

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 155/2008

Date of order: 19.3 - 2010

CORAM:

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

Smt. Bhagirathi W/o Shri Late Pherupal, Aged about 46 years, R/o Near Raju Chakki, Ward No. 3, Suratgarh (Late Pherupal was a T.S.W. Chaukidar in C.C.B.S. Suratgarh).

...Applicant.

Mr. J.K. Mishra, counsel for applicant.

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Agriculture, Krishi Bhavan, New Delhi.
2. The Director, C.C.B.F. Suratgarh, Dist. Sri Ganganagar.

... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Dr. K.S. Sugathan, Administrative Member

The denial of compassionate appointment is the subject matter of this Original Application. The applicant is the widow of Shri Pherupal who was engaged as a casual labourer in the respondents' organization in the year 1979. Shri Pherupal was granted temporary status with effect from 01.09.1993 as per the scheme introduced by the Government of India. While he was thus continuing as casual labourer on temporary status, he met with an accident and passed away on 26.08.2005. The applicant thereafter submitted an application for appointment on compassionate ground. A copy of the representation submitted by the applicant on 3rd February 2006 is at Annexure A/2. It is

stated in the said representation that the applicant's husband died in an accident while on duty and that she has one daughter and one son aged about 14 and 13 years, respectively, and that she has no source of livelihood to maintain the family left behind by the applicant's husband. It is also stated in the said representation that on two occasions earlier, she had represented for compassionate appointment in view of the miserable financial condition of the family. In reply to the said representation, respondent no. 2 had informed the applicant that her request for compassionate appointment has been forwarded to the competent authority in the Ministry and the response from the said competent authority is awaited. Finally, the respondents rejected the request of the applicant for compassionate appointment by letter dated 19th June 2007 (Annex. A/1) on the ground that there is no provision for compassionate appointment to the dependent family members of an employee who is not appointed on regular basis. Aggrieved by the said rejection, the application has filed this Original Application.

2. The respondents have filed a reply. It is contended in the reply that the rejection of the request of the applicant for compassionate appointment is in accordance with the rules and regulations on the subject. The reference to the order of this Tribunal in O.A. No. 291/2003 cannot be the basis for any relief since the said order has been reversed by the Hon'ble Supreme Court. The husband of the applicant worked as a casual labourer for the period from 1979 to 1988. Thereafter, he abandoned his

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job but he was again engaged in the year 1992 but he was not regularized or made permanent. It is also denied in the reply that Shri Pherupal met with an accident while performing his duties on 26.08.2005 as he was not on duty on 26.08.2005. He last attended the duty on 25.08.2005. The applicant has been paid a sum of Rs. 72,333/- as gratuity. The family is not entitled to get any family pension. There is no provision for compassionate appointment in respect of employees who were working on casual basis. The applicant's husband was a casual worker with temporary status and was never regularized and therefore the applicant is not eligible for compassionate appointment. The reference made by the applicant to the case of Smt. Santosh vs. ICAR & another decided by this Bench of the Tribunal on 31.05.2004, is not relevant because Smt. Santosh is the widow of an employee who was working in Indian Council of Agriculture Research (ICAR), which is an autonomous organization whereas Central Cattle Breeding Farm (respondent no. 2) is a subordinate office under the Ministry of Agriculture.

3. I have heard the learned counsel for the applicant Shri J.K.

Mishra and learned counsel for the respondents Shri M. Godara for Mr. Vinit Mathur. I have also perused the records carefully.

4. The issue for consideration in this Original Application is whether the applicant's request for compassionate appointment deserves to be considered on the basis of the financial condition of the family. The request has been rejected on the ground that the applicant's husband was not regular employee of the respondents' organization. I have considered the said ground

cited by the respondents with reference to the terms and conditions of the scheme of compassionate appointment. The objective of the scheme is to grant appointment to a dependent family member of a Govt. servant dying in harness or who is retired on medical grounds if his family is left in penury and without any means of livelihood. The objective of the scheme introduced by the Government of India, Department of Personnel & Training vide O.M. dated 09th October, 1998 is reproduced below:

“1. Object. – The object of the Scheme is to grant appointment to a dependent family member of a Government servant dying in harness or who is retired on medical grounds if his family is left in penury and without any means of livelihood. The Scheme is intended to relieve the family from financial destitution and to help to get over the emergency.”

The scheme is applicable to a dependent family member of a Government servant.

The term 'Government servant' is defined as below:

“ 'Government servant' means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad hoc or contract or re-employment basis. However, Ex-Servicemen re-employed before the normal age of retirement in a Civil post, confirmed work-charged staff and those who are on extension in service will be covered by the Scheme.”

(Source: *Swamy's Master Manual for DDOs and Heads of Offices – Part-II Establishment, 5th edition P.103*).

