

**Central Administrative Tribunal
Lucknow Bench,
Lucknow**

Original Application No. 332/00401/2019

Order reserved on : 07.02.2020

Order pronounced on: 17.03.2020

Hon'ble Mr. Devendra Chaudhry, Member-A.

Neeraj Shukla, aged about 26 years son of late Indramani Shukla resident of 268/223 Kailashpuri Alambagh District and City Lucknow.

.....Applicant

By Advocate: Mohd. Azhar Siddiqui for Sri S.K. Yadav Warsi.

Vs

1. Union of India through the Secretary, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Post Master General, U.P. Circle, Lucknow, Department of Post India.
3. The A.P.M.G. Assistant Post Master General (Staff) O/o CPMG, U.P. Circle, Lucknow in the office of Chief Post Master General U.P. Circle, Lucknow.
4. The Assistant Chief Post Master General, U.P. Circle, Lucknow, Department of Post India.

...Respondents

By Advocate: Sri Rajesh Katiyar.

ORDER

Delivered by:

Hon'ble Mr. Devendra Chaudhry, Member-A.

The present Original Application (OA) has challenged the order dated 10.01.2017 (Annexure-1) and also order dated 23.03.2017

(Annexure -2) which is an order by which the Applicant has been communicated the order of 10.01.2017 regarding rejection of the case of the compassionate appointment of the Applicant. The Applicant has also assailed the order dated 26.05.2017 which is stated to have been obtained under the RTI.

2. By way of relief(s), the Applicant has sought quashing of the order(s) dated 10.01.2017, 23.05.2017 as well as 26.05.2017 alongwith consideration of the case of the Applicant for compassionate appointment.

3. The brief facts of the case, as per Applicant are, that the father of the Applicant demised on 20.07.2013 while working on the post of Manager, RLO, Lucknow in the Department of Posts, Government of India leaving behind his wife Smt. Urmila, the Applicant as well as two other brothers of the Applicant namely; Pankaj Shukla and Dheeraj Shukla. That following demise of the father of the Applicant, he, Applicant, filed an application for grant of compassionate appointment to the Department vide application dated 29.10.2014 in which some short comings pointed out by the Respondents vide their letter dated 19.03.2015 (Annexure-4), were removed and the Applicant again submitted his case vide letter dated 26.03.2015 on which again some clarifications were further sought. That, finally all the clarifications were provided vide letters dated 16.04.2015, 20.04.2015, 22.04.2015, 24.04.2015 and 01.05.2015 (Annexure-6). That, the Applicant has also filed Certificate regarding the movable and immovable properties and its valuation as given in the letter dated 22.07.2016 containing report dated 15.01.2016 (Annexure-7). That, the aforesaid report reveals the fact that the Applicant has Nil movable and immovable property. Accordingly, the Applicant has strong case for consideration of compassionate appointment which has been unlawfully rejected by the Respondents. Hence, the OA.

4. *Per contra*, the Respondents have submitted Counter Affidavit, in which, it is submitted that while admitting fact relating to the father of the Applicant, Late Indramani Shukla demising on 20.07.2013 while functioning as Manager, RLO, Lucknow, it is stated that the case of

the Applicant for compassionate appointment was put up before the Circle Relaxation Committee (CRC) in its meeting held on 27.12.2016, 28.12.2016 and 05.01.2017 (Para-4 of CA) but as the Applicant had obtained only 33 merit points as against cut-of-marks which were 57 merit points, the Applicant could not be considered. That, in fact, there were 85 candidates having higher merit points than the Applicant. Accordingly, the CRC was not able to accept the case of the Applicant which was communicated vide letter No. Bharti/M-5/13/2015/3 dated 10.01.2017. That, in the said decision, the Respondents have taken into account the directions of Postal Directorate No. 37-36/2004-SPB-I/C dated 20.01.2010 and DoP&T Circular No. 14014/02/2012- Estt (D) dated 16.01.2013. Accordingly, the Applicant is not liable to be considered for compassionate appointment. That, inter alia the reasons for lower marks include, the valuation of the house belonging to the family of the applicant which inherent property of the father of the Applicant and is valued Rs. 12 lacs (para 15 of CA) and the same is also mentioned in the report of the Revenue Authority dated 15.01.2016 also filed by the Applicant. That, marks have been evaluated as per the criteria for awarding marks for terminal benefits and other evaluation parameters. Thus, the said marks of 33 have been allocated (Annexure-CR-2) is a fair and transparent manner as per applicable criteria contained in the extant applicable Circulars. Accordingly, there is no case of the Applicant for consideration of compassionate appointment; hence, the OA is liable to be dismissed.

