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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/00

421

of 2015

In the matter of:

1. **SUNITA DAS**, aged about 58 years wife of Late Nirmal Kumar Das, Ex-CMD/MT in the Metal & Steel Factory, Ishapore, who died in harness before retirement on 30.04.2007 and residing at 256/A, Anandamath, Post Office- Ichapur-Nawabganj, District- 24-Parganas (North), Pin-743144;
2. **ARPITA DAS**, daughter of Late Nirmal Kumar Das, aged about 26 years, residing at 256/A, Anandamath, Post Office- Ichapur-Nawabganj, District- 24-Parganas (North), Pin-743144.

...Applicants

-Versus-

1. **UNION OF INDIA** service through the Secretary, Ministry of Defence, (Defence Production), Government of India, South Block, New Delhi-110001;
2. **THE CHAIRMAN**, Ordnance Factory Board, having his office at 10A, Shaheed Khudiram Bose Road, Kolkata- 700001.

3. THE GENERAL MANAGER, Metal & Steel
Factory, Ishapore, Post Office- Ichapur-
Nawabgunj, District 24-Parganas (North), Pin-
743144;

4. THE DEPUTY GENERAL MANAGER, Metal &
Steel Factory, Ishapore, Post Office- Ichapur-
Nawabgunj, District 24-Parganas (North), Pin-
743144;

5. THE SENIOR GENERAL MANAGER, Metal &
Steel Factory, Ishapore, Post Office- Ichapur-
Nawabgunj, District 24-Parganas (North), Pin-
743144;

6. THE WORKS MANAGER, (Administration),
Metal & Steel Factory, Ishapore, Post Office-
Ichapur-Nawabgunj, District 24-Parganas
(North); Pin-743144.

...Respondents.

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A.No. 350/421/2015

Date of Order: 15.01.2021



Coram: Hon'ble Mr. Tarun Shridhar, Administrative Member

Sunita Das & Another Applicant

- VERSUS -

Union of India & Ors. Respondents

For the Applicant : Mr. P.C.Das, Ms. T.Maiti, Counsel

For the Respondents : Mr. M.K.Ghara, Counsel

ORDER

Tarun Shridhar, Administrative Member:

The applicant No. 1, Smt. Sunita Das, seeks appointment on compassionate grounds in favour of applicant No.2, Ms. Arpita Das, who are both respectively wife and daughter of late Nirmal Kumar Das, who was an employee of Metal and Steel Factory, Ishapore under the Ministry of Defence.

2. Brief facts of the case are that the husband of applicant No.1 while working as Ex-CMD/MT in Metal and Steel Factory died on 30.04.2007 while still in service.

During the month of June, 2008, applicant No.1 made an application to the Director General-cum-Chairman, Ordnance Factory Board, Kolkata for grant of compassionate appointment in favour of applicant No.2 along with supporting documents. This application, however, was rejected on 24.05.2008 as she had been awarded 43 points during evaluation of her application and this score was taken into consideration for comparative assessment of various applicants. This assessment was made on the basis of established procedure for assigning merit

2

points to the various applicants and the various parameters on which weightage was assigned included family pension, terminal benefits, monthly income etc.

Subsequently on 01.06.2009, applicant No.1 was informed that the case of her daughter could not fulfil the benchmark on account of low score in the merit as the cut off marks, at that juncture, were 54 while she had secured 43 points.

However, she was informed that her case will be kept under consideration during the next recruitment year also. Again on 29.01.2010 a similar communication was issued and again with the assurance that the case will be kept under consideration during the succeeding year. Ultimately, vide a detailed letter dated 28.10.2010, a communication by the DGM on behalf the General Manager, was issued giving elaborate reasons for regretting offering appointment on compassionate grounds to applicant No.2 against available vacancies. The contents of this letter are reproduced below:

Sub: Employment assistance on compassionate ground:

Ref: Your application dated 22-05-2007.

The objective of the scheme of Compassionate Appointment is to provide relief to tide over the sudden crisis from the financial destitution and to help get over the emergency by the dependant family members of a Govt. Servant who Died-In-Harness/Medically Boarded Out/Missing. While offering appointment on compassionate ground, the financial condition of the family is assessed to find out whether the family is in penury/without livelihood and deserves immediate assistance for relief from financial destitution. Accordingly, after the death of your husband Late Nirmal Kumar Das, action was taken to assess your indigent condition by seeking report from the Assistant Labour Welfare Commissioner. All actions have been taken to make correct assessment and after assessment, it is seen that there are 03 (Three) dependants of Late Nirmal Kumar Das. Your family had received the following Terminal Benefit and Family Pension:

| <u>Terminal Benefit:</u> | | <u>Family Pension: Rs. 4,762.00</u> |
|--------------------------|--------------------------------|-------------------------------------|
| 1. | C.G.I.S. : Rs. 53,294.00 | |
| 2. | D.C.R.G. : Rs. 4,89,694.00 | |
| 3. | Leave Salary : Rs. 1,27,304.00 | |
| | ===== | |
| Total | Rs. 6,70,292.00 | |
| | ===== | |

