

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ADDITIONAL BENCH, JODHPUR**

ORIGINAL APPLICATION N.O.: 303/2002

Date of Order: 17.04.2003

Bhanwar Singh Son of Shri Ram Singh Panwar, R/o Fatehpol, Lalla Kotri near Meharangarh Fort, Jodhpur (Raj.)
....Applicant.

V E R S U S

1. Union of India through
The Under Secretary (Personal) VII,
Government of India, Cabinet Secretariat,
Room No. 8-B, South Block, New Delhi.
2. Under Secretary (Personal) III
Government of India, Cabinet Secretariat,
Room No. 7, Bikaner House, Sahjawa Road,
New Delhi.
3. The Additional Commissioner,
Special Bureau, Jodhpur.

.....Respondents.

Mr. P.R. Singh, counsel for the applicant.

Mr. Ravi Bhansali, counsel for the respondents.

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER.

ORDER

Shri Bhanwar Singh has assailed the impugned order dated 02.09.2002 (Annexure A/1) and order dated 04.07.2001 (Annexure A/2), whereby his claim for grant of compassionate appointment has been turned down. He has further prayed for a

direction to the respondent to accord appointment to him on any suitable post on compassionate ground.

2. The factual profile of this case, necessary for resolving the controversy involved, is that the applicant is the son of one Shri Ram Singh Panwar, who was holding the post of AFO (MT), ID at Sriganganagar. Late Shri Ram Singh Panwar while in service expired on 11.04.1995 due to Encephalitis disease in Mathura Das Hospital, Jodhpur and was survived with wife, son i.e. the applicant and three daughters. The applicant was a minor and was of 11 years age at the time of the said deceased

Government servant.

The widow of late Shri Ram Singh Panwar submitted an application dated 11.06.1995 (Annexure A/5) requesting the respondents to consider the case of the applicant for compassionate appointment after he attained the age of majority. He was apprised vide communication dated 2.06.1995 (Annexure A/8) that the case would be considered on merits keeping in view the Govt. instructions after the applicant attains the minimum prescribed age of 18 years. However, she was informed vide communication dated 04.07.2001 (Annexure A/2) that the case of applicant cannot be considered after a number of years as per the Supreme Court ruling. The matter was again repeated but was again turned down on the ground that the compassionate appointment can be made against the vacancies that becomes available within one year of the death of Govt. servant and

therefore, her case cannot be considered as per the communication dated 04.07.2001.

4. The salient grounds on which the applicant has racked his claim are that the deceased Govt. servant has left a large family with lot of financial crisis without a bread-earner for the family, the respondents have taken different stand in one side they said that the case of the applicant would be considered on attaining the age of 18 years and other side they have turned down when it was applied after the said age, the applicant has been visited with a hostile discrimination and there has been clear infraction of Article 14 and 16 of the Constitution of India, the action of the respondents is arbitrary, the Hon'ble Supreme Court has explicitly laid down guidelines to avoid delay in such matter and that even supernumerary post should be created in case there is no vacancy etc.

5. The respondents have filed a detailed counter reply and have contested the case. It has been averred that Smt. Girdhari Devi wife of late Shri Ram Singh had shown inability to serve the department and requested for appointment of her son on attaining the age of majority. She was informed that the matter would be considered on merit as per the instructions in vogue. The case of the applicant had to be turned down vide communication dated 27.04.2001 since he was under age. As per the DOP&T instructions, case of compassionate appointment can be considered only against the vacancy within ceiling of 5% which will be available within a period of one year from the date

[Signature]

of death and the applicant was replied accordingly. The further defence of the respondents as set out in the reply is that it was not feasible to consider the case of the applicant within a year as per the instructions in as much as there is no provision for creation of supernumerary post for this post. Further the case could not be considered at the belated stage as no vacant post is available. Hence, the Original Application may be dismissed with exemplary costs.



6. I have heard the learned counsel for the parties and have bestowed my earnest consideration to the pleadings and the records of the case.

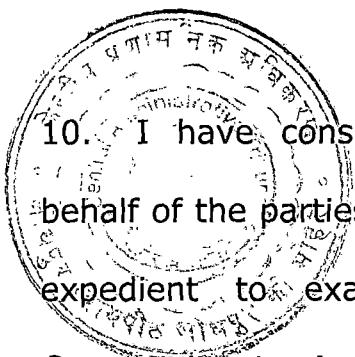
7. As far as the facts of this case are concerned, there is hardly any dispute. The learned counsel for the applicant has reiterated the facts and grounds mentioned in the Original Application, he has submitted that at the time of death of the deceased Govt. servant, the applicant was minor and his mother was not in a position to undertake the employment for the reason of illiteracy and physical incapability. The respondents gave an assurance that the applicant's case would be considered after he attains the age of majority. Now the respondents cannot turn about and change their stand that the case cannot be considered for the reason that no appointment can be given after a number of year or there is no vacancy against 5% quota. The respondent cannot approve and reprobate, blow hot and cold together and their action is ex-facie arbitrary and illegal.

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8. The learned counsel for the applicant has further argued and submitted that the Scheme for Compassionate Appointment dated 09.10.1998 specifically prescribes vide para 8 for regulating the cases as that of applicant but the same has been ignored and the case of the applicant has been turned down with a mechanical way. The family of the deceased Govt. servant is still in indigent condition and is badly in need of bread-winner. The misery and financial hardship faced by the family of the deceased Govt. servant in the present time of inflation can hardly be overemphasized and therefore the present one is the fit case where the applicant should be accorded appointment on compassionate ground.

