

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 471 of 2006

Allahabad this the, 9th day of August, 2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)

Vijay Narayan Singh Son of late Shri Krishna Singh R/o Chandpur
(Barbuspur) Post Office Industrial Estate, District Varanasi (U.P.).

Applicant

By Advocate: Mr. Vinod Kumar

VS.

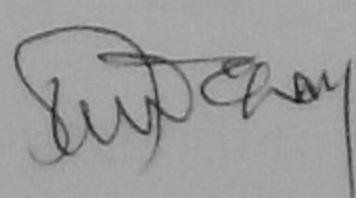
1. Union of India through Secretary Ministry of Human Resources Development, U.O.I., New Delhi.
2. The Commissioner Kendriya Vidyalaya Sangathan, 18, Institutional Area Shaheed Jeet Singh Marg New Delhi - 110 016.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office Patna.
4. The Assistant Commissioner Kendriya Vidyalaya Sangathan, Regional Office, Bhubaneswar, Kendriya Vidyalaya Sangathan, Pragati Vihar Colony, Mancheswar, Bhubaneswar.
5. The Principal, Kendriya Vidyalaya Sangathan, Singarsi, Dumka (Jharkhand).

Respondents

By Advocate: Mr. N.P. Singh

ORDER

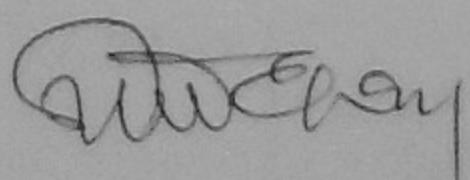
Instant O.A. has been instituted for the following
relief (s): -



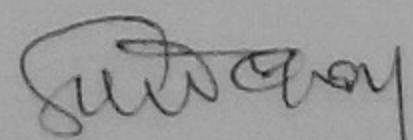
- (i) to issue an order/direction in the nature of certiorari quashing the impugned order dated 15.09.2005 passed by the respondent No. 2.
- (ii) to issue an order/direction commanding the respondents to consider the request of the applicant No. 1 with further direction to the respondents to consider the applicant No. 2 for being appointed on compassionate grounds on the suitable post;
- (iii) To issue an order or direction in favour of the applicant, which this Hon'ble Tribunal may deem fit and proper, so that justice may be done;
- (iv) To award the cost of the application.

2. Pleadings of the parties may be summarized as follows: -

It has been alleged by the applicant that his father was initially appointed as Librarian in Kendriya Vidyalaya Sangathan on 01.09.1966. The post of Librarian is not a promotional post. The father was transferred later on at Bareilly, Izzat Nagar, and again transferred and posted at D.L.W. (Kendriya Vidyalaya School), Varanasi, and lastly transferred at Singarasi in Kendriya Vidyalaya Sangathan (now in Jharkhand Dumka). A request was made by father of the applicant for his posting at some near by station to his district because he has completed 59 years of age and only 1 year remained in superannuation but no attention was paid towards his



request. The father of the applicant while posted at Jharkhand suffered from Brain Malaria. The area where he was posted, was declared as Brain Malaria Effected area. He remained hospitalized for considerable period, and ultimately he was admitted in the Civil Hospital, Varanasi. However, he died on 18.04.2004. It is alleged that father of the applicant ~~was~~ died due to high handedness of the respondents, for not considering him for his transfer from Dumka, Jharkhand. The widow of the deceased employee sent an application through proper channel for giving compassionate appointment to applicant No. 2, and this request was duly forwarded by the Principal, Kendriya Vidyalaya to Commissioner, Kendriya Vidyalaya Sangathan, New Delhi. Certain formalities were performed as per direction of the respondents. The family status of the applicant was known to the respondents. It has also been alleged that the widow has two sons from the deceased employee namely Vijay Narayan Singh and Sanjay Narayan Singh. The younger son- Sanjay Narayan Singh is living separately, and there is no dispute in between applicant No. 2 and his brother. When no response was received from the respondents then application was sent again for providing compassionate appointment. It is alleged

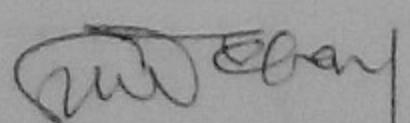


that the applicant is educationally qualified for compassionate appointment as he had completed B. Com. (in the O.A. wrongly mentioned as M. Com.) and Diploma in Commercial Practice. He belongs to OBC category and having no moveable or immoveable property. Any how, widow of the deceased employee is maintaining the family. A cryptic order was passed by the respondents, and the applicant is entitled for compassionate appointment.

