

**RESERVED**

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,**  
**ALLAHABAD**

Dated : This Monday, the 20<sup>th</sup> day of February, 2011.

ORIGINAL APPLICATION NO.1290 OF 2003

**CORAM:**  
**HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER**

Mahipal Singh, S/o Late Sh. Mohan Singh,  
R/o Village Nagala Jayram, P.O. Akhola, District-Agra.

. . . Applicant

By Adv : Sri Ajay Rajendra

**V E R S U S**

1. Union of India through Defence Secretary, Ministry of Defence, New Delhi.
2. Director General of EME Master General of Ordinance Branch, Army Head Quarter, DHQ, PO. New Delhi-110011.
3. Secretary, Board of Officers Directorate General, Army Head Quarter, New Delhi-110011.
4. The Commandant, 509 Army Base Workshop, Agra Cantt-282001

. . . Respondents

By Adv: Shri S. N. Chatterji

**ORDER**

By way of this instant OA filed under Section 19 of the A.T. Act, 1985 the applicant seeks quashing of order dated 20.2.2003 (Annexure A-1) issued by respondent no.2 whereby his case for grant of appointment under the compassionate scheme has been rejected.

16

2. The brief facts of the case are that the father of the applicant Late Mohan Singh was working as Fitter Skilled Grade II in 509 Army Base Workshop at Agra Cantt. While he was on duty he died on 5.12.1998 leaving behind his widow, five daughters and two sons. It is submitted in the OA that on 22.3.1999 respondent no.4 asked the mother of the applicant to submit documents for considering the case of the applicant for appointment on compassionate grounds. In continuation of the above stated letter the mother of the applicant submitted her affidavit on 23.4.1999 along with all documents as desired by the respondent department. It is further submitted that the family of the applicant after the death of his father received an amount of Rs.1,50,280/- towards gratuity and was paid family pension @ Rs.2000/- per month. On 10.5.2000 the respondent no.2 issued a reminder letter to the District Magistrate Agra to submit his verification report on the particulars of the applicant so that his case for compassionate appointment be considered (Annexure A-5). When nothing was heard from the respondent's side then on 15.7.2000 the mother of the applicant again wrote a letter to respondent no.4 reiterating his request which was subsequently supplemented by another letter dated 20.1.2003 and 3.2.2003. On 20.1.2003 respondent no.2 rejected the case of the applicant for appointment on compassionate grounds (Annexure A-1). In para 4.21 the applicant has taken ground of discrimination by alleging that some of the employees who died after the father of the applicant, whose dependants were given appointment by ignoring the case of the applicant.

56

3. Upon notice the respondents filed detailed counter affidavit. The respondents have taken preliminary objection that the compassionate appointment cannot be claimed as a matter of right. It is to be given as per the rule and instructions issued by the Government from time to time. They relied upon the judgment passed in ***Umesh Nagpal Vs. State of Haryana and Others reported in Jt. 1994(3) SC 525 and in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambekar reported in JT 1994 (2) SC 183.*** On merit it is stated that the case of the applicant was forwarded to the higher authority on 20.06.2000 in terms of provisions contained in letter dated 29.5.1982 and which was subsequently reviewed on 30.6.1987. It is further submitted that the case of the applicant was considered vis-à-vis the other candidates who were seeking similar relief but the same was rejected by the Board as there was no vacancy at that time under the said quota. The applicant was informed accordingly by the respondent no.4 on 24.11.2001. With regard to allegation of discrimination it is submitted that the case of the applicant was considered and it was found that the other person's family are having indigent condition vis-à-vis the family of the applicant. They denied allegation of discrimination. They have also relied upon the judgment passed by the different Benches of the Central Administrative Tribunal annexed as Annexure CA-1,2 and 3. The applicant has also filed rejoinder affidavit. In the rejoinder affidavit the applicant has reiterated what has been stated in the OA except the financial crisis faced by the family of the applicant. The respondents have also filed Supplementary counter affidavit. In

16

para 3 of the supplementary counter affidavit the respondents have mentioned about the instructions issued by Government of India i.e. Ministry of Personnel, Public Grievances and Pension ( for short DOPT) (Annexure SCA-1). In para 4 they have given chart indicating the marks given to the applicant by the committee while considering his case which reads as under:-

Sl. No.	Parameters	Total Max. marks earmarked	Marks acquired by the applicant in Vth Board convened on 9.10.2000
(a)	Family Size	10	10
(b)	Liability (in terms of unmarried daughters)	10	05
(c)	Terminal benefits	10	00
(d)	Amount of Pension	10	01
(e)	Earning members in the family	10	10
(f)	Movable/Immovable property	10	05
	Total	60	31

S. No.	Parameters	Total Max Marks earmarked	Marks acquired by the applicant in each Board		
			Board-VI (26.3.2001) (26/27/9/2001)	Board-VII	Board-VIII (27.6.2001)
(a)	Family Pension	20	12	12	12
(b)	Terminal Benefits	10	00	00	00
(c)	Monthly income (of earning members)	5	05	05	05
(d)	Movable/Immovable property	10	10	10	10
(e)	No. of dependents	15	15	15	15
(f)	No. of unmarried daughters	15	15	15	15
(g)	No. of minor children	15	05	05	05
(h)	Left over service	10	02	02	02
	Total	100	64	64	64

