

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD

ORIGINAL APPLICATION NO.290 OF 2003

ALLAHABAD THIS THE 12/15 DAY OF Dec 2005

HON'BLE MR. D.R. TIWARI, MEMBER-A
HON'BLE MR. K.B.S. RAJAN, MEMBER-J

1. Smt. Chando Devi, aged about 60 years, W/o late Sri Pyare Lal, R/o House no. 4/60, Shivpur Hauli, Post Dhoomanganj, District Allahabad.
2. Kali Dass, aged about 35 years, S/o Late Shri Pyare Lal, R/o 4/60, Shivpur Hauli, Post Dhoomanganj, District Allahabad.

.....Applicants.

(By Advocate Shri R. Verma)

V E R S U S

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Engineer-in-C's Branch, Army Headquarter, Kashmir House, DHQ Post Office, New Delhi.
3. The Chief Engineer (A.F.), Allahabad.
4. Garrison Engineer (Air Force), Bamrauli, Allahabad.

.....Respondents

(By Advocate: Sri N.C. Nishad)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

In a recent case, *Punjab National Bank v. Ashwini Kumar Taneja, (2004) 7 SCC 265* the Apex Court has spelt out the criteria for affording compassionate appointment. and the same is as *b*

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under The Scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. *Rani Devi case* (1996) 5

SCC 308 : The dictum of the Apex Court is summarized as under :-

- (a) High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. *LIC of India v. Asha Ramchhandra Ambekar* (1994) 2 SCC 718
- (b) As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But 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. *Umesh Kumar Nagpal v. State of Haryana* (1994) 4 SCC 138
- (c) In all claims of 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 appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the Scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. *Sushma Gosain v. Union of India* (1989) 4 SCC 468 (The above view was reiterated

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in *Phoolwati v. Union of India* 1991 Supp (2) SCC 689 and *Union of India v. Bhagwan Singh* (1995) 6 SCC 476.

(d) In matter of compassionate appointment there cannot be insistence for a particular post. 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. *Director of Education (Secondary) v. Pushpendra Kumar* (1998) 5 SCC 192.

(e) 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. *State of U.P. v. Paras Nath* (1998) 2 SCC 412 (Also see *State of Manipur v. Mohd. Rajaodin* (2003) 7 SCC 511, *State of Haryana v. Ankur Gupta* (2003) 7 SCC 704, *Haryana SEB v. Naresh Tanwar* (1996) 8 SCC 23 and *Haryana SEB v. Hakim Singh* (1997) 8 SCC 85.

(f) Retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. *G.M. (D&PB) v. Kunti Tiwary* (2004) 7 SCC 271. It was categorically held that the amounts have to be taken into consideration.

2. It is to be seen whether the applicant comes within the ^{limited} ~~ambit~~ ^{to qualify for Comp. App.} of the above criteria when only the O.A. would succeed.

3. The facts of the case as narrated by the applicant and the defence as contended by the respondents are contained in the succeeding paragraphs.

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(i) Facts as contained in OA are as under:

(a) The applicant no.1 is the widow of late Sri Pyare Lal. The applicant no.2 is the son of the deceased who was working as Duftary in regular and substantive capacity. Sri Pyare Lal while working in the aforesaid capacity died in a road accident on 28.7.1996 leaving behind him the dependents, total number 5.

(b) The applicant no.1 moved an application dated 28.5.97 to appoint the applicant no.2 on compassionate grounds.

(c) The widow is getting Rs. 1500/- per month as monthly pension and she has also ~~been~~ received an amount of Rs. 1,56,439/- as terminal benefits. In addition, the monthly income of the entire family is only Rs. 800/- per month. The family has been residing on his own house worth Rs. 75,000/-

(d) The respondent no.3 vide letter dated 7.8.2001 addressed to the applicant no.2 ~~and~~ directed ~~her~~ to send certain information in the enclosed proforma.

(e) In compliance thereof, the applicant submitted the required information. Thereafter the impugned order dated 6.8.2002 has been passed by the respondent no.3.

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(f) The respondent no.3 has not dealt with the matter thoroughly by going into the facts of the case applying its own mind. It has only been mentioned that the competent authority has considered the case of the applicant, but the case has not been recommended by the Board of Officers. The reasons thereof have not been disclosed as to how the Board of Officers has not found the case of the applicant as not deserving; unless the reason is assigned, the affected person cannot know as to on what ground his case failed.

