

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH, ALLAHABAD**

Dated : This *Friday*, the *29*th day of April, 2011.

ORIGINAL APPLICATION NO.856 OF 2006

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

Aman Kumar, Son of Late Gomati, R/o Mohalla Badujayee, near
Khilauna Factory, behind Masjid, Shahjahanpur.

... Applicant

By Adv : Sri Amitabh Trivedi

VERSUS

1. Union of India through the Secretary, Ministry of Defence,
D.H.Q., Post Office South Block, New Delhi.
2. The Assistant Works Manager (Administrative), Ordnance
Clothing Factory, Shahjahanpur.
3. The General Manager, Ordnance Clothing Factory,
Shahjahanpur-242001.

... Respondents

By Adv: Shri R.C. Shukla

ORDER

By way of this instant OA filed under Section 19 of the A.T. Act, 1985 the applicant seeks quashing of order dated 14.03.2006 (Annexure A) passed by respondent no.2 whereby his case for grant of appointment under the compassionate scheme has been rejected.

2. The brief facts of the case are that the mother of the applicant i.e. Smt. Gomati Devi who was working with the respondents died on

16/

O.A.No. 856/2006

28.1.1990 while she was in service. At that time the applicant was three years old. It is further submitted that the applicant is legally adopted son of Smt. Gomati Devi. A decree was also passed in favour of her by the competent Court on 18.7.1992 whereby appointing Smt. Ram Beti as Guardian of the applicant. Thereafter the applicant was in receipt of family pension on the demise of her mother on attaining the age of majority i.e. on 5.8.2005. The applicant is stated to have moved a representation to the respondent authority on 29.9.2005 which was supplemented by another representation. A copy of which has been appended as Annexure A-3 to Annexure 3 B. The claim of the applicant has been considered by the respondents and the same was rejected vide an order dated 14.3.2006 (Annexure-A), hence the OA.

3. Upon notice respondents filed counter reply and contested the claim of the applicant. It is submitted that even the mother of the applicant i.e. Smt. Gomati Devi was also appointed on compassionate grounds after the death of her husband late Itwari Lal. The date of death of Smt. Gomati Devi was admitted by the respondents. It is further averred that after the death of Smt. Gomati Devi the respondents asked the report from Civil Authorities who submitted the report on 12.7.1991 intimated therein that the deceased has no dependants on her and she was also having her independent house. Copy is annexed at Annexure CA-1 to the Counter Affidavit. It is submitted that the applicant who is the adopted son of Late Smt. Gomati Devi was given the family pension in terms of the relevant service rules. The representation of the applicant was considered by the respondents and the same was rejected by the impugned order on

(b)

O.A.No. 856/2006

the ground that the applicant is seeking compassionate appointment after 16 years of death of her mother. The respondents relied upon the instructions issued by the Department of Personnel and Training issued on 9.10.1988 and 22.3.1999.

4. I have heard learned counsel for the applicant Mr. Amitabh Trivedi and Mr. R.C. Shukla, Advocate for the respondents and perused the records. Learned Counsel for the applicant has argued that the respondents have rejected the claim of the applicant without appreciating the fact that at the time of death he was only four years old and after attaining the age of majority he immediately applied for considering his case for compassionate appointment. Therefore, there is no delay on the part of the applicant. Secondly he submitted that the allegations of the respondents that the applicant is having sufficient family pension and is not having any dependency is totally wrong as Smt. Ram Beti Devi has been appointed as a Guardian of the applicant and the applicant is to look after her.

5. On the other hand Mr. R.C. Shukla, learned counsel for the respondents have relied upon the Office Memorandum issued by the D.O.P.T. and argued that at this belated stage the claim of the applicant cannot be considered. They relied upon the judgment passed by Hon'ble Apex Court in *Life Insurance Corporation of India Vs. Mrs. Asha Ramchandra Ambedkar and another reported in JT 1994(2) SC 183* and *Umesh Kumar Nagpal Vs. State of Haryana and Others, JT 1994 (3) SC 525*. He further argued that since the mother of the applicant was also appointed on compassionate grounds on the death of her husband, therefore, the claim of the applicant for seeking appointment on compassionate

16/

O.A.No. 856/2006

grounds cannot be considered in the light of instructions dated 22.3.1999.

6. I have considered the rival submissions made by the respective parties and perused the records. Admittedly, the mother of the applicant on 28.1.1999 died at the time when the applicant was four years old. Thereafter the respondents started giving family pension to the applicant. On attaining the age of majority the applicant moved representation which was rejected in terms of Office Memorandum issued by the D.O.P.T. which clearly stipulates that compassionate appointment is only to enable the family to tide over the sudden crises and meet out the immediate necessity of the family who have lost their bread earner and the same cannot be claimed as a matter of right. In this regard the reliance is placed upon in case of "**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.

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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.

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



O.A.No. 856/2006

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."

7. 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

16/

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 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

1/9

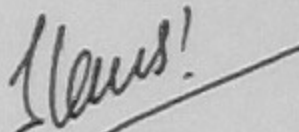
O.A.No. 856/2006

quota of vacancy. Therefore in view of the above, the claim of the applicant cannot be considered at this belated stage.

8. With regard to applicability of the instructions dated 22.3.1989 is concerned it is clarified that the stand of the respondents is without basis as at serial No. C in the same very instructions clearly stated that the dependent of the deceased Government servant can claim compassionate appointment. Therefore the stand of the respondents that the dependant of deceased employee who was appointed on compassionate grounds cannot seek appointment is contrary to their own instructions dated 22.3.1999.

9. In view of the foregoing discussion, I do not find any infirmity with the impugned order which does not warrant any interference by this Tribunal. Accordingly, the O.A. is dismissed being devoid of merits. No Costs.

/ns/sj


(Sanjeev Kaushik)
Member-J