The aforesaid definition of 'Government servant' excludes daily wage workers, casual labourers and those on ad hoc or contract or on re-employment. There is no specific mention about casual labourer on temporary status. It is to be noted that casual labourers on temporary status are given several

benefits admissible to regular Govt. employees. The scheme for grant of temporary status to casual labourers was introduced by OM dated 10.09.1993. Casual labourers on temporary status are entitled to the benefits of increment as admissible to regular Group 'D' employee. They are also entitled to DA, HRA and CCA and also leave of various types and after rendering three years' continuous service on temporary status, they are entitled to the benefit of GPF. Such casual labourers on temporary status are entitled for regularization subject to certain conditions and 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after their regularization. The list of benefits admissible to casual labourers on temporary status are reproduced below:

"4. Entitlement: -

- (i) Wages. – Daily wages will be reference to the minimum of the pay scale for a regular Group 'D' official (any revision of pay scales to be taken into account) plus D.A., H.R.A., and C.C.A.
- (ii) Benefits of increment admissible at the same rate as applicable to a Group 'D' employee for calculation of pro rata wages for every one year of service with at least 240 days (206 days in offices having 5 days week).
- (iii) Leave. – Entitlement will be with on a pro rata basis at the rate of one day for every 10 days of work. It will be credited on 1st January and 1st July every year for leave earned during the previous half year. Carry forward of leave at credit will be allowed on regularization. Encashment of leave is not admissible. No other leave, including casual leave, is admissible except Maternity Leave/Paternity Leave.
- (iv) Maternity Leave/Paternity Leave.- Lady casual labourers are entitled to Maternity Leave as admissible to regular Group 'D' employee. Male casual labourers are entitled to Paternity Leave for 15 days during the confinement of their wives as in the case of regular staff. Such leave will not be

debited to leave account and can be availed along with earned leave at credit.

- (v) Counting of service for retirement benefits.- 50% of service rendered as Casual labourer with temporary status will be counted for retirement benefits after regularization.
- (vi) G.P.F.- After three years' continuous service after conferment of temporary status, the Casual Labourers are entitled to subscribe to G.P.F. They will also be eligible for Festival Advance, Natural Calamity Advance as are applicable to Group 'D' employees, subject to furnishing two sureties from permanent Government servants of their departments.
- (vii) Bonus.- Productivity-linked-Bonus/Ad hoc Bonus will be admissible only at the rates applicable to Casual Labourers until regularization.
- (viii) Transport Allowance.- From 1-8-1997, Casual Labourers who have been granted temporary status are entitled to Transport Allowance for computation of their daily wages at the rate of Rs. 100 p.m. in the case of 'A-1' and 'A' Class cities and at Rs. 75 p.m. in the case of other places. The conditions prescribed for grant of Transport Allowance to regular employees are equally applicable to them."

(Source: DOPT OM dated 10.09.1993 as reproduced in Swamy's Master Manual for DDOs and Heads of Offices - Part-II Establishment, 5th edition P. 122-123)

Since most of the benefits available to a regular Group 'D' employee are also available to casual labourer on temporary status, they cannot be equated with casual labourers who are not on temporary status. The definition of 'Government servant' in the Scheme of 'Compassionate Appointments' does not specifically exclude casual labourer on temporary status.

5. Learned counsel for the applicant has referred to the case of Smt. Santosh (supra) whose husband worked in a sister organization under the same Ministry of Agriculture. The

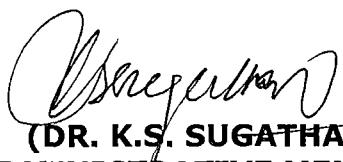
husband of Smt. Santosh was a casual labourer on temporary status. Smt. Santosh had filed two OAs before this Tribunal - OA No. 290/2003 and OA No. 291/2003. The OA No. 290/2003 was for seeking compassionate appointment. OA No. 291/2003 was for family pension. Copy of this Tribunal's order dated 31.05.2004 in OA No. 290/2003 as well as copy of the order of the Hon'ble Rajasthan High Court in DBCWP No. 4355/2004 dated 11.10.2004 upholding the order of this Tribunal, was produced by the counsel for the applicant during the course of hearing. In OA No. 290/2003, this Bench of the Tribunal directed consideration of the request of the applicant citing the precedent in the case of **Smt. Meema Devi's** case (OA No. 303/1999). The order of this Tribunal in OA No. 290/2003 was upheld by the Hon'ble Rajasthan High Court and Smt. Santosh was given compassionate appointment. In OA No. 291/2003, the issue was family pension. This Tribunal allowed the prayers in OA No. 291/2003 also, but it has finally reversed by the Hon'ble Supreme Court in Civil Appeal No. 4499 of 2006 [(2007) 1 SCC (L&S) 394].

In the present case, the applicant is seeking consideration for compassionate appointment and not family pension. Therefore, it is covered by the order of this Bench of the Tribunal in OA No. 290/2003, which stands upheld by the Hon'ble High Court of Rajasthan and also complied by the respondents.

6. It is not disputed that the applicant's husband had served the respondents' organization for more than 20 years. The

respondents have also not disputed the family circumstances of the applicant. As per the reply filed by the respondents, the applicant will not be entitled for any family pension since the applicant's husband was not regularized. However, in view of the order of this Tribunal in the identical case of Smt. Santosh in OA No. 290/2003, and the financial condition of the family as described in the OA, this is a fit case in which a direction should be given to the respondents to consider the financial status of the family and take a decision.

7. For the reasons stated above, this Original Application is disposed of with a direction to the respondents to consider the request of the applicant for compassionate appointment on the basis of the financial condition of the family keeping in mind the observations made in the aforesaid paragraphs and take a decision and communicate it to the applicant within a period of three months from the date of receipt of copy of this order. The impugned order dated 19th June, 2007 (Annex. A/1) is quashed and set aside. There is no order as to costs.



(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER

दिनांक १२-१२-१५ के अन्तर्गत अनुसार
लेही उपस्थिति नं. १०-४-१६
को भाग-II का उपयोग किया गया ।

अनुभाव अधिकारी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर न्यायालय, जोधपुर



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