

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 26<sup>th</sup> day of May 2006.

Original Application No. 1185 of 2003.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Vinayak Gautam, S/o late Sri Moti Lal,  
243/A, Preetam Nagar,  
Allahabad

..... Applicant

By Adv: Sri R. Asthana

**V E R S U S**

1. Union of India through Secretary,  
Ministry of Defence,  
NEW DELHI.
2. Chief Engineer, Central Command,  
LUCKNOW.
3. Chief Engineer, HQ, MES, Air Force,  
ALLAHABAD.
4. Chief Work Engineer (MES), Air Force,  
Bamrauli,  
ALLAHABAD.
5. Garrison Engineer, MES, Air Force,  
Bamrauli,  
ALLAHABAD.
6. Engineer-in-Chief, Bharat Army HQ.,  
D.H.C. 2, P.O.  
NEW DELHI.

..... Respondents.

By Adv: Shri S. Singh

**O R D E R**

The above case relates to grant of compassionate  
appointment.



2. Before diving into factual position, delving into the Summit Court's decisions and the memorandum relating to compassionate appointment would be highly useful.

2. And, as the decisions of the Apex Court on matters of compassionate appointments have dealt with different aspects of the matter it would be appropriate to consolidate the same for the purpose of telescoping such law as laid down by the Apex Court upon the facts of the respective cases for a just decision. As such, the succeeding paragraphs succinctly bring out the salient features of compassionate appointment.

### **3. Objective of Compassionate appointment:**

3.1 In an inimitable and a scintillating style and sublime expression, the Apex Court has, with a constitutional flavour, explained the precise objective of compassionate appointment in the case of *Balbir Kaur v. Steel Authority of India Ltd.*,<sup>1</sup> as under:-

*"The employer ..... ..... has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution.*

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*"The employer ..... ..... has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution.*

Have the lofty ideals which the founding fathers placed before us any effect in our daily life – the answer cannot however but be in the negative – what happens to the constitutional philosophy as is available in the Constitution itself which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on a certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied as "it is likely to open a Pandora's Box" – this is the resultant effect of our entry into the new millennium. Can the law courts be mute spectators in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the bread earner?

As a matter of fact the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach everyone and the ideals of the Constitution-framers would be achieved since the people would be nearer the goal set by the Constitution – an ideal situation but a far cry presently.

3.2 In the case of Umesh Kumar Nagpal vs State of Haryana<sup>2</sup>, the Apex Court has held, "**The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis**".

3.3 Yet another case of Director of Education (Secondary) v. Pushpendra Kumar,<sup>3</sup> the Apex Court has stated,

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that

<sup>2</sup> (1994) 4 SCC 138

<sup>3</sup> (1998) 5 SCC 192

unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions.... Care has ... to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee."

#### 4. No vested Right to Compassionate Appointment

4.1 The Apex Court has held in the case of *Commr. of Public Instructions v. K.R. Vishwanath*,<sup>4</sup>:-

"Appointment on compassionate ground cannot be claimed as a matter of right. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. As was observed in State of

<sup>4</sup> (2005) 7 SCC 206

*Haryana v. Rani Devi*<sup>5</sup> it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16.

4.2 In the case of *State of H.P. v. Rajesh Kumar*,<sup>6</sup> it has been held, "No right vested in the respondent to claim an appointment on compassionate grounds." If, at all, any claim could have been made, it could only have been made by the widow in accordance with the policy on compassionate appointment, held the Apex Court in this case.

4.3 Similarly, in the case of *Haryana SEB v. Krishna Devi*,<sup>7</sup> the Apex Court has held as under:-

"It is well settled that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be claimed as a matter of right.

4.4 Similarly in the case of *S. Mohan v. Govt. of T.N.*,<sup>8</sup> the Apex Court has stated, "The consideration for such employment is not a vested right which can be exercised at any time in future."

<sup>5</sup> (1996) 5 SCC 308

<sup>6</sup> (2001) 9 SCC 174,

<sup>7</sup> (2002) 10 SCC 246

<sup>8</sup> (1998) 9 SCC 485

5. **Compassionate Appointment meant for immediate relief:**

5.1 "The main object was to provide immediate financial help to the family of the deceased employee."<sup>9</sup> holds the Apex Court.

5.2 In the case of *Union of India v. Bhagwan Singh*<sup>10</sup>, the Apex Court has held as under:-,

As stated by this Court in *Sushma Gosain v. Union of India*<sup>11</sup>:

" ... in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress." (emphasis supplied)

7. The above decision was followed in *Phoolwati v. Union of India*<sup>12</sup>. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family.

5.3 The same view has been echoed in the case of *Jagdish Prasad v. State of Bihar*,<sup>13</sup> :

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate

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<sup>9</sup> *ibid*

<sup>10</sup> (1995) 6 SCC 476

<sup>11</sup> (1989) 4 SCC 468

<sup>12</sup> 1991 Supp 2 SCC 689 (Compassionate appointment should be given without much delay)

<sup>13</sup> (1996) 1 SCC 301

grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family." (Emphasis supplied)

5.4 Similarly, in *State of U.P. v. Paras Nath* it was held that the purpose of providing employment to the dependant of a government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. (Also see *MMTC Ltd. v. Pramoda Dei*<sup>14</sup>, wherein, it has been held, *the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment*)

5.5 In *Sanjay Kumar v. State of Bihar*,<sup>15</sup> this view of the Apex Court is rather emphatic. The Hon'ble Supreme Court has stated, "This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood."

<sup>14</sup> (1997) 11 SCC 390

<sup>15</sup> (2000) 7 SCC 192

5.6 In the following cases also, the same view has been reflected by the Apex Court:

- (a) *Dhalla Ram v. Union of India*<sup>16</sup>
- (b) *Haryana State Electricity Board v. Naresh Tanwar*<sup>17</sup>
- (c) *Union of India v. Joginder Sharma*<sup>18</sup>
- (d) *State of U.P. v. Paras Nath*<sup>19</sup>
- (e) *S. Mohan v. Govt. of T.N.*,<sup>20</sup>
- (f) *Haryana SEB v. Hakim Singh*,<sup>21</sup>

5.7 The above dictum of the Apex Court clearly goes to show that there shall be no delay in the family members' applying for compassionate appointment at the earliest and the Respondents shall also consider the same, of course, subject to availability of vacancies, without any delay. Waiting for the minor to become major for appointment has not been encouraged by the Apex Court, vide *Director, Defence Metal Research Laboratory v. G. Murali*.<sup>22</sup>

## 6. No interim order for compassionate appointment:

6.1 Tribunal cannot grant interim order directing appointment on compassionate grounds: In the case of

<sup>16</sup> (1997) 11 SCC 201

<sup>17</sup> (1996) 8 SCC 23

<sup>18</sup> (2002) 8 SCC 65

<sup>19</sup> (1998) 2 SCC 412

<sup>20</sup> (1998) 9 SCC 485

<sup>21</sup> (1997) 8 SCC 85

<sup>22</sup> (2003) 9 SCC 247

State of U.P. v. Ram Sukhi Devi,<sup>23</sup> it has been held as under:-

Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a *prima facie* case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations."

