

1/7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
J O D H P U R B E N C H
J O D H P U R

.....

Date of Order : 28.08.2001.

1. O.A.NO. 171/2001
2. M.A.NO. 122/2001
(O.A.NO. 171/2001)

.....

Jai Singh S/o Late Shri Ganpat Singh aged about 26 years, Resident of Village and post Sathana, District - Ajmer, his father was last employed on the post of Constable in Central Bureau of Narcotics at Pratap-Garh, District - Chittorgarh.

.....Applicant.



VERSUS

The Union of India through the Secretary
Government of India, Central Bureau of
Narcotics, 19 Mali Road, Morar, Gwalior (MP)

2. The Assistant Narcotics Commissioner,
Government of India, Central Bureau
of Narcotics, Rajasthan, Kota.

.....Respondents.

.....

CORAM:

HON"BLE MR.JUSTICE B.S.RAIKOTE
Vice Chairman

.....

Present :

Mr. Kuldeep Mathur, Advocate, for the applicant.

.....

✓

ORDER

BY THE COURT :

Heard.

2.. In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for quashing of order dated 23.1.1996 vide Annex.A/10 by which his application for appointment on compassionate ground, is rejected by the department.

3. The applicant contends that earlier he had filed one O.A. before this Tribunal but when the question of jurisdiction was raised, he withdrew the said O.A. and filed a S.B.Civil Writ Petition No. 1825/97 before the Hon'ble High Court of Rajasthan at Jodhpur and the Hon'ble High Court dismissed the Writ Petition vide its judgement and order dated 29.5.2000 holding that the High Court has no jurisdiction to consider the claim of the petitioner for compassionate appointment and applicant was at liberty to approach the competent court. Applicant contended that thereafter, he has preferred this present application.

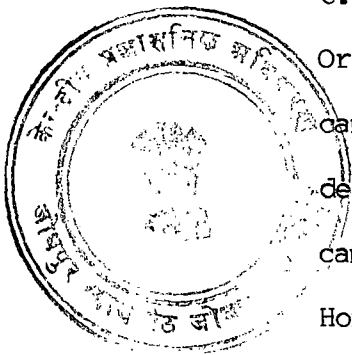
4. The learned counsel for the applicant contended that applicant's father died on 21.11.1979 and at that time, the applicant was a minor aged about six years and after attaining the age of majority, he has filed the present application for compassionate appointment. He further submitted that applicant is entitled for compassionate appointment since his father died in harness and the income earned by his mother is not sufficient for them. Now, I have to see whether this is a fit case for compassionate appointment.

5. It is not in dispute that the father of the applicant died on 21.11.1979. Thereafter, applicant's mother filed one application for appointment of her son (the applicant's) on compassionate grounds and vide order dated



[Handwritten signature]

19.10.1993, her application was rejected on the ground that she herself being in service, employed in the Education Department, Government of Rajasthan, she is not entitled to get her son appointed on compassionate grounds. A copy of the said order is filed in the case at Annex.A/3. Thereafter, the applicant filed another application for appointment on compassionate grounds which has been rejected vide the impugned order dated 23.1.1996 (Annex.A/10) stating that on re-consideration it was found that his case was 15 years old after the death of his father. It also stated that his mother was a Government servant and still she is in employment. In these circumstances, he was not entitled for appointment on compassionate grounds according to the rules and accordingly, his application was rejected. I do not think that this order calls for any interference at the hands of this Tribunal in view of the law declared by Hon'ble the Supreme Court.



6. In JT 1994 (3) SC 525 - Umesh Kumar Nagpal Vs. State of Haryana & Ors., the Hon'ble Supreme Court pointed-out that the only ground which can justify compassionate employment is the penurious condition of the deceased family. It also pointed out that compassionate appointment cannot be granted after lapse of a reasonable period. In this case Hon'ble the Supreme Court found fault with the judgement of the High Court in directing the appointment of the petitioner ^{in that case} on compassionate grounds. We think it appropriate to extract the relevant part of the judgement as under :-

"4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgement:

"...We are of the view that the extra-ordinary situations require extraordinary remedies and it is open to the government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in

[Handwritten signature]

cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the government should frame a policy even for such appointments."

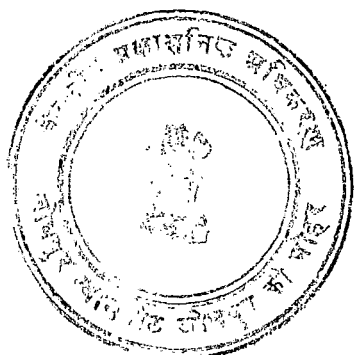
5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Class III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the 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.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.