16

It is further clarified that in terms of the DOPT instructions minimum 5% vacancies falling under the Direct quota in any group C or D is to be considered. Since there were Limited number of vacancies, therefore, the case of the applicant was not found more suitable vis-à-vis the other candidates. They have also appended the proceedings of the meeting wherein the details of all the candidates whose names were considered for appointment under the said quota were given. The name of the applicant stood at serial no.36 and he secured 31 marks and subsequently to that also the applicant did not come in the merit. Therefore, his case was not considered. Lastly they submitted that in second chance the applicant secured 64 marks and placed at serial no.26. In third chance he again secured 64 marks and placed at serial no.38 and could not come in the consideration zone for appointment.

The applicant also filed supplementary rejoinder affidavit wherein he has stated that the case of the applicant has not been considered in right prospective and he has been given less marks than his entitlement. The respondents as per direction of this Tribunal dated 3.8.2010 filed supplementary counter affidavit stating therein relative merit. Despite time granted to parties to file written submissions, if any the applicant chosen not file the same, whereas respondents filed written submission.

4. I have heard Shri D. Tiwari, holding brief of Shri Ajay Rajendra learned counsel for the applicant and Shri S.N. Chatterji, learned Counsel for Union of India. The counsel for the applicant has vehemently argued that the impugned rejection order Annexure A-1 is illegal, arbitrary and violative of Article 14 of the

56

Constitution of India. He further argued that while considering the case of the applicant the respondents have not given him marks properly. He further argued that while considering his case the family condition and the financial hardship faced by the applicant has not been considered, therefore, the impugned decisions of the recommending committee is mere eye wash and suffers from arbitrariness. He further argued that the case of the applicant is more indigent than the case of others as the applicant has already submitted in rejoinder affidavit that there are family liabilities on the shoulder of the applicant after the death of his father for which his case should have considered. Lastly he submitted that the respondents be directed to re-consider his case. On the other hand Shri S.N. Chatterji, learned counsel for the respondents argued that this court cannot direct the respondent to give appointment to applicant under the compassionate grounds. This court has limited powers in terms of the judgments passed by Hon'ble Apex Court i.e. only to direct the respondents to consider the case of the applicant in terms of the rules and instructions prevailing at that time. Since the case of the applicant has already been considered in terms of the Office Memorandum issued by DOPT by the review committee not once at least thrice vis-à-vis the other candidates seeking appointment under the said quota. The case of the applicant was rejected as he did not figure in the merit prepared under the said quota. He further denied that any discrimination has been done in case of the applicant while considering his case under the said quota. He submitted that in terms of the Office Memorandum issued by DOPT there are limited number of vacancies against which all candidates of that quota

26

has to be considered and in terms of the marks given to each candidate their relative merit was prepared and subsequently the candidates who secured high mark was offered appointment.

5. I have considered the rival submissions, gone through the pleadings and the judgment cited by the respective parties. It is the admitted fact that compassionate appointment cannot be claimed as a matter of right. It is a beneficiary piece of legislature by which the government wanted to help those families whose bread earner died leaving behind the family in crisis or in financial hardship. Keeping in view the family circumstances after the death of the head of the family the government in its wisdom has introduced the scheme for giving appointment under the compassionate grounds. Time to time Office Memorandums were issued by the nodal Ministry DOPT in which criteria has been laid down under which the case has to be considered.

6. At the outset it would be pertinent to refer to the Scheme for compassionate Appointment-1998 framed by the Government of India and the striking feature of the said Scheme is that it has been framed keeping in view various judgments of Hon'ble the Supreme Court rendered in the cases of **Auditor General of India v. G. Ananta Rajeswara Rao, (1994) 1 SCC 192; Umesh Kumar Nagpal v. State of Haryana, JT 1994 (3) SC 525; Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambekar, JT 1994 (2) SC 183; Himachal Road Transport Corporation v. Dinesh Kumar, JT 1996 (5) SC 319; Hindustan Aeronautics Limited v. Smt. A. Radhika Thirumalal, JT 1996**

56

**(9) SC 197; and State of Haryana v. Rani Devi, JT 1996 (6) SC 646** as also on the basis of various recommendations made by the Fifth Central Pay Commission and Study Reports of 1990 and 1994 prepared by the Department of Administrative Reforms and Public Grievances on the subject of compassionate appointments. Para 5 of the Scheme contain eligibility conditions which prescribe as under:-

**"5. ELIGIBILITY**

(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."

6. Para 6 of the Scheme provides for certain exemptions regarding observance of requirements of recruitment procedure, clearance from the Surplus Cell of the Department of Personnel and Training/Directorate General of Employment and Training, ban orders, relaxations in upper age limit and relaxation of educational qualifications and other conditions. Para 7 of the Scheme deals with determination/availability of vacancies. As per sub-para (b) of Para 7 of the Scheme the compassionate appointments can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back up to 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. It further provides that a person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz. SC/ST/OBC/General

86

depending upon the category to which he belongs. Sub-para (d) of Para 7 further put a restriction that ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilizing any other vacancy e.g. sports quota vacancy. However, sub-para (f) provides that in case 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.

