

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 141/2009

Date of order: 25-5-2010

CORAM:

HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Bhanwar Manohar Singh S/o Late Shri Mangu Singh, aged about 27 years, R/o Plot No. 97, Green Town, Near Talent Public School, Dadi Ka Phatak, Benar Road, Jhotwara, Jaipur (Raj.). Ward of Ex. Driver DMRC, New Pali Road, Jodhpur (Raj.).

...Applicant.

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. The Union of India through the Director General, Indian Council of Medical Research, Anasari Nagar, New Delhi.
2. The Director In-charge, Desert Medicine Research Centre (DMRC), New Pali Road, Jodhpur.

... Respondents.

Mr. Vikas Seoul, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

Per Hon'ble Mr. V.K. Kapoor, Administrative Member

Shri Bhanwar Manohar Singh has filed present O.A. against the order dated 17.4.2009 (annex. A-1). The applicant has sought the reliefs that are as follows:

- "i) By an appropriate writ, order or direction the impugned order dated 17-04-2009 at Ann-A-1 be declared illegal and be quashed and set-aside.
- ii) By an order or direction respondents may be directed to consider the case of the applicant for appointment on compassionate ground on any group C or D posts with all consequential benefits.
- iii). Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- iv). Any other relief which is found just and proper in the fact and circumstances of the case be passed in favour of the applicant in the interest of justice."

(Signature)

2. The brief facts of the case are that Shri Mangu Singh was serving on the post of Driver in the respondent department, he died on 28.8.2008 due to heart attack. He has left behind wife Smt. Usha Kanwar and two sons, namely the applicant Bhanwar Manohar Singh and Shri Tej Singh. Late Shri Mangu Singh's wife has applied for compassionate appointment in favour of his son i.e. the applicant on 18.9.2008 (ann. A-2) giving full details of family income, etc. The family of the deceased gets family pension amounting to Rs. 6875/- per month, the loan amount comes to Rs. 4026/- to be paid per month. Vide order dated 10.02.2009 (ann. A-4) some outstanding advance against late Shri Mangu Singh was deducted from his terminal benefits. The condition of family is said to be very indigent as there is no house or other source of income, copy of application dated 20.3.2009 is enclosed (ann. A-5). After getting no reply from the respondent-department, reminder dated 06.4.2009 (ann. A-6) was given. Vide order dt 17.4.2009 (ann. A-1), respondents rejected applicant's request for appointment on compassionate grounds without considering their economic status. In view of educational qualifications and computer knowledge, the applicant has requested for appointment on compassionate grounds in view of bad economic condition of the family.

3. Learned counsel for the respondents in detailed reply stated that applicant's father while working under the respondent-department expired on 28.08.2008; after his demise all the retiral benefits, etc. are paid to the deceased's family with monthly pension amounting to Rs. 6875/- per month. The

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matter for compassionate appointment was considered as per rules on the subject and Govt. of India's letters issued from time to time. The respdts after objective assessment did not find applicant's case fit for appointment on compassionate grounds. The appointment on compassionate grounds cannot be claimed as a matter of right. The applicant's case is duly considered, thus, the present O.A. filed by the applicant be dismissed.

4 (a). Learned counsel for the applicant in arguments has stated that applicant's father died on 28.8.2008 due to heart attack after serving 23 years as driver in the respdt department. The applicant applied for compassionate appointment, the respondents passed the impugned order dated 17.4.2009 on the ground that as no suitable post was available, appointment cannot be given to the applicant (ann. A-1). The family of the deceased is in indigent condition. Some deductions were made from the retiral benefits, in such poor economic condition; the family of deceased is not able to sustain itself. The applicant has passed B.A., taken 06 months computer course and knows typing in Hindi and English languages; thus appointment on any lower post could be given to him. The applicant could be given appointment later on a suitable post available with respondents; or appointment could be given to younger brother of applicant Shri Tej Singh who is also equally qualified. The applicant's counsel has cited decision of CAT, Jodhpur Bench in the case of **Smt. Pramila Awasthi vs. UOI & Ors.** in OA No. 94/2007 that relates to compassionate appointment. The respdts' reply is arbitrary to spirit of the case; they cannot go beyond impugned

up to



order (ann. A-1). In support of his contentions, applicant's counsel has cited the decision of apex court in the case of **Mohinder Singh Gill & another vs. The Chief Election Commissioner, New Delhi and Ors.**, (AIR 1978 SC 851).

4(b). Learned counsel for the respondents in arguments has stated that retiral benefits, etc. were given to the family of deceased along with monthly pension amounting to Rs. 6875/-.

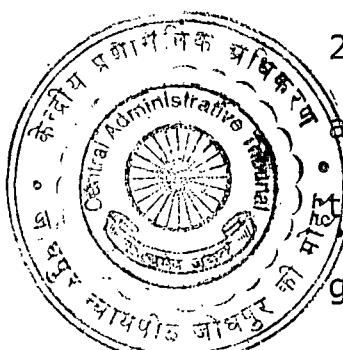
The compassionate appointment cannot be claimed as a matter of right. The applicant is over-age more than 25 years of age, thus cannot be said to be dependent on a nodal family, his case was considered in the light of instructions from Govt. of India. The respdts did not find him fit for compassionate appointment, as no suitable post was available. In support of their contentions, respondents have quoted a decision of Rajasthan High Court, Jodhpur in the case of **Om Prakash vs. UOI & Ors.**, 2004 (3) CDR 2056 (Raj.) & that of apex court in the case of **S.B.I. & anr. vs. Somveer Singh** (2007) 4 SCC 728.