6.2 Similarly it has been held in the case of *Manager, State Bank of Hyderabad v. Puran*<sup>24</sup> "We are clearly of the opinion that by way of an interim order the High Court could not have directed compassionate appointment to be given to the respondent either on casual or temporary or any other basis. Serious complications would arise if such interim order was complied with and ultimately it was found that the writ petition had no merit."

## 7. Posts

7.1 Compassionate appointment is restricted only to Group C and D posts, against the Direct recruitment vacancies. In the case of *Umesh Kumar Nagpal (supra)*, the Apex Court has held as under:-

The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory.

<sup>23</sup> (2005) 9 SCC 733

<sup>24</sup> (2000) 10 SCC 437

(Also see Auditor General of India v. G. Ananta Rajeswara Rao)<sup>25</sup>

7.2 Earlier, vide the judgment in the case of Sushma Gosain (supra), the Apex Court had held, "Such appointment should, therefore, be provided immediately to redeem the family in distress. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant." However, as per the latest decisions, availability of vacancy is a must and it would not be proper to direct the Government to create supernumerary posts to appoint persons on compassionate grounds. - *A.P.SRTC v. Dannina Rajeswari*.<sup>26</sup> Also, see *Orissa SEB v. Raj Kumari Panda*,<sup>27</sup> wherein the Apex Court has ruled, "Compassionate employment is to be given to the parties satisfying the requirements only if there are vacancies and not otherwise. To direct the employer to create supernumerary posts to accommodate such employees is not warranted by the rules." (Also see *Himachal Road Transport Corp. v. Dinesh Kumar*)<sup>28</sup>

7.3 In *Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai*<sup>29</sup>, The Apex Court has held, "Rule 78.3 it has been laid down that such appointment would be made depending upon the availability of vacancies in the respective staffing cadre/authorization. In other

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<sup>25</sup> (1994) 1 SCC 192

<sup>26</sup> 1999 SCC (L&S) 1182

<sup>27</sup> 1999 SCC (L&S) 729

<sup>28</sup> (1996) 4 SCC 560

<sup>29</sup> (1996) 6 SCC 394

words, an appointment on compassionate grounds can be made only if a vacancy is available. According to the appellant no vacancy is available since there is surplus labour and the policy of the appellant is to progressively reduce the work force and with that end in view a ban has been imposed on fresh recruitment and the appellant is also offering incentives for voluntary retirement. The learned Single Judge of the High Court was of the view that in spite of such a ban on fresh recruitment it was obligatory for the appellant to make appointment on compassionate grounds. .... All that can be said is that in the event of the appellant making fresh appointment on a Class III or Class IV post the application of the respondent for appointment on such post shall be given due consideration in accordance with her ranking in the waiting list."

7.4 When there is ban on recruitment, there is no question of compassionate appointment. Regional Manager, A.P.SRTC v. M. Sampoornamma<sup>30</sup>. In this case, the High Court has held that imposition of ban does not mean that the vacancy has not existed at all. The ban could only be against filling up of vacancies and such a ban cannot be pressed into service to defeat the claim of the applicant for compassionate appointment. The Apex Court has, however, held as under:-

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<sup>30</sup> 1999 SCC (L&S) 1162

"4. It clearly appears that the High Court has failed to appreciate the real nature of compassionate appointments and the Scheme framed in that behalf. If for valid reasons, the general policy decision has been taken not to make any fresh appointment then it would not be proper for the Court to direct filling up of the post merely because there is a vacancy. The Court's sympathy and consequential orders/directions should not be such as would create an impediment in smooth and efficient running of the administration. Orders and directions for consideration of appointments on compassionate grounds should be made where it is possible and permissible for the employer to employ the dependant of his earlier employee. Once it is found that the decision of the employer not to make any fresh appointment is bona fide it would not be proper for the Court to question the same and in spite of the decision to that effect, direct him to consider appointing the person on compassionate grounds. Merely because a vacancy existed it was not proper for the High Court to direct the appellant Corporation to consider the respondent and give her appointment ignoring the ban for any fresh appointment."

7.5 There is no link between the post (or group) held by the deceased and that being offered to his ward. In other words, a group C appointment can be offered to the son of a deceased Group D employee, subject to fulfillment of other prescribed qualifications. The Apex Court in Umesh Kumar Nagpal (Supra) has held, "It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to

*[Handwritten signature/initials over the bottom left corner]*

do so. The post is not offered to cater to his status but to see the family through the economic calamity."

**7.6 Particular post:** If offer is made to a person for a particular post say in group D while he possesses qualification as for a Group C post, the individual cannot insist that he must be offered a Group C post only. In *State of M.P. v. Ramesh Kumar Sharma*<sup>31</sup>, the Apex Court has held, "the applicant has no right to any **particular post** of his choice, he can only claim to be considered for that post." Similarly, in *Pepsu Road Transport Corpn. v. Satinder Kumar*,<sup>32</sup> the Apex Court observed, "Then again it would be erroneous for the courts to compel appointment to particular posts. In *Director of Education (Secondary) v. Pushpendra Kumar*,<sup>33</sup> it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Also see *State of Manipur v. Mohd. Rajaodin*.<sup>34</sup>

**7.7 Once Consummated, no change from that post:** When appointments under relevant instructions have already been completed, there cannot be further appointment, by way of change of post, as held by the Apex Court in *State of Haryana vs Naresh Kumar Bali*<sup>35</sup>. Similarly, in the case of *State of Rajasthan v. Umrao*

<sup>31</sup> 1994 Supp (3) SCC 661

<sup>32</sup> 1995 Supp (4) SCC 597

<sup>33</sup> 1998 (5) SCC 192

<sup>34</sup> (2003) 7 SCC 511

<sup>35</sup> 1994 (4) SCC 448

*Singh*,<sup>36</sup> the Apex Court has stated that *Once the right to be considered for the appointment on compassionate ground was consummated, no further consideration on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion".*

**8. Strict observance of Rules :** Compassionate Appointment should be only as per Rules: In *Phoolwati v. Union of India (supra)* and *Union of India v. Bhagwan Singh (supra)* it has been held that such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

8.1 Appointment dehors the rules is illegal, vide *State of Rajasthan v. Chandra Narain Verma*,<sup>37</sup> wherein, it has been held by the Apex Court, "It is one thing to say that a family member of the deceased is entitled to appointment on compassionate ground, but it is altogether a different thing to say that his appointment should be made regardless of the rules."

8.2 "It is also well settled that employment under compassionate ground cannot be made in absence of rules or instructions issued by the Government or any

<sup>36</sup> 1994) 6 SCC 560

<sup>37</sup> (1994) 2 SCC 752

public authority, vide *Haryana SEB v. Krishna Devi (supra)*<sup>38</sup>

8.3 In *Umesh Kumar Nagpal*, supra the Apex Court has in clear terms stated as under:-

- (a) *it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law.*
- (b) *The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done*
- (c) *there may be pitiable situations but on that score, the statutory provisions cannot be put aside.*

8.4 In *LIC v. Asha Ramchhandra Ambekar*,<sup>39</sup> the Apex Court has expressed, "The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. .... There may be pitiable situations but on that score, the statutory provisions cannot be put aside."