5. The Applicant has filed his Rejoinder on 11.01.2019 and reiterating the facts stated earlier in the OA also cited certain rulings namely; Auditor General of India Vs. Ananta Rajeswara Rao, 1994 (1) Supreme Court, Sushma Gosain v. Union of India and ors. and V. Sivamurthy v State of Andhra Pradesh and others and has finally argued that the case of the Applicant has been rejected wrongly.

6. Heard the parties at length and perused the material available on record carefully.

7. The key issue which falls for consideration is whether, the Applicant's case can be considered for compassionate appointment under the applicable rules and guidelines regarding the same. The order dated 26.05.2017 cannot be taken up for adjudication as it is information obtained under RTI.

8. In order to decide the case of the Applicant, it would be just and proper to first of all to reproduce the relevant abstracts of the order dated 10.01.2017 and 23.03.2017; the same has done herein below:

10.01.2017

“ विभागीय कर्मचारियों से संबंधित अनुकम्पा आधारित नियुक्तियों के प्रकरणों पर विचार हेतु गठित की गई परिमण्डलीय शिथिलीकरण समिति द्वारा दिनांक 27.12.2016, 28.12.2016 एवं 05.01.2017 को सम्पन्न हुई बैठक में, विषयगत प्रकरण पर एवं अन्य ऐसे सभी प्रकरणों पर डाक निदेशालय, नई दिल्ली के पत्रांक : 37/36/2004-एसपीबी-1/सी दिनांक 20.01.2020 DOP&T No. 14014/2/2009-Estt(D) dated 03.04.2012 circulated vide Directorate no. 37-34/2009-SPB-I/c dated 19.04.2012, DOP&T No. 14014/2/2009-Estt(D) dated 11.12.2009 circulated vide Directorate's letter no. 37-34/2009-SPB-I/c dated 16.07.2010; DOP&T No. 14014/02/2012-Estt(D) dated 16.01.2013 circulated vide Dte's No. 37-4/2013-SPB-I/C dated 04.02.2013; DOP&T No. 14014/02/2012-Estt(D) dated 30.05.2013 circulated vide Dte's No. 37-4/2013-SPB-I/C dated 12.06.2013 and DOP&T No. 14014/02/2012-Estt (D) dated 25.02.2015 circulated vide Directorate's letter no. 37-4/2013-SPB-I/C (Pt) dated 11.03.2015 and 37-4/2013-SPB-I/C dated 13.01.2016 में विहित निर्देशों तथा भारत सरकार एवं डाक विभाग द्वारा समय-समय पर अनुकम्पा के आधार पर नियुक्ति हेतु जारी किये गये निर्देशों के अन्तर्गत, अभ्यर्थी की शैक्षिक योग्यता तथा संबंधित पदों पर भर्ती नियमावली को ध्यान पर रखते हुये विचार किया गया। यह बैठक अनुकम्पा के आधार पर भर्ती के लिए वर्ष 2015-2016 (01.01.2015 से 31.03.2016) की निर्धारित रिक्तियों को भरने के लिए आयोजित की गई।