9. On the contrary, the learned counsel for the respondents has strenuously opposed the contentions submitted on behalf of the applicant. The learned counsel for the respondents has made a clean breast of their stand and has submitted that they did not give any assurance to the applicant and had only said that case would be considered as per the Govt. instructions. He has referred to Annexure R/1, whereby it has been prescribed that the case of compassionate appointment can be considered against a vacancy which will be available within a year and has submitted that no such vacancy is available. He has also submitted that by now about 8 years have elapsed and the family has survived. He has also thrown light on the very purpose of the appointment on compassionate ground. The compassionate appointment is meant to provide bread-winner to meet the minimum crisis and financial hardship of the family in

fact it is in exception to the general rule of the recruitment and cannot be used as a distinct mode of recruitment. The very paragraph of the Scheme on which the learned counsel for the applicant had placed reliance provides for a presumption that after about 5 years if family of the deceased Govt. servant has survived that would normally be taken as adequate proof that the family had some dependable means of subsistence. In the present case no abnormality has been shown. Thus, the impugned orders are just, proper and very much in order and therefore no interference is called for from this Tribunal.



10. I have considered the rival contentions submitted on behalf of the parties. To appreciate the controversy, it would be expedient to examine the para 8 of the Scheme for Compassionate Appointment on which both the parties have placed reliance. The contents of the same are extracted as under:-

“8. Belated requests for Compassionate Appointment

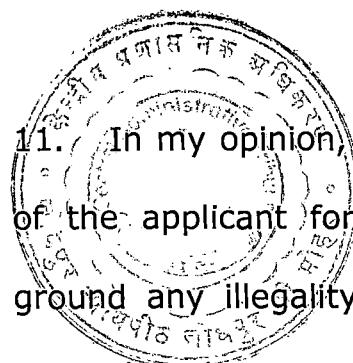
(a) Ministries/Departments can consider requests for compassionate even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government

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servant and not the age of the applicant at the time of consideration."

By reading the aforesaid provision in relation to the facts of the present case, it is admitted that by now about 8 years have been elapsed and the family of the deceased Government servant has survived. The applicant has not pointed out any abnormality or special reason so as to counter the presumption of dependable means of subsistence to the family of deceased. Thus, the contention of the applicant stands repelled.



11. In my opinion, it cannot be said that by rejecting the case of the applicant for grant of appointment on compassionate ground any illegality has been committed by the respondents even though none of the parties (especially on behalf of the respondents) have been quoted any authority in support of their contentions, I find support of my view from catena of decisions of the Supreme Court and the same of them having close proximity and bearing to the issue involved in the present case are mentioned in the following paragraphs.

12. As far as vacancy is concerned the issue has been settled by the Supreme Court ad it has been held by their Lordships in **Sanjay Kumar v. State of Bihar** 2000 (5) SLR SC 265 that there can be no reservation of vacancies after number of years for the purpose of grant of compassionate appointment. In another case of **Himachal Road Transport Corporation vs. Dinesh Kumar** AIR 1996 SC 2226, the Supreme Court dealing with two cases where applications had been submitted by the

dependents of the deceased employees for appointment on compassionate grounds and both of them were placed on the waiting list and had not been given appointment. They approached the Himachal Pradesh Administrative Tribunal and the Tribunal directed the Himachal Road Transport Corporation to appoint both of them as Clerk on regular basis. Setting aside the said decision of the Tribunal, the Apex Court has observed as under:-

“.....In the absence of a vacancy it is not open to the Corporation to appointment a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be mere misuse of public funds, which is totally unauthorized. Normally, even if the Tribunal finds that a person is qualified to be appointed to post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any persons to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post.”

The perusal of the aforesaid observation, it is now the settled position that the Tribunal will not order for creating the supernumerary post for grant of the compassionate appointment. In the present case since there was no vacancy available for appointment of the applicant, the relief as prayed for cannot be granted and the action of the respondents cannot be faulted.

13. As regards the other contention that the applicant has survived and has been insisting the respondents to consider her case and also the applicant was a minor at the time of death of his father and his case was rejected in the year 2002, there was

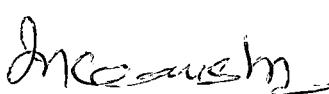
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no fault of the applicant and indigent condition remains as they were. However, the contentions of the learned counsel for the respondents that family has survived for over about 8 years, has to be given due weight in view of the judgment of the Supreme Court in **Jagdish Prasad vs. State of Bihar** [1996 (1) SCC 301] wherein their lordships have held as under:-

"The very object of appointment of a dependent of the deceased employees who die 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 ~~until he attained majority long thereafter.~~ if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged. de hors the recruitment rules."

The aforesaid decision squarely covers the whole controversy on all fours. Thus the applicant cannot be appointed on any pretext. There is no infirmity or illegality with the action of the respondents.

14. Result is however very unfortunate but I have no option except to dismiss this Original Application. Ordered accordingly. However, there shall be no order as to costs.


 [J.K. KAUSHIK]
 JUDICIAL MEMBER

Kumawat

Part II and III destroyed
in my presence on 14/4/08
under the supervision of
section officer (1) as per
order dated 5/2/08

Section officer (Record)

✓ 21/4/08
MADE RECORD
21/4/08

RECORDED
21/4/08