8.5 In the absence of a scheme, compassionate appointment to a destitute woman cannot be held to be legal vide *Uma Rani vs Registrar of Co-op. Societies*.<sup>40</sup>

<sup>38</sup> (2002) 10 SCC 246

<sup>39</sup> (1994) 2 SCC 718

<sup>40</sup> 2004 (7) SCC 112

8.6 When due to occupational hazards, an employee is incapacitated and hence discharged from service, save when a scheme exists for compassionate appointment of the ward, no compassionate appointment is permissible on the ground of such incapacitation. (*State of Haryana v. Hawa Singh*).<sup>41</sup>

8.7 "The High Court could not have given such directions which are contrary to the existing scheme of providing appointments on compassionate grounds. The rights of the respondent are governed by the scheme which the employer may provide for appointment on compassionate grounds." Declared the Apex Court in the case of *A.P.SRTC v. Kaiser Begum*.<sup>42</sup>

#### 9. Efficiency cannot be compromised:

In Pepsu transport Corporation (supra) the Apex Court's considered decision is that "The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be matric, however, generally graduates and even post-graduate degree holders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of the post,

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<sup>41</sup> 1995 Supp (2) SCC 258

<sup>42</sup> (1998) 9 SCC 398

taking into account the realities of the employment-market, should be available."

**10. Tribunal Not to be impelled by sense of benediction:** That the court should not be impelled by a sense of benediction in matters of compassionate appointment has been succinctly brought out by the Apex Court in the case of **LIC v. Asha Ramchhandra Ambekar (supra)** in the following terms:

**"10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration."**

**11. Power of court to direct appointment:**

11.1 The Tribunal cannot direct the Government to give appointment on compassionate ground. In the case of **State of Haryana v. Naresh Kumar Bali**,<sup>43</sup> it has been observed, "In any event, the High Court should have merely directed the appellants to consider and not straight away issue directions to appoint. More so, the post of an Inspector is a promotional post and not by direct recruitment."

11.2 In the case of **Union of India v. Joginder Sharma**<sup>44</sup>, the apex Court has held,

**"If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities**

<sup>43</sup> (1994) 4 SCC 448

<sup>44</sup> (2002) 8 SCC 65

to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise".

11.3 In *Himachal Road Transport Corpn. v. Dinesh Kumar*,<sup>45</sup> the Apex Court has held, "Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post." Also see *State of Bihar v. Samsuz Zoha*<sup>46</sup>, wherein the Apex Court has held, " The question that arises for consideration is whether the High Court is right in giving directions to appoint them afresh or give them promotion? .... The High Court, therefore, was not justified in issuing directions in all the cases for appointment to Class III post".

## 12. The Beneficiaries:

12.1 Compassionate appointment is available only to the family members of those who were in a regular post and not in ad hoc capacity or with only temporary status. Die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi case (supra)* it was held that scheme regarding appointment on compassionate ground if

<sup>45</sup> (1996) 4 SCC 560

<sup>46</sup> (1996) 4 SCC 546

extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In the case of *State of Haryana v. Rani Devi*,<sup>47</sup> the Apex Court's view has been as under:-

"8. According to us, when the aforesaid Government Order dated 31-10-1985 extends the benefit of appointment to one of the dependants of the "deceased employee" the expression 'employee' does not conceive casual or purely ad hoc employee or those who are working as apprentices."

12.2 Again, it is only any of the family members who were dependent upon the deceased government employee that would be entitled to get the appointment. In the case of *State of Manipur v. A. Ongbi Memcha Devi*<sup>48</sup> it has been held that the brother is not a dependant of the deceased employee who died in harness. In the case of *State of Haryana v. Dhan Singh*,<sup>49</sup> the Apex Court has held as under:-

"4. A reading of this rule would clearly indicate that for the purpose of the above rules 'family' includes the wife, in the case of male officer, husband, in the case of a female officer, sons, unmarried and widowed daughters (including step-children and adopted children), brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and sisters), father, mother (including adoptive parents in case of individuals whose personal law permits adoption), married daughters and children of a pre-deceased son. It would thus be seen that in the case of a brother, he will be a member of the family as dependant if he is below 18 years. If he seeks employment under the rules, he cannot be appointed if he is below 18 years and has not become major. The moment he crosses 18 years, he no longer remains to be a dependant member of the family of the deceased government employee."

<sup>47</sup> (1996) 5 SCC 308

<sup>48</sup> (1995) 4 SCC 210,

<sup>49</sup> (1996) 7 SCC 262

**13. Compassionate Appointment and Terminal Benefits/other Benefits**

13.1 The concession of compassionate appointment is in addition and not in lieu of other terminal benefits that would accrue to the family of the deceased. In *State of Punjab v. Manjit Kaur*,<sup>50</sup> the Apex Court has held, "If any compassionate appointment has been made that cannot deprive the respondent from getting the retiral benefits payable statutorily."

13.2 Similarly, compensation payable under the Workmen's Compensation Act, 1923 cannot be denied on the ground that the son of the deceased had been given compassionate appointment. (*Shyama Devi v. Union of India*)<sup>51</sup>.

13.3 In a recent case of *Govind Prakash Verma v. LIC of India*,<sup>52</sup> the Apex Court has 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 benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that

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<sup>50</sup> (2005) 12 SCC 250

<sup>51</sup> (2005) 12 SCC 217

<sup>52</sup> (2005) 10 SCC 289

any member of the family received the amounts admissible under the Rules."

13.4 That there is a requirement of compassionate appointment as well as lump sum payment for the bereaved family has been spelt out by the Apex Court in the case of *Balbir Kaur v. Steel Authority of India Ltd* (*supra*) wherein the Apex Court has stated as under:-

"The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

13.5 At the same time, when a person appointed on compassionate grounds gets dearness allowance attached to the pay, if the same person is in receipt of Family Pension, then, dearness relief attached to the family pension is not admissible. (*Union of India v. Rekha Majhi*).<sup>53</sup>

#### 14. Equality clause and exception thereto:

14.1 Grant of compassionate appointment though cannot be upheld on the touchstone of Art. 14 or 16 of the Constitution, has been considered reasonable on the

<sup>53</sup> (2000) 10 SCC 659

basis of sudden crisis occurring in the family of the deceased govt. servant, who has 'served the State and dies in harness'. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. (*Commr. of Public Instructions v. K.R. Vishwanath*<sup>54</sup>)

14.2 However, within the claimants of compassionate appointment, there shall be maintained the equality clause. In the case of *State Bank of India v. Akeel Ahmed Khan*<sup>55</sup> it has been held by the Apex Court:

"2. This is a case of compassionate appointment. The High Court has directed reconsideration of the case of the respondent in the light of the three instances, namely, the instances of the Chief Manager Mr P.K. Nath, Mr K.J. Rajgopalan, Assistant Manager and Mr Javed Akhtar, General Manager, Delhi Circle, where the relatives of these persons have been given compassionate appointment. The fact that the compassionate appointments were given in these three cases is not disputed by the appellants. However, they say that there are distinguishing factors between the compassionate appointment given in that case and the appellant's case. We are not prepared to carry out the enquiry ourselves but the matter must be considered in-depth by the authority concerned.

