

119

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No. 30/2012

Date of decision: 01.01.2013

CORAM :

HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER

Pradeep Maru S/o Late Shri Surajmal Maru,
aged about 20 years, by caste Maru (SC),
resident of Kumhar Mohalla, Abu Road,
District Sirohi (Late Shri Surajmal Maru
was posted at Abu Road Post Office as Postal Assistant).

Applicant

[By Mr. S.P.Singh, Advocate]

Versus

- 1- Union of India through the Secretary, Government of India, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
- 2- The Chief Postmaster General, Rajasthan Circle, Jaipur 07.
- 3- Assistant Postmaster General (S&V), Office of the Chief Postmaster General, Rajasthan Circle, Jaipur – 07.
- 4- The Director, Office of the Postmaster General, Western Region, Jodhpur.
- 5- Superintendent of Post Offices, Sirohi Division, Sirohi.

Respondents

[By Mr. Vinit Mathur and Mr. Ankur Mathur, Advocates]

ORDER

1. The instant OA is directed against the order dated Recrt/4-24/99 dated 15.2.2011 rejecting the application for compassionate

appointment of the applicant Pradeep Maru in place of his father and the deceased employee Shri Surajmal Maru vide Annex.A/1.

2. The applicant has prayed for the following relief(s):-

- (i) ***That respondent may kindly be directed to consider the case of applicant for appointment on compassionate ground.***
- (ii) ***That impugned order vide Memo Recru./4-24/99 dated 15.2.2011 (Annex.A/1) may kindly be declared illegal, improper and deserves to be quashed and set aside.***
- (iii) ***That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.***
- (iv) ***That the cost of this application may be awarded to the applicant.***

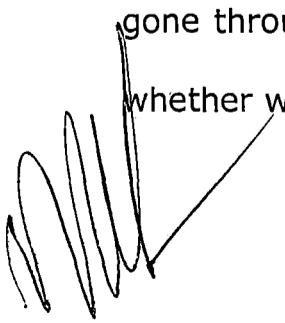
3. The case of the applicant in brief is that the father of the applicant expired on 27.01.1995 leaving behind five minor children including four minor daughters and one son. The mother of the applicant moved an application for compassionate appointment which was rejected on 8.12.2010 [Annex.A/2] stating that there was no vacancy at the time of consideration. Thereafter, she submitted several representations without evoking any favorable reply. The applicant was admittedly minor at the time of the death of his father who had rendered only 10 years of service and moved an application on 6.1.2010 which was rejected on the ground that he had not attained the majority. Therefore, on having attained majority, he moved another application which has been rejected vide letter dated 11.1.2010 [Annex.A/3] on the ground that once the application has been rejected, it would not be considered again. The applicant submitted another representation which has been rejected by letter dated 21.6.2011 [Annex.A/4]. The

T/11

applicant submits that neither of the applications submitted by him have been considered for three appointment years and that the condition of the indigence of the family of the deceased have not been thoroughly looked into. The applicant accused the respondents of having adopted a pick and chose policy and not complying the terms of the Notifications dated 4.7.2002 and 5.5.2003 issued by the Department of Personnel & Training. A minor has legal right to avail of the opportunity for compassionate appointment on attaining the age of majority, as submitted. During the course of the arguments, it was also forcefully submitted by the learned counsel for the applicant that compassionate appointment is subject to three opportunities and that once the application for compassionate appointment of one member of the family has been considered and rejected that right to agitate the same issue by another member continues till the three opportunities have been acceded to. The learned counsel for the applicant further submitted that his case had never been considered subject to the gap for three appointment years and, hence, he has prayed that the respondent-department be directed to re-consider the same.

3. The learned counsel for the respondents vehemently opposed the OA, principally on the ground that the application of the mother of the applicant has already been considered and rejected. Hence, the claim of the applicant has already extinguished and it cannot be reagitated particularly after a gap of 15 years.

4. Having heard the learned counsel for the parties and after having gone through the pleadings, the prime issue arises for consideration is whether when once the application by one member of the family stands



rejected, another member of the family can agitate the claim at a later date. In this regard, one has to look into the terms of the scheme itself. In the first instance, it has to be clearly understood that the compassionate appointment is not a right bestowed upon the dependants of a deceased Government employee to any one member of the family as descent simplicitor. It is an appointment being made against the express provisions of Articles 14 and 16 of the Constitution of India as a matter of exception. It is, therefore, a special dispensation strictly governed by the terms of the rules. The appointment under such provision is made subject to certain exemptions as per provisions of Sections 6 (A) and (B) which deals with the issue.