2. अनुकम्पा के आधार पर नियुक्ति हेतु निर्धारित मानकों यथा पारिवारिक पेन्शन, सेवानिवृत्ति हित लाभ, मासिक आय, चल-अचल सम्पत्ति, आश्रितों की संख्या, अविवाहित पुत्रियों की संख्या, नाबालिग बच्चों की संख्या व अवशेष सेवा अवधि का संज्ञान लेते हुये तुलनात्मक मेरित प्याइंट के आधार पर मामले का गहन परीक्षण किया गया। परंतु अनुकम्पा के आधार पर नियुक्ति के लिए निर्धारित सीमित रिक्तियों के कारण परिमण्डलीय शिथिलीकरण समिति द्वारा नीरज शुक्ला पुत्र स्वरूप इन्द्रमणि शुक्ला, भूषण मैनेजर आर० एल० ओ० लखनऊ की अनुकम्पा के आधार पर नियुक्ति हेतु संस्तुति नहीं की जा सकी, क्योंकि उनके इस प्रकरण में मात्र 33 मेरित प्याइंट थे। यह भी सूचित किया जाता है कि

अनुकम्पा के आधार पर नियुक्ति के लिए संस्तुत किये गये अंतिम आवेदक के मामले में 57 मेरिट प्वाइंट थे।

3. कृपया संबंधित अभ्यर्थी को उपरोक्त पैरा 1 व पैरा 2 में वर्णित तथ्यों के साथ, तदनुसार सूचित करें। तथा आवेदक की पावती लेकर इस कार्यालय को रिकार्ड में रखने के लिए भेंजें।"

23.03.2017

"सहायक पोस्टमास्टर जनरल (भर्ती), परिमण्डल कार्यालय, लखनऊ ने अपने पत्र संख्या भर्ती/एम-5/13/2015/3 दिनांक 10-1-2017 द्वारा सूचित किया है कि विभागीय कर्मचारियों से सम्बन्धित अनुकम्पा आधारित नियुक्तियों के प्रकरणों पर विचार हेतु गठित की गई परिमण्डलीय शिथिलीकरण समिति द्वारा दिनांक 27.12.2016, 28.12.2016 एवं 05.01.2017 को सम्पन्न हुई बैठक में, विषयगत प्रकरण पर एवं अन्य ऐसे सभी प्रकरणों पर डाक निदेशालय, नई दिल्ली के पत्रांक : 37/36/2004-एसपीबी-1/सी दिनांक 20.01.2020 ए DOP&T No. 14014/2/2009-Estt(D) dated 03.04.2012 circulated vide Directorate no. 37-34/2009-SPB-I/c dated 19.04.2012, DOP&T No. 14014/2/2009-Estt(D) dated 11.12.2009 circulated vide Directorate's letter no. 37-34/2009-SPB-I/c dated 16.07.2010; DOP&T No. 14014/02/2012-Estt(D) dated 16.01.2013 circulated vide Dte's No. 37-4/2013-SPB-I/C dated 04.02.2013; DOP&T No. 14014/02/2012-Estt(D) dated 30.05.2013 circulated vide Dte's No. 37-4/2013-SPB-I/C dated 12.06.2013 and DOP&T No. 14014/02/2012-Estt (D) dated 25.02.2015 circulated vide Directorate's letter no. 37-4/2013-SPB-I/C (Pt) dated 11.03.2015 and 37-4/2013-SPB-I/C dated 13.01.2016 में विहित निर्देशों तथा भारत सरकार एवं डाक विभाग द्वारा समय-समय पर अनुकम्पा के आधार पर नियुक्ति हेतु जारी किये गये निर्देशों के अन्तर्गत, अभ्यर्थी की शैक्षिक योग्यता तथा संबंधित पदों पर भर्ती नियमावली को ध्यान पर रखते हुये विचार किया गया। यह बैठक अनुकम्पा के आधार पर भर्ती के लिए वर्ष 2015-2016 (01.01.2015 से 31.03.2016) की निर्धारित रिक्तियों को भरने के लिए आयोजित की गई।