It is being made clear that whatever principle was followed in granting compassionate appointment in respect of the aforesaid three employees must also be followed as far as the appellant is concerned."

14.3 In *Surya Kant Kadam v. State of Karnataka*,<sup>56</sup> the Apex Court has stated:

<sup>54</sup> (2005) 7 SCC 206

<sup>55</sup> (2005) 11 SCC 508

<sup>56</sup> (2002) 9 SCC 445

"But the grounds on which the appellant makes out the case for consideration of his case, is the violation of Article 14 and discriminatory treatment meted out to the appellant. It is undisputed that the date on which the appellant was given a compassionate appointment as Second Division Assistant/Clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that Respondents 3 and 4 were given appointment initially as Second Division Assistant/Clerk but later than the appellant. When the State, therefore, thought it fit to change the post of Respondents 3 and 4 and appointed them to the post of Sub-Inspector of Excise, unless there is any justifiable reason existing, there is no reason as to why the appellant should be treated with hostile discrimination. In the aforesaid circumstances, we set aside the impugned order of the Tribunal rejecting the prayer of the appellant for being considered for the post of Sub-Inspector of Excise and we direct that the State Government may consider the case of appointment of the appellant as Sub-Inspector of Excise. Be it stated, in the event he is appointed it would be prospective and he will not be entitled to any retrospective benefit. The appeals are allowed accordingly."

14.4 Also, there can be no queue jumping. Vide the judgment in the case of *Cochin Dock Labour Board v. Leenamma Samuel*,<sup>57</sup> the Apex Court has held:

"4. Having regard to the fact that a number of dependants of employees who had died while in service and whose names were above that of Respondent 1 in the first priority list had not been given appointment, the High Court was in error in giving a direction that Respondent 1 should be given appointment on compassionate ground against the next available vacancy. The Board was justified in taking the stand that Respondent 1 could not be considered for such appointment out of turn. We are, therefore, unable to uphold the direction given in the impugned judgment of the High Court that Respondent 1 be appointed against the next arising vacancy"

<sup>57</sup> (1998) 9 SCC 87

15. When one family member is already in service:

15.1 The Apex Court has held that when one of the family members is employed, there is no need to consider compassionate appointment in respect of another family member. However, this is not a blanket bar, as the same is subject to certain contingencies as well.

15.2 In *SAIL v. Awadhesh Singh*,<sup>58</sup>, the Apex Court has held:

"The very purpose for which such Scheme had been evolved would get frustrated if a claim on priority basis is made by a dependant of the deceased notwithstanding the fact that the other dependant of the deceased is already in service. In this view of the matter we are unable to sustain the decision of the Patna High Court in the impugned judgments. It may be stated that a Bench of this Court has already taken a similar view in the case of *S. Mohan v. Govt. of T.N.*<sup>59</sup> with which we have our respectful concurrence."

15.3 Similarly, in the case of *State of H.P. v. Jafli Devi*, (1997) 5 SCC 301, the Apex Court has held:

"5. In the present case the High Court appears to have been influenced by sympathetic considerations and hardship of the respondent to make a departure from the policy laid down by the Government in the Office Memorandum dated 18-1-1990. Under the said policy Harbans Lal, the second son of the respondent could not be given appointment on compassionate grounds since another son of the deceased employee was already in government service. Having regard to the said policy the application of the respondent seeking appointment for Harbans Lal had been rightly rejected by the Director of Fisheries by his order dated 31-3-1994. The High Court was in error in

<sup>58</sup> (2001) 10 SCC 621

<sup>59</sup> (1998) 9 SCC 485

setting aside the said order passed by the Director of Fisheries and directing the appellants to reconsider the case of Harbans Lal for appointment on compassionate grounds."

(In this case one of the sons of the deceased was already employed in government department)

15.4 In Awadesh Singh (supra) one of the sons of the deceased was 'in service'. Generally, the use of the term, "in service" is to connote employment in Government department. In S. Mohan (supra) rejection of compassionate appointment was not only on the ground that two of the sons of the deceased were employed, but also on the ground that the applicant had approached the Court after ten years. That's why, the Apex Court has held that there is no vested right which can be exercised at any time in future.

15.5 In the case of State of H.P. v. Rajesh Kumar,<sup>60</sup> the Apex Court has expressed as under:-

4. It is not disputed that the elder brother of the respondent is employed as a Clerk in the Office of the Superintending Engineer (I & PH), Shimla. The submission that he is living separately, would not make any difference as he, on respondents' own showing, separated after the death of his father. Under the policy framed by the Government on 18-1-1990 relating to the appointment on compassionate grounds, it is specifically provided in para 5(c):

"In all cases where one or more members of the family are already in government service or in employment of autonomous bodies/bodies/ boards/corporations etc. of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased

<sup>60</sup> (2001) 9 SCC 174

government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the department of personnel, and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers."

15.6 If a family member is earning something casually, or having some income by working in the agricultural land of the family, that cannot be taken as one of the family members in "gainful employment".

*Govind Prakash Verma v. LIC of India (supra)*, the Apex Court has held as under:-

"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 members 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 terminal benefits received by the widow and the family pension could not be taken into account."

b/

15.7 The above decisions would point out the fact that when one of the family members of the deceased is in 'service' (meaning thereby, in government service) compassionate appointment may not be granted. Rajesh Kumar (supra) states that if separation of that earning member is posterior to the demise of the government servant, compassionate appointment be not given for any other member of the family, which impliedly means that if the earning member is separately living even during the life time of the deceased, then compassionate appointment may be given. Again, Govind Prakash Verma (supra) clarifies as to how to interpret the term, "gainfully employed".

15.8 Though in the earlier decisions, the Apex Court has held that the extent of terminal benefits would weigh in determining the entitlement to compassionate appointment, in the case of Balbir Kaur (supra) and the latest judgment in Govind Prakash Verma (supra) the view of the Apex Court is that compassionate appointment be not denied purely on the ground that the family had received the terminal benefits. The words, "*The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment,*" as appearing in Balbir Kaur's case (supra) and "*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 benefits of service which one gets on the death of the employee" appearing in the case of Govind Prakash Verma (supra) would go to show that payment terminal benefit cannot be taken as the sole ground for denying the grant of compassionate appointment to one of the family members of the deceased government official.

16. Which Rule shall be applied - the one at the time of application or at the time of consideration of the application?

16.1 More often than not, applications for compassionate appointment are considered years after filing of such applications, reasons being that there must be some vacancies in the event of which alone, such applications could be considered. So far as the general rules are concerned, the Government has stipulated such rules and depending upon the circumstances, the rules are also modified. If so, the question that arises for consideration is as to which Rule should be applied -

*[Handwritten mark: a large 'B' with a diagonal line through it]*

- (a) the one that was applicable when the government servant expired;
- (b) the one that was applicable at the time when the applicant makes application, complete in all respects;
- (c) the one prevalent at the time when the application comes up for consideration.