On receipt of the above reports your case was forwarded to the duly constituted Board of Officers for the third time in the year 2009-10, who had allotted marks after considering all parameters in view of OFB's Instruction No. 75/2010/PCC [bearing L/No. 01/6th CPC/2010/PCC/A/A dated 11-08-2010] relating to 91 cases including yours. On this process you had secured 64 marks only out of 100 marks. In this connection it is mentioned that the cut off marks for the year 2009-10 is 69.

Your case for compassionate appointment was considered thrice (in the years 2007-08, 2008-09 & 2009-10) sympathetically by the Competent Authority in the light of various Govt. Instructions issued from time to time including the D.O.P.T. O.M. No.14014/6/94-Estt (D) dated 09-10-1998.

Since only limited number of vacancies, in the ceiling limit of 5% of the total direct recruitment quota, were available in the years 2007-08, 2008-09 and 2009-10 for offering Compassionate Appointment, the candidates who have secured higher marks after assessing of relative merit points for recommendation/decision regarding compassionate appointment were offered employment assistance on compassionate ground.

Further, D.O.P.T. vide its O.M. No. 14014/19/2002-Estt(D) dated 05-05-2003 specifically mentioned that the maximum time, a person's name can be kept under consideration for offering compassionate appointment, is 3 years from the date of death of the employee and if compassionate appointment cannot be offered during this period, the case is to be finally closed.

3. Lt. Counsel for the applicant argues that the very criteria relied upon by the respondents for assessing the relative merit of the applicant is erroneous and there is a well settled principle that the terminal benefits of the deceased employee are not to be taken into consideration while determining the financial status of the family of the applicant.

To support his argument, he draws strength from the various judgment passed by the different Benches of this Tribunal as also the judgment passed by the Hon'ble High Courts, the principal among them being the judgment of the Hon'ble Allahabad High Court, which struck down the DoPT instruction of 05.05.2003 wherein restriction of 3 years for offering compassionate appointment was stipulated. Similarly, he has relied upon the judgment passed by Calcutta High Court in **Sujit Kr. Datta Vs United Commercial Bank, 2011(4) CHN (CAL) 29**, and **Angurbala Maity Vs State of West Bengal, 2012 (1) CLJ (Cal)**, in which the Hon'ble High Court of Calcutta has held that mere receipt of terminal benefits cannot be a ground of rejection of an application for compassionate appointment and the authorities are expected to make a detailed evaluation of the financial status.





4. Ld. Counsel for the respondents submits that respondents have displayed empathy and concern for the applicants and have carefully considered their application and request. Their case was kept open for consideration for successive years and was considered on three separate occasions independently and objectively. He further draws attention to the limitation of compassionate appointments as the number is restricted to 5% of the Direct Recruitment vacancies while the number of applicants for such appointments is large.

He informs that all the terminal benefits of the deceased employee have been released to the applicants and nothing is due to them. As far as their claim and privilege for compassionate appointment is concerned that too has been carefully considered on three occasions.

5. Having heard Ld. Counsels for both the parties, I am of the view that while the Ld. Counsel for the applicant has correctly pointed out that mere payment of terminal benefits cannot be a ground to deprive the applicant of claiming appointment on compassionate grounds, the fact as borne out from the record is that the respondent have not denied such a claim but merely evaluated it in comparison with other similar claims. The number of compassionate appointments cannot exceed a particular limit laid down under the rules governing the subject; and, within the ambit of these rules, the respondents have considered and assessed the case of applicant No.2 on three different occasions and also taken care to inform the applicant of the reasons for not accepting her claim on each of these occasions, and further informed her on the first two occasions that they are open to further consideration of her claim. This establishes the bonafides of the intention of the respondents.

6. Since the prayer of the applicant has been carefully considered on three occasions and decided by the respondents, no further direction is called for in the matter and the O.A. is, accordingly, disposed of. However, the applicant still enjoys the liberty of making a fresh representation before the respondents and the respondents enjoy the liberty to taking an appropriate decision in the matter.

7. O.A. is disposed of with the aforesaid observations. No costs.


(Tarun Shridhar)
Member (A)

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