2. आपके प्रकरण में अनुकम्पा के आधार पर नियुक्ति हेतु निर्धारित मानकों यथा पारिवारिक पेशन, सेवानिवृत्त हित लाभ, मासिक आय, चल-अचल सम्पत्ति, आभितों की संख्या, अविवाहित पुत्रियों की संख्या, नाबालिग बच्चों की संख्या व अवशेष सेवा अवधि का संज्ञान लेते हुये तुलनात्मक मेरिट प्वाइंट के आधार पर मामले का गहन परीक्षण किया गया। परन्तु अनुकम्पा के आधार पर नियुक्ति हेतु संस्तुति नहीं की जा सकी क्योंकि आपके प्रकरण में 33 मेरिट प्वाइंट थे जबकि इस आधार पर नियुक्ति के लिए संस्तुत किये गये अंतिम आवेदक के मामले में 57 मेरिट प्वाइंट थे।"

9. It would also be pertinent to reproduce the relevant abstracts of the allocation of the marks (Annexure-2 of the OA):

Allocation of points

Sl. No.	Various Attributes	Maximum Points allocated	Details of each attribute in the case	Points admissible in the case
1	2	3	4	5
(a)	Family Pension (Basic excluding DA & allowance)	20	Amount of Family Pension in Rs. 10525/-	16
(b)	Terminal benefits (DCRG, GPF, CGEGIS, Leave encashment & Pension commutation)	10	Total amount of Terminal benefits Rs. 16,24,137/-	00
(c)	Monthly income of earning members & income from property	5	Total Monthly income Rs. Nil	05
(d)	Moveable/Immoveable property	10	Moveable/Immoveable property assessed for Rs. 12,00000/-	00
(e)	Number of dependents	15	Actual number of dependents 02	10
(f)	Number of unmarried daughters	15	Actual number of unmarried daughters Nil	00
(g)	Number of minor children	15	Actual number of minor children Nil	00
(h)	Left over service	10	Service left over in Years 4 months 5 days 11	02
	Total	100		33
	Additional points (as grace points) if widow is an applicant	15		

10. It would also be pertinent to reproduce the relevant abstracts of the circular No. 37-36/2004-SPB-I/C dated 20.01.2010 (Annexure-CR-1):

Circular dated 20.01.2010

"The objective of the Scheme for Compassionate Appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood. It is to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

2. *Keeping, in view the objective for the Scheme, the existing instructions relating to Compassionate Appointment have time and again been reviewed/modified/simplified so that the system finally derived at shall be more transparent, efficient and uniform in nature.*

3. *The efficacy of the Scheme is based on its transparency. It is this aspect, which is foremost and hence while considering a request for appointment on compassionate grounds by a Committee, a balanced and objective assessment of the financial condition of the family has to be made taking into consideration its assets and liabilities and all other relevant factors such as the presence of earning member, size of the family, ages of the children and the essential needs of the family etc. This is done to assess the degree of the indigence among all the applicants considered for compassionate appointment within the prescribed ceiling of 5% of the direct recruitment vacancies.*

4. *The existing position has been reviewed in this Department and it has been decided by the competent authority that to achieve the objective of the scheme of the Compassionate Appointment and to ensure complete transparency, merits of the cases can be conveniently decided by allocating points to the applicants, based on various attributes indicated in the references of DOP&T from time to time. Accordingly, the Department has worked out a system of allocation of points to various attributes based on a hundred point-scale as indicated in the tables below:-*

(a) Family pension (Basic Excluding DA & Allowances)

Sl No.	Points	Proposed slab for Deptt. of Posts
1	20	Upto 5000
2	18	5001-8000
3	16	8001-11000
4	14	11001-14000
5	12	14001-17000

6	10	17001-20000
7	8	20001-23000
8	6	<i>Above 23000</i>

(b) Terminal benefits (DCRG, GPF, CGEGIS, Leave Encashment & Pension Commutation)

Sl No.	Points	Proposed slab for Deptt. of Posts
1	10	<i>Upto 140000</i>
2	9	<i>140001-168000</i>
3	8	<i>168001-196000</i>
4	7	<i>196001-224000</i>
5	6	<i>224001-252000</i>
6	5	<i>252001-280000</i>
7	4	<i>280001-308000</i>
8	3	<i>308001-336000</i>
9	2	<i>336001-364000</i>
10	1	<i>364001-420000</i>
11	0	<i>420001 & above</i>