16.2 In so far as (a) is concerned, it would not apply, for the question of consideration comes only when there is an application. As regards (c) above too, it would not be appropriate as any rules (which may go to the disadvantage of the applicants) framed later on i.e. after the application, complete in all respects, has been filed, would go against the applicant without any fault of his. Hence, it can be safely stated that the rules that apply at the time of filing of the application alone would apply. Service jurisprudence is clear on the issue. Amendment to the rules cannot take prospective effect. It is only the prevailing rules that would apply. To cite a few examples:

"(i) In the case of *Prem Kumar Verma v. Union of India*, (1998) 5 SCC 457 in a matter of seniority, when the Tribunal altered certain seniority on the basis of a rule which was not in existence at the time when vacancy arose, the Apex Court has held, "The Tribunal committed error by altering the said seniority on the basis of a rule which was not in existence on the date the vacancy arose and on the date when the selection was completed."



(ii) In another case of *Y. v. Rangaiah v. Sreenivasa Rao* (1983) 3 SCC 284, the Apex Court had held as under:-

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

This was later followed in the case of *P. Ganeshwar Rao v. State of A.P.*, 1988 Supp SCC 740.

17. Certain inconsistencies and inappropriate propositions could be smelt in the policy relating to grant of compassionate appointments, especially with reference to the yardstick being adopted to ascertain, what is called, 'the more deserving cases'. These are

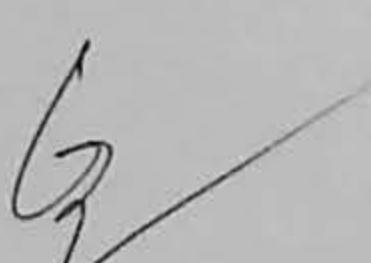
- (a) The larger the number of family members the greater is the prospect of Compassionate appointment.
- (b) The larger the quantum of terminal benefits, the bleaker the prospect of compassionate appointment.
- (c) The larger the area of landed properties in possession of the family the less the prospect of compassionate appointment to the family member of the deceased government servant.

*b2*

(d) If there is any earning member in the family, irrespective of whether he is with the family and maintains the family or living separately and neglects the family, the same would be almost a bar for compassionate appointment for any other member.

17.1 Now the reasons as to why the above are inconsistent and inappropriate.

(a) Family Planning has been one of the prime programs and national schemes (**State of Haryana vs Santra, (2000) 5 SCC 182**) of the Government which is also evident from the fact that maternity leave is not admissible for delivery of the third child (even if it be the second delivery, when first one was of twin children), ironically, in the event of unfortunate and untimely death of that government servant, who adopted the family planning and had only one child or two children, the family is deprived of the benefit of compassionate appointment, as, for such compassionate appointment the yardstick is that greater the number of family members, more the prospect of compassionate appointment! A clear Dichotomy !! Of course, if the family of a deceased government servant has more than two children, for the purpose of working out the number of dependents, the same would be taken as three irrespective of the number of children over and above two. This



would ensure that the ward of those who had maintained family planning would not be in a much disadvantaged position. In a policy letter issued by the Ministry of Defence, it appears that dependents beyond two are considered as only one and thus, total number of dependents does not exceed three. Many departments do not adopt this method.

(b) Provident fund is meant for saving for the future and as long as the same with the Government, it is used by the Government for its constructive purposes; and if, with frugal living, a government servant saves more in his provident fund, the same costs his family the prospect of compassionate appointment in the event of his unfortunate and untimely demise, for, the larger the terminal benefits, the less the possibility of such appointment! This kills the intention to save for the future! Again, release of provident fund cannot be taken as a terminal benefit, though, it could aptly be said to be a terminal payment. For, it should be only that amount that should be characterized as "terminal benefits" which is dependent upon the extent of service rendered etc., and payable to the applicant at the time of his leaving the government service. Such a terminal benefit, such as gratuity, commutation

*b2*

etc., could be withheld or even denied in the event of dismissal from service, whereas, provident fund amount cannot be withheld. In fact provident fund enjoys certain immunity from attachment as long as the character of the same remains as Provident fund. As such, for the purpose of working out the assets of the family (if at all the same should be considered), the element of provident fund should be excluded as otherwise, the inducement in saving through provident fund would be thoroughly diluted, which may not be conducive to the policy of the government to encourage savings through provident fund. Again, it has been held in the case of *Govind Prakash Verma v. LIC of India, (supra)* "The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as 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."

Similarly, in *Balbir Kaur v. Steel Authority of India Ltd., (supra)* the apex Court on the contention of the employer that compassionate appointment in addition to Family Benefit Scheme would mean more benefits, held, "We are not called upon to assess the situation but the



fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”.

In view of the above verdict of the Apex Court, it would be in the interest of justice, that the Department of Personnel consider this aspect and reschedule the scheme by excluding the extent of provident Fund assets from the purview of terminal benefit and again while so considering the scale of evaluation of income from landed property be given a re-look in view of the position at (c) below.

(c) Possession of landed property is one thing; yield from the same is another. The Apex court has held in the case of **Orissa Cement Ltd. v. State of Orissa**,<sup>61</sup> as under:-

<sup>61</sup> 1991 Supp (1) SCC 430

"The income from the land may be more or less due to a variety of reasons. In the case of agricultural lands, it may depend on the fertility of the soil, the sources of irrigation available, the nature of crops grown and other such factors."

Thus, while considering a case for compassionate appointment, irrespective of whether the land in possession is wet land or dry land, if only the extent of area of land possessed is taken into account, without any consideration of the exact annual yield out of it, the same may not reflect the correct position. Again, more often than not, such landed property would be hereditary one with only undivided share to the family concerned, in which event, even sale of that property would not be that easy. Similarly, ancestral house in the village should not be taken into account as the same would be of the least assistance in mitigating the financial crisis of the family which is residing at a far off place.

(d) "A son is a son until he gets a wife. A daughter is a daughter throughout her life."

*Savita Samvedi v. Union of India,*<sup>62</sup>

17.2 If the son of a deceased government lives separately even during the life time of the government servant and is earning, what is the benefit to the other family members? In one case the decision of

<sup>62</sup> (1996) 2 SCC 380

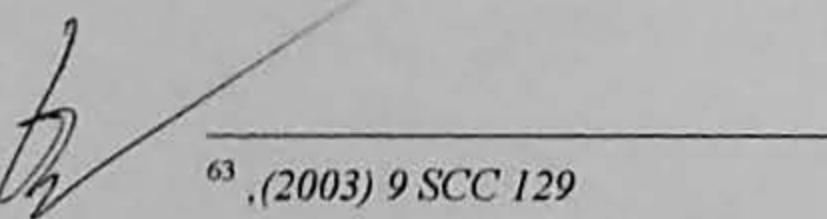
the Tribunal to the extent that the brother of the deceased living separately and not supporting the family, some other member was sought to be considered for appointment was complied with and simultaneously the case was taken up with the Apex Court. The Apex Court after narrating the facts of the case declined to interfere with the order of the Court below. The following is the relevant portion of the judgment in the case of **Union of India v. K.P. Tiwari**<sup>63</sup>:

"2. The Tribunal in the first instance merely directed to consider the case of the respondent afresh for appointment on compassionate grounds in relaxation of the educational qualification on merits and the matter was disposed of. Thereafter, the said order was reviewed by another application when the various circumstances of the death of the father of the respondent, the brother being in employment and living separately not supporting the family of the respondent, were considered and the matter had been pending consideration for a long time and in view of the special circumstances directed that the respondent be provided with an employment within one month from the date of the receipt of the order.