3. The respondents contested the O.A., and denied from the allegations made in the O.A. It has further been alleged that the Kendriya Vidyalaya Sangathan is an autonomous body set up by the Ministry of Education, Govt. of India and registered as a Society under the Society Registration Act. The respondents admitted that an application was received of applicant for compassionate appointment at the place of his father. Claim of the applicant was considered by the competent authority in accordance with office memorandum of D.O.P.T. dated 09.11.1998. The compassionate appointment can be granted to the eligible persons within 5% of the total existing vacancy in Group 'C' and 'D' against the direct recruitment quota.

S. W. Chauhan

In the respondents' office, Group 'C' cadre of compassionate appointment is restricted to the post of Lower Division Clerk. There is no direct recruitment in the respondents' office on the post of Lower Division Clerk in Group 'C' cadre for the last few years. It is stated that no direct recruitment is to be made in Group 'D' post as the work of Group 'D' is undertaken by the outsourcing. Under these circumstances, there is no direct recruitment either to the post of LDC-Group 'C' post or Group 'D' post, and hence no appointment was permissible under the limit of 5%. The letter was sent by the respondents-competent authority on 15.09.2005, and this letter is perfectly justified. It is suffering from no illegality. The case of the applicant was closed for compassionate appointment as no appointment is to be made directly in Group 'C' or Group 'D' post for the reasons mentioned above. The father of the applicant had served for a period of 37 years, 07 months and 17 days, and a sum of ₹ 12,47,507/- was paid to the widow. The family pension is payable to the widow-applicant No. 1 at the rate of ₹ 9,188/- per month. The wife of the deceased employee is aged about 54 years, and two sons are aged about 35 years and 32 years respectively. The applicant is eldest, and his younger



brother is employed in Kendriya Vidyalaya as P.E.T. The father of the applicant has left sufficient amount for survival of his widow, who is under the category of the dependent. There is no sufficient ground to interfere in the order passed by the respondents, and the O.A. deserves to be dismissed as lacks merits.

4. In response to the Counter Affidavit filed by the respondents, the applicant filed a Rejoinder Affidavit, and denied from the allegations of the respondents, and reiterated the facts which have been alleged in the O.A.

5. I have heard Mr. Vinod Kumar, Advocate for the applicant and Mr. N.P. Singh, Advocate for the respondents, and perused the entire facts of the case. When the arguments of Mr. N.P. Singh were heard, Mr. Vinod Kumar was not present. Later on, he appeared and heard.

6. It is undisputed fact from the pleadings of the parties that the deceased Late Sri Krishna Singh was an employee of the respondents-Kendriya Vidyalaya Sangathan, and he served as a Librarian. It has been alleged by the applicant himself that at the time of

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death, deceased employee was aged about 59 years, and only one year remained in his superannuation. The deceased employee was suffering from Brain Malaria, and the area, in which he was posted at the time of death, was declared Brain Malaria effected area. It is alleged by the applicant that in spite of making so many requests for his transfer to some nearby place to his district, no attention was paid towards it, and father of the applicant died due to highhandedness, carelessness and negligence on the part of the respondents. The deceased died on 06.05.2004 while he was hospitalized. Application was made by the applicant for giving compassionate appointment.

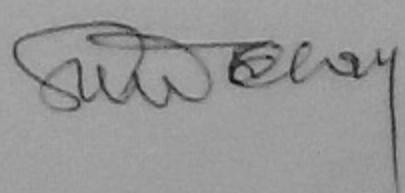
7. Annexure-1 is copy of the impugned order dated 15.09.2005. It has been mentioned in the order, as under: -

" I am to refer to note sent vide Dy. No. 4481/NC/MHRD dated 2.8.2005 on the subject cited above and to say that in KVS there is no direct recruitment to the post of Group C (LDC) and Group D employee.

As per rules compassionate appointment can be given against 5% of the direct recruitment. Since there is no direct recruitment, no appointment on compassionate grounds can take place against the permissible limit of 5%.

In view of the above position, the request of Shri Vijay Narayan Singh, son of Late Shri Krishan Singh, Ex-Librarian, KV Singharshi for appointment on compassionate grounds cannot be acceded to."