6. A. EXEMPTIONS -

Compassionate appointments are exempted from observance of the following requirements:-

- (a) Recruitment procedure i.e. without the agency of the Staff Selection Commission or the Employment Exchange...***
- (b) Clearance from the Surplus Cell of the Department of Personnel and Training/ Directorate General of Employment and Training.***
- (c) The ban orders on filling up of posts issued by the Ministry of Finance (Department of Expenditure).***

B. RELAXATIONS -

(a) Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.

Note I Age eligibility shall be determined with reference to the date of application and not the date of appointment;

Note II Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.

(b) Secretary in the Ministry/Department concerned is competent to relax temporarily educational qualifications as prescribed in the relevant recruitment rules in the case of appointment at the lowest level e.g. Group 'D' or Lower Division Clerk post, in exceptional circumstances where the condition of the family is very hard provided there is no vacancy meant for compassionate appointment in a post for which the dependent family member in question is educationally qualified. Such relaxation will be permitted upto a period of two years beyond which no relaxation of educational qualifications will be admissible and the services of the person concerned, if still unqualified, are liable to be terminated.

Note - In the case of an attached subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose.

(c) In the matter of exemption from the requirement of passing the typing test those appointed on compassionate grounds to the post of Lower Division Clerk will be governed by the general orders issued in this regard:-

- (i) by the CS Division of the Department of Personnel and Training if the post is included in the Central Secretariat Clerical Service; or**
- (ii) by the Establishment Division of the Department of personnel and Training if the post is not included in the Central Secretariat Clerical Service.**

(d) Where a widow is appointed on compassionate ground to a Group 'D' post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her without possessing such educational qualifications."

5. The Hon'ble Supreme Court in a decided case of **Auditor General of India and Ors. Vs. G. Ananta Rajeswara Rao** reported in 1994 SCC (L&S) 500, wherein, Hon'ble the Apex Court has, in paragraph 5, held as under :-

"(5) A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow

E/14

the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted."

6. The Hon'ble Supreme Court in its judgment dated May 4th, 1994 in the case of ***Umesh Kumar Nagpal Vs. Vs. State of Haryana and Ors.*** reported in JT 1994 (3) SC 525 has laid down the following guiding principles in this regard.

- (i) *Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.*
- (ii) *The posts in Group 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.*
- (iii) *The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.*
- (iv) *Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.*
- (v) *Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant 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.*
- (vi) *Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.*
- (vii) *Compassionate appointment cannot be offered by an individual functionary on an ad-hoc basis*

7. The judgment of the Hon'ble Supreme Court has given birth to four fundamental doctrines of compassionate appointment. The first doctrine is that of competitive indigence. A family may be in indigent condition but this has to be judged in comparison to other cases which

E/S

to other cases which may be more indigent. The second doctrine is that of immediacy. The family may be indigent but, it should be so indigent that it cannot survive without the help of compassionate appointment. Where the event of death and the appointment are separated by a long distance this doctrine gets attracted. The third doctrine is that of eligibility. The criteria for appointment has not been waived altogether but have been made subject to exemption. The fourth doctrine is that of limitation to the period of consideration. The compassionate appointment being subject to the aforesaid three doctrines is not an indefinite affair but it has to be brought to a close by consideration over three appointment years. The case of **Life Insurance Corporation of India Vs. Miss Asha R.L. Ambedkar** reported in JT 1994 (2) SC 183 is quite revealing :-

"10. Of late, this court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in Merchant of Venice:

"The quality of mercy is not strain'd"

It droppeth, as the gentle rain from heaven

Upon the place beneath it is twice bless'd;

It blesseth him that gives, and him that takes;"

11. These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

12. xxxxxxxxxxx

13. The Courts should endeavour to find out whether a particular case in which sympathetic consideration are to be weighed falls within the scope of law. Disregardful of law,



however, hard the case ay be, it should never be done. In the very case, itself, there re *Regulations and Instructions* which we have extracted above. The Court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of *Instructions* makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the *Life Insurance Corporation Act* as well as the *Statutory Regulations and Instructions*. They cannot be put aside and compassionate appointment be ordered."

