is to enable the family of the deceased employee to tide over the crisis resulting due to the death of the bread-earner, who has left the family in penury and without any means of livelihood. The applicant pointed out that he is fully dependent on his father and has no other source of livelihood and has to maintain two mentally disabled sisters of his late father as well as his sisters. As the respondents have not rightly considered the claim of the applicant, he deserves appointment on compassionate grounds. The applicant further prayed that merely because his mother is working cannot be a ground that the condition of the

OA No. 291/285/2019

family is not indigent as they have several financial liabilities and it is not sufficient to maintain the family as the family is facing pitiable circumstances and the applicant has relied upon several judgments in his favour.

7. The respondents, on the other hand, pointed out that the submission of the applicant is totally incorrect. The respondents have considered the case of the applicant in accordance with the rules and policy in vogue keeping in mind the DOPT instructions and guidelines on the subject and the applicant could not be given compassionate appointment as he was minor and his mother is also working and the family cannot be said to be dying in harness or is in indigent condition and his case cannot be said to be a deserving case for consideration / appointment on compassionate basis. Also his claim deserves to be rejected as otherwise the very purpose for grant of compassionate appointment will be frustrated. There are several judgments on the said issue which are very clear that the said appointment cannot be claimed as a matter of right. Therefore, the present Original Application has no merit and the same deserves to be dismissed.

8. The factual matrix of the case is that the father of the applicant, late Shri Nemi Chand expired on 06.06.2016 while in service and the ex-employee left behind him his wife, two daughters (engagement of both daughters have been done before the death of the father of the applicant and are now married), the present applicant and two sisters of deceased employee, who are mentally disabled. They were dependent on the deceased employee though his wife was in government service as a teacher in Ajmer. Respondents have failed to consider the case of the applicant in a positive manner as their condition is pitiable and it is very difficult to maintain as they have several financial liabilities. On the other hand, respondents have examined and considered the case of the applicant as per govt. instructions and guidelines but his case was not recommended as the same was not found to be deserving for several reasons that when the applicant applied for compassionate appointment, he was a minor and none of his sisters though eligible did not apply and, therefore, family cannot be said to be in penury or without any means of livelihood.

OA No. 291/285/2019

9. The grounds of challenge raised by the applicant are that after death of his father and though his family is in indigent circumstances, the case of the applicant was not considered positively. Though the mother of the applicant is working as a govt. teacher but the financial liabilities are such that it is very difficult for them to maintain themselves and so the applicant deserves appointment on compassionate grounds and that their condition is pitiable. To get into the merits of these grounds, it has to be seen whether respondents have considered the case of the applicant in the light of Govt. instructions and OMs on the subject. It is seen that the respondents have examined and considered the case of the applicant, but the same could not be recommended for grant of compassionate appointment as they did not feel that the family is in penury or without any means of livelihood.

10. As seen, the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. The applicant has only a right to be considered for appointment against a specified quota even if he fulfils all the eligibility criteria and the selection is made of

OA No. 291/285/2019

the most deserving cases in the respective quota. Moreover, appointment on compassionate grounds cannot be claimed as a matter of right. In the present matter, it is also clear that the family cannot be said to be either in penury nor can be said to be dying in harness as the family is able to maintain itself. Also in compassionate appointment, the object and purpose to provide compassionate appointment is to enable the family to tide over the sudden crisis which arises due to the death of the sole breadwinner. The mere death of an employee in harness does not entitle his family to such source of livelihood. The authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that, but for provisions of employment, the family will not be able to meet the crisis that the job is offered to the eligible member of the family.

11. In the judgment of the Hon'ble Apex Court in the case of Central Coalfields Limited through its Chairman and Managing Director and Ors. vs. Parden Oraon [Civil Appeal No. 897 of 2021 (arising out of SLP (C) No. 10514 of 2020 decided on 09.04.2021)], as relied by the applicant, the Hon'ble Apex Court while allowing the Appeal has held that "merely

OA No. 291/285/2019

because the respondent is working, her son cannot be denied compassionate appointment as per the relevant clauses of the National Coal Wage Agreement. It cannot be said that there was any financial crisis created immediately after Respondent's husband went missing. Though the reasons given by the employer to deny the relief sought by the Respondent are not sustainable, it is correct that Respondent's son cannot be given compassionate appointment at this point of time". In the present case, we are not governed by the clauses of National Coal Wage Agreement nor there is any agreement by which the applicant can state that he has a right for such appointment. In the judgment of the Hon'ble Supreme Court in the case of Director General of Posts vs. K. Chandrashekar Rao, [Civil Appeal No. 9049 of 2012 (arising out of SLP (C) No. 19871 of 2009, decided on 13th December, 2012), as relied by the applicant, in those bunch of cases, the appointments under compassionate grounds made were in excess of quota reserved for the said purpose and so their services were terminated for no fault of said persons but for the fault of the administration, this is not the situation in the present case. Thus, we are not in agreement with the judgments relied by the applicant

OA No. 291/285/2019

as the facts and circumstances of the said cases are not applicable to the facts and circumstances of the present case.

12. On the other hand, the Hon'ble Apex Court in the case of Indian Bank & Others vs. Promila & Another, reported in (2020) 1 SCC (L&S) 312, has held that though Court has sympathy with the respondents for predicament they faced on the death of deceased but sympathy alone cannot give remedy to the respondents. Courts cannot substitute a scheme or add or subtract from terms thereof in exercise of judicial review.

13. In view of the observations made herein-above, as the present Original Application suffers from merit, the same is accordingly dismissed with no order as to costs.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**

/nlk/