(c) *Monthly income of Earning members and income from property*

<i>Sl No.</i>	<i>Points</i>	<i>Proposed slab for Deptt. of Posts</i>
1	5	<i>No income</i>
2	4	<i>2500 or less</i>
3	3	<i>2501-3500</i>
4	2	<i>3501-4500</i>
5	1	<i>4501-5500</i>
6	0	<i>5501 & above</i>

(d) *Moveable/ Immoveable Property*

<i>Sl No.</i>	<i>Points</i>	<i>Proposed slab for Deptt. of Posts</i>
1	10	<i>Nil</i>
2	8	<i>Upto 1,50,000</i>
3	6	<i>150,001-300,000</i>
4	3	<i>300,001-600,000</i>
5	1	<i>600,001-100000</i>
6	0	<i>Above 10,00,000</i>

(e) *No. of dependents* *Points*

(i) 3 and above 15

(ii) 2 10

(iii) 1 5

	<i>Points</i>
<i>(f) No. of unmarried daughters</i>	
(i) 3 and above	15
(ii) 2	10
(iii) 1	5
(iv) 0	0
<i>(g) No. of Minor Children</i>	<i>Points</i>
(i) 3 and above	15
(ii) 2	10
(iii) 1	5
(v) None	0
<i>(h) Left over service</i>	<i>Points</i>
(i) Over 20 years	10
(ii) Over 15 & upto 20 years	8
(iv) Over 10 & upto 15 years	6
(v) Over 5 & upto 10 years	4
(vi) 0-5 years	2

In Addition to the above, cases where the wife of the deceased official has applied for compassionate appointment for herself, she shall get 15 additional points as grace points. This will be in line with the general principle that the widow needs to be given preference for compassionate appointment.”

11. From an examination of all of above, it emerges that first of all, the criteria for evaluation for compassionate appointment vide OM dated 20.01.2010 include parameters relating to pension, Terminal benefits, Monthly income of earning members, income from property, Moveable /Immoveable property, No. of dependents, No. of unmarried daughters, No. of minor children, and Left over service. That in light of these parameters, the marking dispute by the Applicant is primarily w.r.t. the ownership of the moveable and immoveable property by the Applicant's name himself on the basis of the said report of the Revenue Authority dated 15.01.2016 wherein it is mentioned that there is Nil moveable and immoveable property w.r.t. the Applicant. The Respondents have countered the same by stating that the valuation of consideration for compassionate appointment is made on not just individual property ownership of the Applicant but on the property status of the entire family. That this is critical because the over-all indigency of the family concerned is

evaluated on the basis of income, property, etc available to the whole family and not just the prospective applicant for compassionate appointment. That the family includes the widow/spouse and other dependent members of the family of the demised employee for whose consideration the compassionate appointment is assessed in the first place. Therefore, the plea of the Applicant that the property is not in his individual name cannot be upheld because the indigency of the complete family is judged and not the indigency of the prospective Applicant only. What should not be lost sight of is that in the end, it is the prospective applicant who is going to be responsible (and hence the justification for granting any compassionate appointment at all in the first place) for supporting the entire family of the demised employee and not just the applicant himself. This argument of the Respondents is supported by the extent of the circular dated 20.01.2010 wherein it is stated that "*The objective of the Scheme for Compassionate Appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood (emphasis added). It is to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency*".

12. That, from the above, it is clear that the compassionate appointment is provided for all the dependent family members of the government servant dying in harness and it is this fact which needs to be considered and not judge the individual indigency qua ownership of the moveable and immoveable of prospective applicant.

13. Secondly, as per para 3 of the aforesaid circular, there is a limitation of consideration of only 5% of the notified vacancies for compassionate appointment in a given year. It is also undisputed fact that there were 85 other candidates who had higher marks than the Applicant and based on the number of vacancies available for consideration, appropriate approvals were given for compassionate appointment thereupon.