.....

4. It is unnecessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the respondent from his livelihood."

17.3 There is however, a difference between the earning member of the family living separately during the life time of the deceased government servant and after his death. The former would be considered in favour of compassionate appointment, while the latter

 63. (2003) 9 SCC 129

would not. In the case of *State of H.P. v. Rajesh Kumar*,<sup>64</sup> the Apex Court has held as under:-

*"The submission that he is living separately, would not make any difference as he, on respondents' own showing, separated after the death of his father."*

(This would tacitly/impliedly mean that if the earning member of the family resides separately, even during the life time of the government employee, that there has been an earning member would not come in the way of compassionate appointment to other family member).

17.4 The above involves honest heart searching and perhaps it is time that the Rule making authorities reconsider the yardstick for compassionate appointment keeping in view the above dicta of the Apex Court.

18. To summarize, in so far as the dictum of the Apex Court in respect of compassionate appointment is concerned,

- (a) There is no vested right for compassionate appointment. (Para 4)
- (b) Grant of compassionate appointment is an exception to the rule of normal recruitment.
- (c) Such appointment shall be restricted to Group C and D posts only, subject to availability of vacancies.
- (d) Compassionate appointment is meant to tide over the sudden financial crisis of the deceased family.
- (e) The Rules on the subject as applicable should be strictly followed. (Para 8)
- (f) There shall be equality clause maintained amongst the claimants for compassionate

*64* (2001) 9 SCC 174

appointment and there shall be no queue jumping.

- (g) If any of the family members is in government service, grant of compassionate appointment to another family member may be denied.
- (h) Compassionate appointment cannot be denied merely on the ground of the family having received certain terminal benefits or any of the family members makes some earnings by cultivation etc.,
- (i) The rules that are in extant at the time when the application, complete in all respects, is filed would be pressed into service.

19. Now a look at the Memorandum on the subject.

Office Memorandum dated November 25, 1978 was one such memorandum which deals with compassionate appointment and the same had been interpreted by the Apex Court in the case of Auditor General of India v. G. Ananta Rajeswara Rao,<sup>65</sup>

*It is contended for the State that the Memorandum envisages appointments purely on compassionate grounds in the circumstances enumerated in Office Memorandum No. 14014/1/77-Estt. (D), Government of India, dated November 25, 1978. It provides that Secretaries or Joint Secretaries in the Ministries/Departments are competent to appoint, in relaxation of the procedure of recruitment through the Staff Selection Commission or Employment Exchange, but subject to the other requirements set out therein, the son/daughter or near relative of the government servant (it is stated by the learned counsel that widow of the deceased is near relative), who died in harness leaving his family in immediate need of assistance, in the event of there being no other earning member in the family, to a Group 'C' post or Group 'D' post. After the proposal for such appointment has been approved by the Joint Secretary in charge of the Administration or Secretary in the Ministry or Department concerned, it would be made. The Memorandum also provides for the fulfilment of the qualifications prescribed for the post. So it is not violative of Article 16(2). We find no force to accept in toto.*

*3. In paragraph 5, it is stated that in deserving cases even where there is an earning member in the family, a son/daughter/near relative of a government servant who dies in harness leaving his family in indigent circumstances, may be considered for*

appointment to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependents left by the deceased government servant, the assets and liabilities left by him, the income of the earning member as also his liabilities, whether the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to other members of the family.

4. In paragraph 6, it is stated that in exceptional cases when a Department is satisfied that the condition of the family is indigent and in great distress, the benefit of compassionate appointment may be extended to the son/daughter or near relative of government servant retired on medical grounds under Rule 36 of the Central Civil Service (Pension Rules), 1972 or corresponding provisions in the Central Civil Regulations. Para 7 dealt with the ban on recruitment in Group 'C' posts and direction was given to make appointments to group 'D' posts and paragraph 8 relates to the certain clarifications and para 9 relates to the imposition of the conditions or the condition to be accepted by the person appointed to the post. Para 11(a) provides that the appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications required for the post consistent with requirement of the maintenance of efficiency of administration. Para 11(b) provides that these instructions do not restrict employment of sons/daughters or near relatives of deceased Group 'D' employee to a Group 'D' post alone. As such a son/daughter or near relative of a deceased employee can be appointed to a Group 'C' post for which he is educationally qualified, provided a vacancy in Group 'C' exists and para 11(c) provides that the appointments have to be cleared at the Head of Department level, and as all the vacancies are to be pooled for compassionate appointment, it may be ensured that subordinate and field offices got an equitable share in the compassionate appointments.

5. A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of

descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that **if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable.** But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted.

19.2 Later on in October, 1998, the DOPT had issued a fresh notification relating to compassionate appointments and the salient features are as under:-

#### **"SCHEME FOR COMPASSIONATE APPOINTMENT**

##### **OBJECT**

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

##### **2. TO WHOM APPLICABLE.**

To a dependent family member:-

(A) of a Government servant who-

- (a) dies while in service (including death by suicide) or
- (b) is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations

before attaining the age of 55 years (57 years for Group 'D' Government servants); or

(c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 of the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants): or

(B) of a member of the Armed Forces who-

- (a) dies during service; or
- (b) is killed in action; or
- (c) is medically boarded out and is unfit for civil employment.

**Note 1** "Dependent Family Member" means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para.

Who was wholly dependent on the Government servant/member of the Armed forces at the time of his death in harness or retirement on medical grounds, as the case may be.

**Note II** "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or adhoc or contract or re-employment basis.

**Note III** "Confirmed work-charged staff" will also be covered by the term 'Government servant' mentioned in Note III above.

**Note IV** "Service" includes extension in service (but not re-employment) after

attaining the normal age of retirement in a civil post.

**Note V** "Re-employment" does not include employment of ex-serviceman before the normal age of retirement in a civil post.

**3. AUTHORITY COMPETENT TO MAKE COMPASSIONATE APPOINTMENT**

- (A) Joint Secretary incharge of administration in the Ministry/Department concerned.
- (B) Head of the Department under the Supplementary Rule 2 (10) in the case of attached and subordinate officer.
- (C) Secretary in the Ministry/Department concerned in special types of cases.

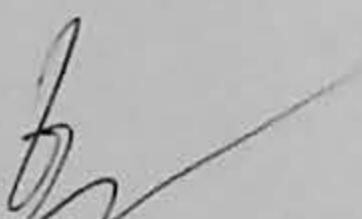
**4. POSTS THROUGH SUCH APPOINTMENTS CAN BE MADE.**

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution and
- (b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

**A- EXEMPTIONS;**

Compassionate appointments are exempted from observance of the following requirements:-

- (a) Recruitment procedure i.e. without the agency of the staff Selection Commission or the Employment Exchange/
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training.
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure).



**B- RELAXATIONS:**

(a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

**Note:1** Age eligibility shall be determined with reference to the date of application and not the date of appointment.

**Note:2** Authority Competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

(b) Secretary in the Ministry/Department concerned is competent to relax temporarily educationally qualifications as prescribed in the relevant recruitment rules in the case of appointment at the lowest level e.g. Group D or Lower Division Clerk post, in exceptional circumstances where the condition of the family is very hard provided there is no vacancy meant for compassionate appointment is a post for which the dependent family member in question is educationally qualified. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the person concerned, if still unqualified, are liable to be terminated.