8. In yet another case of *Local Administration Department and Another vs. M. Selvanayagam alias Kumaravelu* [Civil Appeal No.2206 of 2006 decided on April 5, 2011] and reported in 2012 (1) SCC (L&S) 717 [(2011) 13 SCC 42 wherein, it has been held by the Hon'ble Supreme Court as under :-

4. *Failing to get a favourable response to his application, the respondent filed a writ petition before the High Court seeking appropriate directions to the authorities concerned. That writ petition was disposed of by a Single Judge of the High Court with a direction to the authorities to consider his claim for appointment on compassionate grounds afresh and pass an order on his application within four months from the date of receipt of that order. This order (first in the series) passed by the High Court was followed by a contempt proceeding initiated against the authorities at the instance of the respondent but that is not relevant for the present and we need not go into that any further. Suffice to note that eventually, the Municipality rejected the respondent's claim for compassionate appointment vide order dated 19-4-2000.*
5. *The respondent once again went to the High Court. A Single Judge of the High Court, this time, rejected the writ petition. Against the order passed by the Single Judge, he filed an intra-court appeal which was allowed by judgment and order dated 30-4-2004, and the Municipality was given the direction to appoint the respondent within three months from the date of the order.*
12. *Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasized is that such*

an appointment must have some bearing on the object of the scheme.

13. *In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7 years and 6 months of his father's death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service.*
14. *In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakshisundaram had been able to tide over the first impact of his death. That being the position, the case of the respondent did not come under the scheme of compassionate appointments.*

9. In the case of **Haryana State Electricity Board Vs. Naresh Tanwar and Another**, reported in 1996 SCC (L&S) 816, the Hon'ble Supreme Court has held as under :-

"9. It has been indicated in the decision of Umesh Kumar Nagpal [(1994) 4 SCC 138 : 1994 SCC (L&S) 930] that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case [(1996) 1 SCC 301 : 1996 SCC (L&S) 303] it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

10. In yet another case of **State of J&K and Ors. Vs. Sajad Ahmed Mir** reported in 2006 SCC (L&S) 1195, wherein, the Hon'ble Supreme Court has held as under :-

"11. We may also observe that when the Division Bench of the High Court, was considering the case of the applicant holding that he had sought "compassion", the Bench ought

D/18

to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

12. In *State of Haryana V. Rani Devi* [(1996) 5 SCC 308 : 1996 SCC (L&S) 1162] it was held that the claim of the applicant for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crises occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right."

11. In the case of *State of UP and Ors. Vs. Parasnath* reported in 1998 SCC (L&S) 570, where an application was made after 17 years, the Hon'ble Supreme Court has held in paras 4 to 7 of its judgment as under :-

"(4)Seventeen years after the death of his father, the respondent, on 8-1-1986, 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 dependent 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,

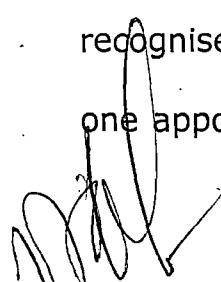
such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

(6) We may, in this connection, refer to only one judgment 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 not other earning member in the family."

(7) 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."

12. From the aforementioned judgments, the position that clearly emerges is that the scheme of compassionate appointment is made to make appointments subject to the four doctrines enumerated in aforesaid paragraph. It is to be accepted that there has to be finality to the process. It cannot be an open ended affair. I agree with the argument of the learned counsel for the applicant only to that extent that three appointment years is normal period for consideration. However, this cap is not to be donned on all occasions. It also has a collar, that being of 'time'. Here an appointment year will not correspond to a calendar year but to a transaction in which appointment is made. Where there are no vacancies arising any consideration will only be a sham consideration. Hence, it cannot be recognised as an appointment year. Likewise there can be more than one appointment years in a calendar year. The death has occurred on



D/20

27.1.1995 of the deceased Government employee. The mother of the applicant has submitted her application for compassionate appointment on 10.2.1999 which was not within the prescribed period of one year. Yet, the same was considered and rejected on 2.3.2001 and communicated to the mother of the applicant vide letter dated 16.3.2001. Two wrongs do not add up to make one right. It is clearly held that the application for appointment on compassionate grounds once having been considered and rejected leaves no scope for another member of the family who applied and be considered against the same occurrence of the death of the Government employee. Hence, the OA filed by the present applicant is disallowed with no order as to costs.



[B.K.Sinha]
Administrative Member

jrm