In view of the above position, request of the applicant-Vijay Narayan Singh S/o Late Shri Krishan

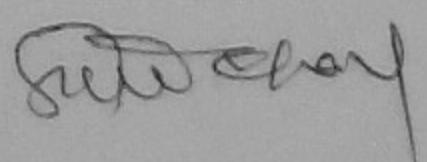


Singh-Ex Librarian, Kendriya Vidyalaya Sangathan for appointment on compassionate ground cannot be acceded to. In the Counter Affidavit, case of the respondents is two fold. Firstly, it has been alleged that no direct recruitment on Group 'D' post is permissible in Kendriya Vidyalaya Sangathan as the work done by Group 'D' employee, is being undertaken by outsourcing. It has further been alleged that the direct recruitment is to be given for the post of Lower Division Clerk, and it is admissible only against 5% quota of the existing vacancy. For the last numerous years, no appointment has been made on Group 'C' and 'D' post. No vacancy has fallen vacant for numerous years hence the appointment could not be given. It has also been alleged that the deceased father of the applicant left his wife-aged about 54 years, and two sons namely Vijay Narayan Singh-aged about 35 years and 32 years respectively. The applicant is the eldest son aged about 35 years, and another son is working in the Kendriya Vidyalaya Sangathan as P.E.T. Therefore, there was only one dependent of the deceased employee-his widow aged about 54 years at the time of death. A sum of ₹ 12,47,507/- was paid to the widow as the benefits, as a consequence of death of the deceased employee,

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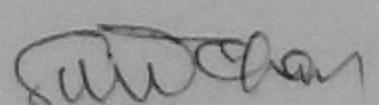
and this amount is sufficient for survival of widow of the deceased. The applicant cannot be called as a dependent of the deceased as he is aged about 35 years and hence there appears no illegality in the order passed by the respondents in not giving compassionate appointment to applicant No. 2.

8. It has been argued by learned counsel for the respondents that no recruitment is permissible in Group 'D' post in the Kendriya Vidyalaya Sangathan, as the work performed by Group 'D' employee is being undertaken by outsourcing. No appointment is to be given in Group 'D' post. The main contention of the applicant is that the applicant was B. Com and Diploma in Commercial Practice, and he was entitled to be appointed in Group 'C' post. It has been argued by learned counsel for the applicant that in accordance of the Rules issued by the Ministry of DOP & T, compassionate appointment is permissible to eligible persons within 5% of the existing vacancy in Group 'C'. For want of vacancies in Group 'C', no appointment was made for the last several years, and due to this reason, compassionate appointment was not given to the applicant as there was no vacancy. In view of the

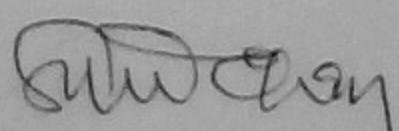


Judgment of the Hon'ble Apex Court as well as the guidelines issued by the DOPT, compassionate appointment is to be given only against 5% existing vacancy of a year. New post is not to be created for giving compassionate appointment. There are strict rules of the DOP&T as well as the directions of the Hon'ble Apex Court. There had not been any vacancy in Group 'C' hence no appointment was given. This contention of the respondents has not been disputed by the applicant. Hence, this contention of the respondents as well as the argument of learned counsel for the respondents is to be accepted that as there had not been any vacancy in Group 'C' post in order to give compassionate appointment under 5% quota vacancy, compassionate appointment could not be given to the applicant.

9. It has also been alleged by the respondents that the deceased was aged about 59 years at the time of death. The deceased had put in 37 years, 7 months and 17 days service. It means the deceased had only one year to reach the age of superannuation, and a person who has put in so many years of service, and is of 59 years of age, it is to be expected that his children are

A handwritten signature in black ink, appearing to read "S. W. Chauhan".

mature, and in the present case it has been specifically alleged that applicant was aged about 35 years at the time of death of his father. It is an undisputed fact that younger son of the deceased employee is an employee in the Kendriya Vidyalaya Sangathan as P.E.T. No appointment is to be given to younger son because he was already employed. It is only applicant for whom employment has been prayed. He was mature and fully competent to be employed somewhere else. As the applicant could not get any employment anywhere irrespective of the fact that he was aged about 35 years hence after the death of father, application has been submitted for giving appointment to the applicant. The Hon'ble Apex Court has held in numerous cases that compassionate appointment is not a source of employment, and it is not to be claimed as a matter of right. The main criteria for giving compassionate appointment are to tide over the family from the financial crisis which a family suffered due to untimely death of the sole bread earner of the family. As is evident from the facts of the case, no son of the deceased employee was dependent on the deceased. One son was already employed with the respondents, and another son-eldest one was aged about 35 years. If



a son remained unemployed up to the age of 35 years, and his father has got only one year at his disposal in reaching the age of superannuation then it cannot be expected that he will do some miracle so as to set up the applicant-eldest son. Whatever could have been expected from the deceased employee, he had done the same. It is not the question of livelihood but it is a question of giving employment to one unemployed son of the deceased employee, and the purpose of giving compassionate appointment, is not giving employment. It is not a source of employment.