  
In the case of an attached/subordinate office, the Secretary in the concerned administrative

Ministry/Department shall be the competent authority for this purpose.

(c) In the matter of exemption from the requirement of passing the typing test these appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-

- (i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or
- (ii) by the Establishment Division of the Department of Personnel and Training if the post is not included in the Central Secretariat Clerical Service.

(d) Where a widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications.

#### **DETERMINATION/AVAILABILITY OF VACANCIES.**

- (a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.
- (b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing

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authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for general category.

- (c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments.
- (d) The ceiling of 5% of Direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g sport quota vacancy.
- (e) Employment under the scheme is not confined to the Ministry/Department/Office in which deceased/medically retired

Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list.

#### **RELATE REQUESTS FOR COMPASSIONATE APPOINTMENT**

(a) Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may,

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therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration.

**9. WIDOW APPOINTED ON COMPASSIONATE GROUNDS GETTING REMARRIED.**

Widow appointed on compassionate grounds will be allowed to continue in service on after re-marriage.

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependent, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

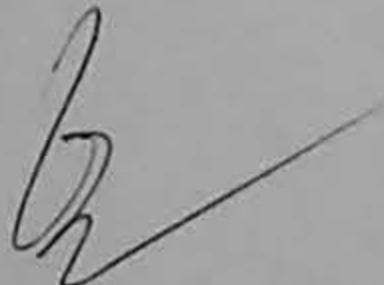
(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supported the other members of the family of

the Government servant, extreme caution has to be observed in ascertaining the economic distress of the member of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

**11. MISSING GOVERNMENT SERVANT;**

Cases of missing Government servants are also covered under the scheme for compassionate appointment subject to the following conditions:-

- (a) A request to grant the benefit of compassionate appointment can be considered only after a lapse of at least 2 years from the date from which the Government servant has been missing provided that;
  - (i) an FIR to this effect has been lodged with the Police.
  - (ii) The missing person is not traceable and
  - (iii) The competent authority feels that the case is genuine.
- (b) This benefit will not be applicable to the case of a Government servant:-
  - (i) Who had less than two years to retire on the date from which he has been missing; or
  - (ii) Who is suspected to have committed fraud, or suspected to have joined any terrorist organization or suspected to have gone abroad.
  - (iii) Compassionate appointment in the case of a missing Government servant also would be a matter of right as in the case of others and it will be subject to fulfilment of all the conditions, including



the availability of vacancy, laid down for such appointment under the scheme.

- (iv) While considering such a request, the results of the Police investigation should also be taken into account; and
- (v) A decision any such request for compassionate appointment should be taken only at the level of the Secretary of the Ministry/Department concerned.

## 12. PROCEDURE.

- (a) The proforma as in Annexure may be used by Ministries/Departments/Offices for ascertaining necessary information and processing the cases of compassionate appointment.
- (b) The Welfare Officer in each Ministry/Department/Office should meet the members of the family of the Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.
- (c) An application for appointment on compassionate grounds should be considered in the light of the instructions issued from time to time, the Department of Personnel and Training (Establishment Division) on the subject by a committee of officers consisting of three officers- one Chairman and two Members- of the rank of Deputy Secretary/Director in the Ministry/Department and officers of equivalent rank in the case of attached and subordinate offices. The Welfare Officers may also be made one of the



Members/Chairman of the committee depending upon his rank. The committee may meet during the second week of every month to consider cases received during the previous month. The applicant may also be granted personal hearing before Committee, if necessary, for better appreciation of the facts of the case.

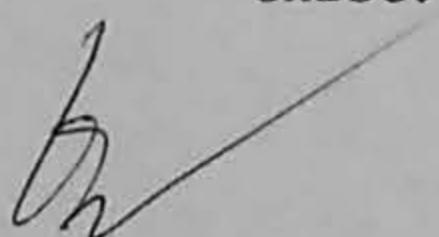
(d) Recommendation of the committee should be placed before the competent authority for a decision. If the competent authority disagrees with the committee's recommendation, the case may be referred to the next higher authority for a decision.

#### **13. UNDERTAKING.**

A person appointed on compassionate grounds under the scheme should give an undertaking in writing (as in Annexure) that he/she will maintain property the other family members who were dependent on the Government servant/member of the Armed Forces in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith.

#### **14. REQUEST FOR CHANGE IN POST/PERSON.**

When a person has been appointed on compassionate grounds to a particular post, the set of circumstances, which led to such appointment, should be deemed to have ceased to exist. Therefore.....

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- (a) he/she should strive in his/her career like his/her colleagues for future advancement and any request for appointment to any higher post on considerations of compassion should invariably be rejected.
- (b) An appointment made on compassionate grounds cannot be transferred to any other person and any request for the same on consideration of compassion should invariably be rejected.

#### 15. SENIORITY

- (a) The inter-se seniority of persons appointed on compassionate grounds may be fixed with reference to their date of appointment. Their interpolation with the direct recruits/promotees may also be made with reference to their dates of appointment without disturbing the inter-se seniority of direct recruit promoteess.
- (b) Date of joining by a person appointed on compassionate grounds shall be treated as the date of his/her regular appointment.

#### 16. GENERAL

- (a) Appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.
- (b) It is not the intention to restrict employment of a family member of the deceased or medically retired. Group 'D' Government servant to a Group 'D' post only. As such, a family member of such Group 'D' Government servant can be appointed to a Group 'C' post for which

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he/she is educationally qualified, provided a vacancy in Group 'C' post exists for his purpose.

(c) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) 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.

(d) Compassionate appointment should not be denied or delayed merely on the ground that there is reorganisation in the Ministry/Department/Office. It should be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the scheme.

(e) Requests for compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be

considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

(f) Compassionate appointment will have precedence over absorption of surplus employees and regularization of daily wage/casual workers with/without temporary status.

(g) Any request to increase the upper age limit of 55 years for retirement on medical grounds prescribed in para 2 (A) and (b) and (C) above in respect of Group 'A'/'B'/'C' Government servants and to bring it at par with the upper age-limit or 37 years prescribed therein for Group 'D' Government servants on the ground that the age of retirement has recently (May 1998) been raised from 58 years to 60 years for Group 'A'/'B'/'C' Government servants (which is at par with the age of retirement of 60 years applicable to Group 'D' Government servants) or on any other ground should invariably be rejected so as to ensure that the benefit of compassionate appointment available under the scheme is not misused by seeking retirement on medical grounds at the fag end of one's career and also keeping in view the fact that the higher upper age-limit of 57 years has been prescribed therein for Group 'D' Government servants for the reason that they are low paid Government servants who get meagre invalid pension in comparison to others.



**IMPORTANT COURT JUDGMENTS.**

The ruling continued in the following judgments may also be kept in view considering cases of compassionate appointment.

(a) The Supreme Court in its judgment dated April 8, 1993 in the case of Auditor General of India and others Vs. G. Ananta Rajeswara Rao {(1994) 1 SCC 192} has held that appointment on grounds of descent clearly violates Article 16 (2) of the Constitution, but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable.