(g) One of the grounds for rejecting ^{The case is} has been shown that the crisis is lacking as the death of the Government servant took place six years ago, whereas the need for immediate assistance is to tide over the emergency and crisis the family has been facing after the sudden death of the bread-winner and it was the respondent no.3, who delayed the matter. The respondent no.3 has applied its mind mechanically.

(h) As per the law laid down by the Hon'ble Supreme Court, the terminal benefits and the monthly pension cannot be a good ground for rejecting the claim of dependent of a Government servant for compassionate appointment.

(ii) Defence of the respondents are as under:-

(a) The respondent no.3 has issued the impugned order based on the Government

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rules and decision by Board of Officers constituted at Headquarter Chief Engineer (Air Force), Allahabad.

(b) The deceased Government servant has left behind widow and four sons, all are adult being aged 44 years, 41 years, 35 years and 19 years respectively, therefore, cannot be termed as dependent to the deceased Government employee. Except widow, no other members are dependent as all of them are adult.

(c) There are two elder brothers than the applicant no.2, therefore, it is not understood how the burden of the whole family rested on the shoulders of the applicant no.2.

(d) The application of the applicant was examined by the Board of Officers and after rejection of his case by the Board, the respondent no.3 issued the impugned order.

(e) In the case of Umesh Kumar Nagpal Vs. State of Haryana & Ors. Reported in JT 1994(3) SC 525 it has been held that offering appointment on compassionate grounds as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Govt. servant is legally impermissible and compassionate appointment cannot be granted after lapse of a reasonable period and it is

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not a vested right which can be exercised at any time in future.

(f) The quota prescribed for compassionate appointment is only 5% of the total direct recruitment vacancy occurring in a year in Group 'C' and 'D' posts.

(g) The present O.A. has been filed ^{to} extract undue advantage from the Govt., therefore, the same is liable to be dismissed at admission stage itself with costs.

4. Rejoinder had been filed by the applicants reiterating their stand as contained in O.A. With this the pleadings are over as per the rules of practice. However, supplementary counter affidavit, supplementary rejoinder affidavit, followed by another supplementary affidavit on behalf of the respondents have all been filed, which on filtration, resulted only in repetition of what have been stated in the pleadings.

5. One objection by the respondents is that since all the sons of the deceased were majors at the time of the demise of the govt. servant, save the widow, none could be treated as dependents. This is thoroughly incorrect. If that be so, where compassionate appointment should be

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granted, the same shall be only to the widow and none else, whereas, the respondents themselves have given such appointment to the major son or daughter of the deceased government servants. Respondents could have been more logical while retorting the contentions of the applicant.

6. Arguments were heard and the documents perused. As the precise reason of rejection has not been manifested in the counter, relevant records were called for and the same had been perused.

7. It is revealed from the records that the board met on 20.11.1997 and after recording various particulars of the case finally gave its opinion as under:-

"OPINION"

The Board of officers is of opinion that Sri Kali Das, son of late Pvare Lal. Daftry may be given employment as Chowkidar/Peon/Mazdoor in the MES to the son of the deceased Govt. servant in relaxation of normal recruitment procedure of coming through employment exchange."

8. The above opinion, it appears from the record was not varied. May be, certain modification would have occurred even in policy decision at a later date. The respondents,

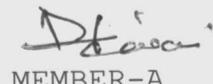
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however, have totally eclipsed the above opinion and rejected the case of the applicant stating that the case is old and the benefit of compassionate appointment cannot be granted after a lapse of reasonable period. One more novel rejection for rejection have been invented stating that all others in the family of the deceased being major, except the widow, none is to be considered as a dependent. It is clear that the respondents have rejected the case on totally untenable reasons. The OA succeeds. The respondents are directed to consider the case of the applicant to any of the posts recommended by the Board of Officers. Necessary offer of appointment issued to the applicant within three months from the date of communication of this order.

9. As the applicant's ^{carrier} ~~carrier~~ has been unnecessarily hampered since 1997 the respondents are liable to pay cost which is quantified at Rs. 5000/-. This amount should be paid within one month from the date of communication of this order.



MEMBER-J



MEMBER-A

GIRISH/-