7. Para 16 under the heading of 'General' postulates certain guiding principles for making appointments on compassionate ground. Sub-para (c) of Para 16 of the Scheme, being relevant is reproduced as under:-

"16. GENERAL

(a) and (b) xxx xxx xxx

(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 an earning*

16.

*member, size of the family, ages of the children and the essential needs of the family, etc.” (Emphasis by us)*

7. Obviously the case of the applicant-petitioners qualifies for consideration under the aforementioned 1998 Scheme framed by the Government of India.

8. Now we proceed to see whether the official respondents have complied with the said instructions contained in the 1998 Scheme and made a comparative assessment of the case of the applicant-petitioners vis-à-vis other competing claims as noticed above the case of the applicant was considered by the respondents as mentioned in Para 4 of supplementary counter affidavit not once, but four consecutive occasions. After judging suitability of applicant vis-à-vis other candidates of the same category his case was rejected by impugned order. From perusal of the proceedings appended with the supplementary affidavit it is clear that the case of the applicant has been considered but he secured less marks than the candidate who was given the appointment. Therefore, there is no justification in not accepting the reply put forth by the respondents in counter affidavit as well as in the supplementary counter affidavit.

9. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof his dependants have been living in penury and to

46.

mitigate the immediate hardship of the family and the dependents of the deceased.

10. It is also now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. In case "**Umesh Kumar Nagpal versus State of Haryana, (1994) 4 SCC 138**", their Lordships of the Supreme Court held as under:-

*"The whole object of grant of compassionate employment is, thus to enable the family to tide over the sudden crises. The object is not to give member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.*

*xx xx xx*

*The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.*

*66*

In case **Jagdish Prasad versus State of Bihar, (1996) 1 SCC 38**, the Hon'ble Supreme Court rejected the claim of a minor dependent to be appointed on compassionate ground after attaining the age of majority by making the following observation:-

*"The very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment to the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."*

In **Steel Authority of India Ltd. v. Madhusudan Das and Ors.**

**[2008 (15) SCALE 39]**, the Hon'ble Court held:

*"...This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."*

As has been held by Hon'ble the Supreme Court in the cases of **National Hydro Electric Power Corpn. Vs. Nanak Chand, (2004) 12 SCC 487 and Hindustan Aeronautics Ltd. (supra)** and. Such an appointment cannot be secured as a matter of right as it is an exception to Articles 14 and 16(1) of the Constitution.

11. The similar view has been taken in the case of **State of J & K and others Vs. Sajad Ahmed Mir (2006 (5) SCC 766** wherein the Hon'ble Apex Court observed as under:

*11. It is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the set back. Once it is proved that inspite of the death of the bread winner, the family survived and substantial period is over, there is no necessity to say !! goodbye!! to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.*

The Apex Court in **I.G. (Karmik) v. Prahalad Mani Tripathi [(2007) 6 SCC162]** carved out an exception to the ordinary rule of recruitment, stating:

*"6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.*

*7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined*



*only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."*

In view of the above, at this belated stage, no relief can be granted to the applicant. **The Hon'ble Supreme Court in the case of Mumtaz Yunus Mulani vs. State of Maharashtra & Ors., 2008**

**(2) S.C.T.,669,** has held as under:-

*"16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged 16 years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at this age."*

In another case also the Hon'ble Apex Court has retreated same view which is reported as **2006 Supreme Court Cases 766 and 2008 AIR SCW 3642.**

The Punjab and Haryana High court also consider point of giving appointment after attaining majority in State of Haryana and others, **2005(2) SCT 478,** has held to the following effect:-

*"We are of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and reasonable manner. Legally there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when*

*Sl*

*other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment had become non-existent – the deceased parent having died 4/5 years ago – an event which can hardly be said to be reasonable vis-à-vis persons waiting for regular appointment. We are, therefore, of the view that there cannot be continuity of cause of action in matters of compassionate appointment.*

The same view is again reiterated by the Hon'ble Supreme Court in recent decision in Civil Appeal NO. 3242 OF 2009 titled as State of Chhatisgarh & Ors Versus Dhirjo Kumar Sengar decided on 5.5.2010 reported as 2010(1) Recent Service Judgment 22. The Hon'ble Apex Court in number of cases has repeatedly held that the compassionate appointment is not a mode for appointment. Not only this it is further lay down by the Hon'ble Apex Court that the vacancy under the said quota is referred from the quota of direct recruitment. Therefore, especially in these circumstances the appointment cannot be made casually as right of general public in seeking appointment in public employment has been affected. Therefore, they have formulated a scheme under different headings and thereafter to make a comparative merit of those candidates who were seeking appointment under the said quota and to give them appointment to a family whose case is more indigent than others because each family cannot be accommodated/given appointment as against the limited quota of vacancy.

12. In view of the above, I feel that the impugned order does not deserve any interference by this Court. No Costs.

  
Member-J

/ns/