14. As regards citations, while taking than into account, it is pertinent to quote the latest (2019) judgment and rulings of the Hon'ble Apex Court in the matter of State of Himachal Pradesh & Anr v Shashi Kumar (2019) 1 SCC (L&S) 542 wherein the Hon'ble Apex Court has vide its judgment dated 16.01.2019 held that the terms of policy qua the receipt of various benefits received by the family were required to be considered in the matter of compassionate appointment. Relevant abstracts of this judgment are reproduced below for ready use:

.....The matter has been considered carefully and it is noticed that specific guidelines with respect to what would amount to "indigent circumstances" will not be possible or practicable. "Indigent circumstances" of a family are to be seen with specific reference to the assets i.e. immoveable and moveable property left behind by the deceased income from various sources i.e. assets, houses, pension, savings resulting to income employment status and number of employees within the extended family etc. as also liabilities i.e. number of dependents specially unmarried daughters aged parents etc. left behind by the deceased, some consideration towards the particular standard of life that the family of the deceased might be used to during the life time of the government employee etc. These are vital parameters that have to be kept in mind before any decision is arrived at regarding admissibility of employment to the ward/dependent of the deceased employee. As the above would show the question of "indigent circumstances", therefore has to be decided in each individual case after obtaining detailed information about all the relevant aspects mentioned, so that employment on compassionate grounds is not given as matter of routine. While every effort should be made to provide suitable employment in all deserving cases. It should always be kept in mind that employment on compassionate ground can not be claimed as a matter of right...".

....While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Defendants of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a defendant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment..."

....Among them, the policy stipulates that family pension and death gratuity are required to be taken into account in assessing the financial circumstances of the family. The Policy does not preclude the defendants of a deceased employee from being considered for compassionate appointment merely because they are in receipt of family pension. What the Policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence. The receipt of family pension is, therefore, one of the considerations which is to be taken into account...."

.....In view of the clear terms of the Policy, we are of the view that the High Court was in error in issuing a mandamus to the Government to disregard its Policy. Such direction could not have been issued by the High Court....."

.....It is necessary to note that the nature of compassionate appointment had been considered by this Court in *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138. The principles which have been laid down in *Umesh Kumar Nagpal* (supra) have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:

"2. ...As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies."

One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public 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 the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family..."

.....The favourable treatment given to such defendant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned. Specifically in the context of considering the financial circumstances of the family of the deceased employee, several judgments of this Court have elaborated on the principles to be followed...."

.....The Court expressly held that the authorities were not in error in taking account of the terminal benefits, investments and the monthly family income including the family pension paid by the Bank. The view of this Court finds expression in the following extract:

"12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of the employee who died in harness are not in penury and without any means of livelihood. The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any

error in taking into consideration the income of the family from other sources viz. the agricultural land." (emphasis supplied)

In the view of this Court, the only issue to be considered was whether the claim for compassionate appointment had been considered in accordance with the Scheme. The income of the family from all sources was required to be taken into consideration according to the Scheme. This having been ignored by the High Court, the appeal filed by the Bank was allowed..."

.....
.... In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the bread-earner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment..."

.....
....For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma (supra) in issuing a direction to the State to act in a manner contrary to the express terms of the Scheme which require that the family pension received by the dependants of the deceased employee be taken into account...."

.....
....(ii) The direction issued by the High Court to the appellants to desist from taking into account the family pension and other terminal benefits is unsustainable in law and is accordingly set aside..."

15. The 16.01.2019 judgment of the Hon'ble Apex Court in the matter of Shashi Kumar (supra) has been cited again in the matter of State of Himachal Pradesh v Sanjay Kumar vide judgment 12.03.2019 and State of Himachal Pradesh vs. Hirda Ram vide judgment dated 18.12.2019.

16. From the above, law laid down by the Hon'ble Apex Court, it is clear that in all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the bread-earner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment.

17. In sum, on the basis of all the reasoning heretofore, the case of the Applicant for consideration for compassionate

appointment is not able to stand judicial scrutiny and consideration thereof. Accordingly, in conclusion, the case of Applicant cannot be considered for compassionate appointment.

18. The O. A. is liable to be dismissed and is dismissed. No costs.

(Devendra Chaudhry)

Member (A)

JNS