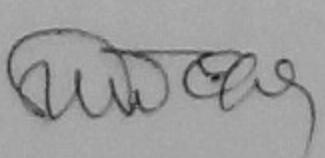
10. I have perused the entire facts of the O.A., and it has nowhere been alleged by the applicant that father of the deceased is living in penurious condition and it is not indigent. Only it has been alleged that the applicant had completed B. Com. and Diploma in Commercial Practice. It is alleged by the applicant that he can be considered for giving compassionate appointment. It has further been alleged that the applicant belongs to OBC category and he has got no moveable or immoveable property, and the widow is somehow maintaining the family. Nothing has been alleged that the family is in penurious condition or indigent or at the verge of starvation. As I

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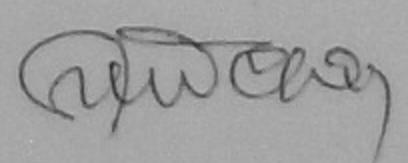
have stated above that the deceased employee had only one year in superannuation, and it is not expected from the deceased employee that he might have done some miracle for setting up applicant, who was aged about 35 years at the time of death of deceased employee. The applicant is not expected to be dependent on the deceased employee. I agree with the contention of the respondents that wife of the deceased was only the dependent of the deceased employee. She was aged about 54 years at the time of death in the year 2004. A sum of ₹ 12,47,507/- was paid to the widow of the deceased as the benefits. Besides this amount, the widow is also entitled for family pension at the rate of ₹ 9,188/- and in my opinion this amount is sufficient for maintenance of the widow. The Hon'ble Apex Court in the Judgment, reported in (1994) 4 Supreme Court Cases 138 *Umesh Kumar Nagpal Vs. State of Haryana and others*, held as under: -

"Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

Hence, in view of the Judgment of the Hon'ble Apex Court, the purpose for providing compassionate



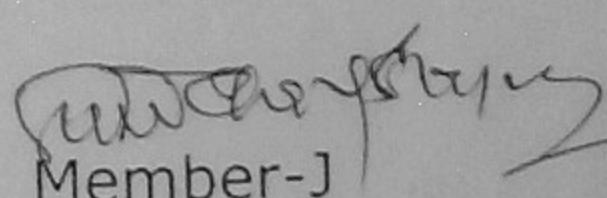
appointment is to enable the family to tide over the sudden crisis. In the present case, there was no sudden crisis to the family of the deceased due to his death because one younger son was already employed in the Kendriya Vidyalaya Sangathan as P.E.T., and applicant was aged about 35 years at the time of death of his father. The Hon'ble Apex Court also held that the object is not to give a member of such family a post much less a post for post held by the deceased. But mere death of an employee in harness does not entitle his family to such source of livelihood. The respondents are expected to examine the financial condition of family of the deceased, and if the authority arrived at the conclusion that whatever means is available with the family is not sufficient to enable the family to meet the financial crisis then a job is to be offered. In the present case, one son of the deceased employee was employed, and applicant No. 2 was aged about 35 years, and it is not expected that he was dependent on the deceased, and sufficient amount was paid to widow of the deceased, and moreover family pension at the rate of ₹ 9,188/- per month has also been given to the widow. Considering all the facts and circumstances of the case, I am of the opinion that the family is not living in penurious



condition. It is not the requirement of law to provide compassionate appointment to the applicant as financial assistance is required to him to tide over the family from the financial crisis.

11. For the reasons mentioned above, I have arrived at the conclusion that there appears no illegality in the impugned order passed by the respondents in refusing compassionate appointment to applicant. Family of the deceased employee is not living in penurious condition. The deceased was aged about 59 years at the time of death, and applicant is aged about 35 years. He is not expected to be dependent of the deceased, and the widow got sufficient amount for maintaining herself. Moreover, family pension is also payable to her. It is also the fact that no vacancy occurred in the respondents' Sangathan in Group 'C' category so as to give compassionate appointment to applicant. O.A. lacks merits and is liable to be dismissed.

12. O.A. is dismissed. No cost.


Member-J