8. For the reasons given above, we dismiss the special leave petitions."

RA



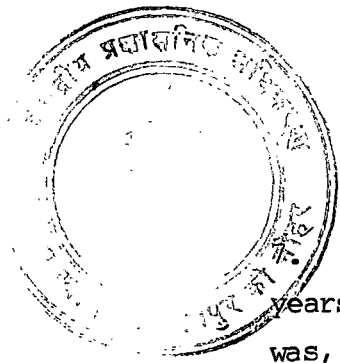
The same principle also is reiterated by Hon'ble the Supreme Court in 1998 SCC (L&S) 570 - State of U.P. and Ors. Vs. Parasnath. In this case also, Hon'ble the Supreme Court has pointed out that the purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death. The purpose of such compassionate appointment is only to alleviate the distress of the family and to provide an immediate financial assistance. It also pointed out that none of these considerations can operate when the application is made after a long period of time such as 17 years in that case. I think it appropriate to extract the relevant part of this judgement as under :-

"4. Seventeen years after the death of his father, the respondent, on 8.1.1996, made an application for being appointed to the post of a Primary School Teacher under the said Rules. His application was rejected. He, thereafter, filed a writ petition before the High Court. This writ petition was allowed by the High Court and an appeal from the decision of the Single Judge of the High Court was also dismissed by the Division Bench of the High Court. Hence the State has filed the present appeal.

5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one judgement of this Court in the case of Union of India v. Bhagwan Singh. In this case, the application for appointment on similar compassionate grounds was made twenty years after the railway

servant's death. This Court observed :



"The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness when there is no other earning member in the family."

No such considerations would normally operate seventeen years after the death of the government servant. The High Court was, therefore, not right in granting any relief to the respondents.

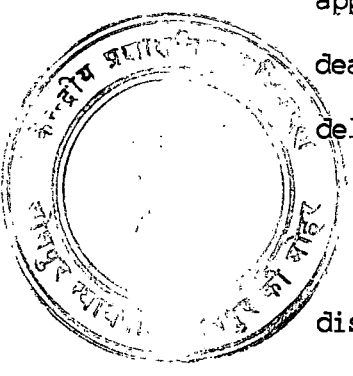
8. The appeals are, therefore, allowed. The impugned judgements and orders of the High Court are set aside and the original petitions filed by the respondents before the High Court are dismissed. There will, however, be no order as to costs."

7. On the examination of the present case in the light of above judgements, I find that the ratio of the judgements of Hon'ble the Supreme Court squarely applied to the facts of this case. The applicant's father died on 21.11.1979 i.e. about 22 years back. Admittedly, the applicant's mother has been in service in the Government Senior Secondary School, Vijay Nagar, District Ajmer in the Education department. In these circumstances, it cannot be said that the family is in penurious condition so as to deserve compassionate appointment after a lapse of 22 years of the death of the deceased employee. Applicant's mother's application was earlier rejected for appointment of her son on compassionate grounds vide order Annex.A/4 of December 1993. The said order has become final in the year 1993. Thereafter also applicant's case was again reconsidered and rejected vide order dated 23.1.1996, Annex.A/10, on the ground that it is an old matter of 15 years and applicant's mother was employed in government service. Therefore, in my considered opinion, the impugned order does not call for any interference at the hands of this Tribunal.

8. Moreover, taking up M.A.No. 122/2001 filed for condonation of

A handwritten signature or mark, possibly a checkmark or a stylized signature, located at the bottom center of the page.

delay, I find that this is not a fit case for condonation of delay. Even though applicant has challenged the order dated 23.1.1996 but taking that he bonafide prosecuted his earlier O.A. before this Tribunal and then a Writ Petition before the Hon'ble High Court and time could be excluded under section 14 of the Limitation Act. But, absolutely, there are no reasons why the applicant did not represent this application within one month or two after the order of the Hon'ble High Court passed on 29.5.2000 but this application is preferred only on 22.3.2001 after a lapse of about ten months and thus, I find that the applicant has not been deligent in prosecuting his application. At any rate, applicant has not made out any sufficient cause for not preferring this application within a reasonable time after the disposal of his writ petition by the Hon'ble High Court on 29.5.2000. As I have stated above, applicant's father died in the year 1979 and this application for compassionate appointment is a belated application filed after 15 years of his father's death. In these circumstances, I do not find any ground to condone the delay. Accordingly, I pass the order as under :-



"The Original Application and the Misc.Application are hereby dismissed at the stage of admission."

BSR

(Justice B.S.Raikote)
Vice Chairman

.....

mehta