

7

O.A.No. 515/07

ORDER DATED 26<sup>th</sup> MARCH, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Heard Mr. G. Satpathy, Ld. Counsel for the applicant and Mr. B.K. Mohapatra, Ld. Additional Standing Counsel for the Respondents.

2. The questions involved in this Original Application are whether the widow of a deceased Postal employee is entitled to family pension and whether appointment on compassionate ground in favour of the 2<sup>nd</sup> applicant (the son) is permissible.

3. The facts that the 1<sup>st</sup> applicant is the widow of late U.N. Dey and the 2<sup>nd</sup> applicant is the son, <sup>are</sup> ~~is~~ not disputed before this Tribunal. It is also an admitted fact that the 1<sup>st</sup> applicant is getting the family pension on introduction of the family pension in the Department from 1977 -2001. On going through the averments and on hearing the Counsel for the parties and as per the counter reply, the remaining question needs to be considered is with regard to the arrears of family pension and the extension employment assistance to the 2<sup>nd</sup> applicant. It is stated in the counter reply that the cause of action having arisen at Kolkata, this Tribunal has no jurisdiction to entertain this O.A. However, it is an admitted case before this Tribunal that the applicants are the residents of



Balasore which falls within the jurisdiction of this Tribunal. Hence, the question of maintainability is answered accordingly. It is further to be noted that as per the intimation given by the pension finalizing authority, through the Telegraph check Office, Kolkata, the payment of family pension has already been ordered. If so, it is only proper for the Respondents to consider the payment of pension continuously and also to pay the arrears of pension from 1958 to 1977. In the above circumstance and on the facts now placed, this Tribunal feels that the matter ~~shall~~ be considered by the Respondents and appropriate orders passed at the earliest, at any rate within 03 (three) months from the receipt of copy of this order.

4. The second question to be decided is the extension of benefit under the compassionate appointment scheme to the 2<sup>nd</sup> applicant. It is settled law by the judgements of the Hon'ble Apex Court as well as various Hon'ble High Courts and Tribunals and also from the Official orders/Memorandums issued from time to time by the Nodal Ministry/Department of the Government, i.e., the Department of Personnel & Training (DOP&T), that the compassionate appointment can be given to the dependant of a deceased employee basing on certain considerations, viz., the financial condition of the family or the financial crisis, if any, that existed at the time of death of the deceased employee. Secondly, the claim under the scheme should be made within a reasonable time. The Hon'ble Apex Court has repeatedly held that compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments

8

on open invitation of application on merits and that it cannot be claimed as a matter of right. [ Appeal (Civil) No.5256 of 2004, decided on 16.08.2004, Punjab National Bank & Ors. V. Ashwini Kumar Taneja & Appeal (Civil) No.3548 of 2006, decided on 18.08.2006 (Union Bank of India & Ors. V. M.T. Latheesh) ]. In (1996) 5 SCC 308 (State of Haryana & Ors. V. Rani Devi & Anr.), 1998 SCC (L&S) 31 (Haryana State Electricity Board & Anr. V. Hakim Singh), 2000 SCC (L & S) 895 (Sanjay Kumar V. State of Bihar & Ors.), 2005 (4) SLR 770 (Sona Devi & Another V. State of Haryana & Ors.) and 2005 SCC (L&S) 267 (Union of India V. Draupadi Behera (Smt.)), it has been held that after lapse of a certain period the Courts or Tribunals would not be justified in directing the Department to consider the claim for compassionate appointment made far beyond the period indicated in the relevant instructions or after long lapse of time. Admittedly, the father of the 2<sup>nd</sup> applicant died during 1958 and the scheme does not contemplate consideration of any such claim after lapse of a considerable time. Hence this Tribunal feels that the 2<sup>nd</sup> ground urged in this O.A is not justifiable and hence this prayer is rejected. However, with the direction already issued by this Tribunal in this order, this O.A stands allowed to the extent indicated above. No order as to costs.

U. K. Appan  
MEMBER (J)