(b) The Supreme Court's judgment dated May 4, 1994 in the case of Umesh Kumar Nagpal Vs. State of Haryana and others (JT 1994 (3) SC 525) has laid down the following important principles in this regard.

(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group 'C' and 'D' (Generally Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered to compassionate grounds and no other post i.e. in the Group

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'C or group B category is expected or required to be given for this purpose as it is legally impermissible.

- (iii) 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.
- (iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
- (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered he is free not to do so. The post is not offered to enter to his starts out to see the family through the economic calamity.
- (vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- (vii) Compassionate appointment cannot be offered by an individual functionary on an adhoc basis.

(c) The Supreme Court has held in its judgement dated February 28, 1995 in the case of the Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambekar and

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others (JT 1994 (2) SC 83) that the High Courts and Administrative Tribunals can not give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment.

(d) The Supreme Court has ruled in the cases of Himachal Road Transport Corporation Vs. Dinesh Kumar (1996) 4 SCC 560 on May 7, 1996 and Hindustan Aeronautics Limited Vs. Smt. R. Radhika Thirumalai (JT 1996 (9) SC 197) on October 9, 1996 the appointment on compassionate grounds can be made only if a vacancy is available for that purpose.

(e) The Supreme Court has held in its judgment in the case of State of Haryana and others Vs. Rani DEvi and others (JT 1996 SC 646) on July 15, 1996 that if the scheme regarding appointment on compassionate ground is extended to all sorts of casual, adhoc employees including those who are working as Apprentices, then such scheme cannot be justified on Constitutional grounds".

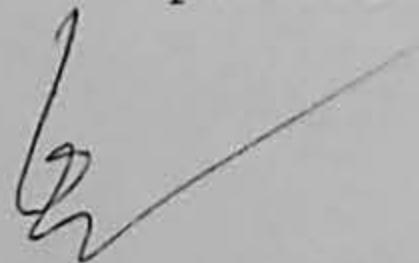
Subsequently, another Memorandum dated 22-06-2001 was issued and the same reads as under:-

"The undersigned is directed to refer to paragraph 7 (1) of the Department of Personnel and Training (Do P & T) office memorandum (O.M) NO.14014/6/94-Estt. (D) dated October 9, 1998 read with O.M No.14024/23/99-Estt (D) dated December 3, 1999 on the above subject and to say that the matter has been further examined. Generally it is seen that in view of the 5% ceiling prescribed for compassionate appointment under the extant instructions, there are not enough vacancies to accommodate even request for compassionate appointment from family members of Government servants belonging to the same Ministry/Department Office. Consequently, there are not spare vacancies left to accommodate

requests from other Ministries/Departments/Offices for such appointment. Therefore, while no useful purpose is being served by taking up the matter with other cases received by them from other Ministries/Departments/Officers of the Government of India to consider such other cases received by them from other Ministries/Departments/Offices for compassionate appointment, it on the other hand only gives false hope to the applicants as grant of such appointment by other Ministries etc, cannot be guaranteed. It has, therefore, been decided that in future the Committee prescribed in paragraph 12 of Office Memorandum dated October 9, 1998 for considering a requests for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should limit its recommendation to appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/office, that too within the ceiling of 5% of vacancies falling under DR quota in any group 'C' or 'D' post prescribed in this regard in para 7 (b) of Office Memorandum dated October 9, 1998 referred to above.

19.3 It is to be stated here that the memorandum is based on the decision of the Apex Court as pronounced prior to 1998 whereas, certain latest judgments, such as Govind Prakash Verma (supra) which have certainly diluted the rigidity as contained in the above O.M., especially in relation to the terminal benefits, gainful employment. As such, it is high time that the DOPT revises the OM to be in conformity with the judgment of the Apex Court.)

19.4 Thus, when a case of compassionate appointment is considered, the same is to be analyzed on the basis of the above law laid by the Apex Court and the provisions of relevant Memorandum.

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20. With the above legal position, the aforesaid OAs are scanned for decision

- a. Late Shri Moti Lal has left behind him his widow and four sons who were fully dependent upon the deceased government servant. The family has received Rs. 4,37,483/- as terminal benefits and besides.
- b. Widow of the deceased government employee applied on 12.1.2001 to consider the case of Vinayak Gautam for appointment on compassionate grounds instead of Shri Prabhat Gautam due to some family problems which was accepted by the department.
- c. The case of the applicant has been thoroughly considered/checked by the Board of Officers while considering his case for compassionate appointments and the same has been rejected due to non-availability of sufficient vacancies within the ceiling limit of 5% of Direct Recruitment Vacancies.
- d. Now the whole amount of family pension works out to Rs. 4,611/- per month and not Rs. 2000/-.
- e. The case for compassionate appointment of his son was considered in the year 2002, hence it was considered as per the rules prevalent at the relevant point of time. The department cannot consider old cases as per old rules and new cases as per new rules when considering the cases at a same time.

21. Further Facts as contained in the rejoinder are as under:

- a. Initially application was submitted on 13.2.1999 to give compassionate appointment to Shri Prabhat Gautam the son of the deceased employee.
- b. Shri Prabhat Gautam was not effected. Compassionate and financial crisis continued. Dispute arose in the family. On account of dispute application dated 12.6.2001 was made for giving employment to the applicant.
- c. Respondent did not provide such employment to the dependent of the deceased though the application was made on 13.2.1999 itself.
- d. It has been stated as to why claim for employment was not considered from the year 1999 to 2002.

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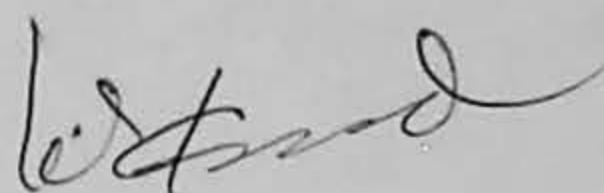
22. The matter has been considered. The rejection is mainly on the ground that the family was not in indigent condition and that the case did not come up within the 5% quota. That the family of the deceased government employee was not in indigent condition must be based on the fact that the family had been in receipt of terminal benefit. It is, however, to be seen as to what was the amount that was available as terminal benefit, after excluding the provident fund credit. If even after excluding the same, the family was found to be not in indigent condition, then, compassionate appointment need not be given. As such, it is essential to verify this aspect. Of course, as far as the non availability of vacancy within 5% is concerned, has been in existence since 26<sup>th</sup> September, 1995 the respondents have correctly taken into account the limitations in considering the case of the applicant had rejected the application.

23. No fault could be found in the decision arrived at by the respondents so far as 5% restrictions is concerned. Notwithstanding the same, as the case requires re-examination in consultation with the Department of Personnel. Hence, it would be in the interest of justice, if the Department of Personnel be approached by the Ministry of Defence in regard to consideration by them of the points mentioned above (i.e. exclusion of provident fund, rescheduling the

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scale of evaluation of yield from the field, excluding the income earned by the son who had left the parents even during the life time of the employee etc., ) and arrive at a fresh policy decision and apply the same to the facts of this case and come to a judicious decision. Ordered accordingly. This is a time consuming process and as such, no time is scheduled for implementation of this order.

24. The O.A. is disposed of accordingly. No cost.



Member (J)

Piyush/-