5. The case pertains to compassionate appointment. Late Shri Mangu Singh who was driver in the respondent-department died on 28.8.2008 due to heart attack after serving 23 years in the respondent-department. He left behind his wife & two sons namely the applicant Shri Bhanwar Manohar Singh and Shri Tej Singh. The applicant is said to have passed BA-II exam. but in arguments it was told on his behalf that he has passed B.A. standard. The applicant has passed 06 months computer course certificate and has got proficiency in typing in Hindi and English

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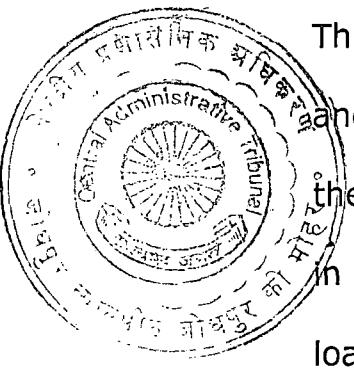
languages. The dependent of deceased are getting family pension amounting to Rs. 6875/- per month. The family was given death cum retirement gratuity of Rs. 3,28,442/-. Some deductions were made from retiral benefits of the deceased amounting to Rs. 38,408/-. The family has no house to live in, they have taken house loan from Bank and are paying regular instalments of Rs. 4026/- per month. After deducting all these payments, the family of deceased is getting actual monthly pension of Rs. 2849/- only; beyond this there is no other source of income. The applicant's mother Smt. Usha Kanwar wrote to the respondents on 18.9.2008, 09.02.2009 and then on 20.3.2009 for giving appointment to her elder son i.e. the applicant. The respdt 2 gave her in writing on 17 April 2009 that no suitable post is vacant, thus the applicant cannot be given appointment (ann. A-1). This is to mention here that late Shri Mangu Singh served for 23 years in the respondent dept. as driver; their children are educated. The applicant has passed B.A. Examination and has got experience in computer, knows Hindi/English Typing and his age said to be of 27 years. The respondents' counsel has quoted the judgment of Hon'ble Rajasthan High Court, Jodhpur in the case of **Om Prakash vs. UOI & Ors.**, 2004 (3) CDR 2056 (Raj.) in this regard. The respondents' contention is that applicant is more than 27 years of age, thus cannot be said to be dependent on the nodal family. This is to be mention here that appointment is to be given by the respondents as per terms and conditions of the department. If applicant is over-age, the case of his younger brother could be

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considered. The financial condition of the family is in a bad shape and they are totally in indigent shape.

6. The order of the respondent no. 2 is also not specific on the point that what sort of suitable post they referred to. The applicant has taken objection to new grounds as regards drifting away beyond the orbit of the impugned order dated 17.4.2009 (ann A-1), therefore, the respondents cannot go beyond grounds stated in the plaint or reply, thus cannot raise new questions. The respondents have also quoted the decision of apex court in the case of **State Bank of India & Another vs. Somvir Singh**, (2007) 4 SCC 778 that pertains to compassionate appointment.

 This speaks of financial condition of deceased employee's family and income of the family from all sources to be assessed. In the present case, financial condition of the family of deceased is in bad shape and they own no house, after deduction of house loan the family gets a meager amount of family pension as Rs. 2849/- pm. The family got gratuity amounting to Rs. 3.28 lacs but much of liability is also there on them. The applicant and his younger brother are both educated but not employed, in view of

the applicant's contention, this is a fit case for compassionate appointment. The applicant's age is something like 27 years, his case should be considered in view of norms fixed by respondents dept. In case of problem or objection, applicant's younger brother Shri Tej Singh could be considered for employment. To reiterate, in case of some problem in regard to suitability of the post, the case of applicant's brother could be considered after suitable post is available but in the meantime, any of these two

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could be employed on some junior post. The applicant has quoted the decision of this Bench of the Tribunal in the case of **Smt. Pramila Awasthi vs. UOI & Ors.** (OA No. 94/2007) decided on 15th January, 2009; the present case is squarely covered by this judgment of this Bench of the Tribunal. In the above mentioned decision, the true meaning of three occasions in DOP&T O.M. dated 05.5.2003 is referred to i.e. it means effective consideration on three occasions or only three years even if no vacancies were available. The proper construction of the aforesaid OM of DOPT is that the applicant has to be considered on three occasions subject to the condition that the applicant has to be indigent on the first occasion.

In the light of the observations made above, applicant's case is required to be considered on three occasions subject to the conditions mentioned in DOP&T OM dated 05.5.2003. Accordingly, the order dated 17th April 2009 (annex. A-1) is hereby set aside. The respondents are directed to consider the applicant's case for compassionate appointment subject to the condition mentioned in the DOP&T OM dated 05.5.2003. In case of any difficulty/legal problem, the name of younger son of late Shri Mangu Singh i.e. Shri Tej Singh could equally be considered. The compliance of this order shall be made within four months from the date of receipt of copy of this order. The O.A. is accordingly disposed of with no order as to costs.

V.K. Kapoor
(V.K. KAPOOR)
ADMINISTRATIVE MEMBER

दिनांक 17/12/18 को आदेशानुसार
सैर उद्यात नहीं किया गया ।
को भाग-II व III को किया गया ।

अनुसार अधिकारी
केन्द्रीय प्रशासनिक उद्योगसभा
जोधपुर न्यायपीठ, जोधपुर