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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

OA No. 139/2012

Dated this the 17th day of April, 2012

CORAM

HON'BLE MR. B K SINHA. ADMINISTRATIVE MEMBER

1. Smt. Kamla alias Guddi. widow of late Shri Vijay Singh aged 49 days.
2. Gaje Singh son of late Shri Vijay Singh aged 30
(both by caste Ravna Rajpur. residents of house No.98, Jogmaya Colony
Bhagt Ki Kothi, Jodhpur FGM (MCM) MES Jodhpur.Applicant

(By Advocate Mr. Manoj Pareek)

Vs.

1. Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. The Chief Engineer, Air Force MES, Air Force Station, Jodhpur.
3. The Garrison Engineer, Air Force MES, Jodhpur.Respondents

ORDER

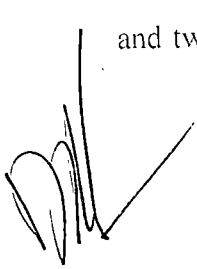
1. The instant OA is directed against the order of the Garrison Engineer, Air Force Station, Jodhpur intimating the rejection of her application for compassionate appointment of her son Gaje Singh. applicant no 2 in the instant OA [A-1].

2. The applicants pray for the following relief in their OA:

- i. *The impugned letter dated 15.4.2011 [Anx/1] may be quashed and set aside and the respondents be directed to grant appointment to the applicant no.2 on compassionate grounds in accordance with his qualification.*
- ii. *Any other appropriate order as may be deemed just and proper in the facts and circumstances of the case be passed.*
- iii. *Cost of the proceeding may kindly be ordered to be awarded in favour of the applicant.*

Facts of the Case in Brief

3. The facts of the case in brief are that the husband of the applicant no.1. Vijay Singh was a Driver Engine Static in AC E/MI. He expired on 6.3.2011 leaving behind the applicants 1 and 2, and two daughters. There being no other male member in the family the applicant no.1 moved



an application that her only son, who was otherwise unemployed, be given an appointment on compassionate grounds supported by the applicant no. 2 Gaje Singh[A/6]. In response to this application the respondents sought the some documentary evidence for his date of birth, the bank details, bank passbook and passport size photographs along with the death certificate of the deceased employee [A/7]. On 15.4.2011 the Garrison Engineer, Air Force, Jodhpur informed the petitioner, in response to their application declining the application for compassionate appointment as all her children were major and the terminal benefits already had already been granted and no other dependant being left behind it was not feasible to grant appointment on compassionate grounds to a married major son.. The instant OA is directed against the impugned order. The grounds that the applicants have adopted include indigence as the applicants have no other source of livelihood for their survival; both the applicants 1& 2 were completely dependent upon the deceased employee; and that the post-death benefits granted are not sufficient for their maintenance. The Ld Counsel for the applicants reiterated these very points at the time of the argument.

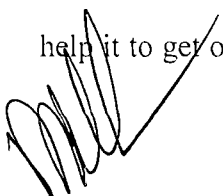
Facts-in-issue

4. Having heard the Ld Counsel for the applicants and having gone through the contents of their OA the following facts-in-issue emerge:

- i. *What is the scope of intervention for the Tribunal in compassionate appointments?*
- ii. *Whether the applicant no.2 is eligible for grant of appointment on compassionate grounds?*
- iv. *What relief, if any, could be granted to the applicant?*

What is the scope of intervention for the Tribunal in matters of compassionate appointments?

5. In order to determine this issue it is necessary to go into the Scheme of Compassionate Appointment. The objective of the Scheme for Compassionate Appointment includes is to grant appointment, on compassionate ground, to a dependent family member of a Government Servant who dies in harness thereby leaving his family in penury and without means of livelihood, in order to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency. This doctrine of '**Immediate Emergency**', thereby, underlies



the Scheme for Compassionate Appointment. This Scheme is applicable to the dependent family members of a person who dies while in service or to a Government Servant, who retires on medical ground under Rule 2 of the CCS (Medical Examination) Rules 1957 or under Rule 38 of the CCS (Pension) Rules 1972 with corresponding provision or corresponding provisions of Central Civil Service Regulation in last two cases. Members of Armed Forces killed in action or dying in service or being boarded out on medical grounds and being declared unfit for civil employment is covered in this Scheme. The term '*Dependent Family Member*' means and includes spouse, son including adopted son, daughter including adopted daughter, brother sister in case of unmarried Government servants or a member of Armed Forces only dependent on the Government servant at the time of death in harness or retirement on medical ground. The term Government servant here would mean a Government servant on regular basis and does not include one working on daily wages or casual, apprentice, or ad hoc or contract or re-employment basis. However, confirmed worked charge employee would be covered by the term Government servant. Service includes extension in service but not re-employment after attaining retirement on a civil post. Re-employment does not include employment of ex-service man before the normal age of retirement in a civil post.

6. Two clauses have been laid down in order that the claimant to compassionate appointment attains eligibility- the family is indigent and deserves immediate assistance for relief from financial destitution and applicant should be eligible and suitable for the post in all respect under the provision of relevant Recruitment Rules. The appointments are exempt from recruitment procedures, clearance from the Surplus Cell from the Department of Personnel and Training/Director General of Employment and Training and ban orders on filling up of post issued by the Ministry of Finance Department of Expenditure. Relaxations have been granted in the upper age limit wherever found to be necessary but not below of 18 years of age and in temporarily in educational qualification with a prior approval of Secretary in the Ministry/Department for a period of two years. This category of appointment can only be made to Group 'C' and Group 'D' posts against Direct Recruitment Quota. Relaxation is also given in

passing the typing test governed by the General Orders of the CS Division in DOPT and Establishment Division of DOPT where the post is not included in the CS Clerical Service. Where a widow is appointed she is exempt from educational qualification provided she is deemed to be fit to perform the duty of the post.

7. Compassionate appointment can only be made on regular basis against regular vacancy to the extent of maximum of 5% of vacancies under the DR Quota on any Group 'C' or Group 'D' posts to be held back from regular recruitment. This ceiling of 5 % is not to be circumvented by making appointment against sports quota or against casual/daily wage/contract employment. Such appointments can be given anywhere under the Government of India. Requests for compassionate appointments can be considered for a period of 3 years.

8. It is apt to mention here that compassionate appointment does not fall within the rights structure. It is a special dispensation which must qualify to a certain conditions, which have already been enumerated in the preceding paragraphs of this order. These doctrines are contained in the form of Doctrine of Immediacy, Doctrine of Penury, and Doctrine of Currency. The hands of the Tribunal are also fettered in matters of granting reliefs. It is not that the Tribunals/Courts can direct the appointment of the applicant on compassionate grounds where they feel that the applicant's is a deserving case. Still the Court shall have to go through the process of consideration by the Competent Authority. It is more like promotion through the DPC where the Courts do not decide that whether a person should be amongst those to be promoted but merely see that whether there has been some infringement of natural justice or the rules in this matter. I find a similar position emerging in the case of compassionate appointment. The Hon'ble Supreme Court have clearly held in their judgment dated Feb 28 1995 in the case of *Life Insurance Corporation of India Vs. Ms. Asha Ramchandra Ambedkar and others in JT 1994(2) SC 183*, that the High Courts and Administrative Tribunals are precluded from giving directions for appointment of a person compassionate grounds but can merely direct consideration of the clam for such appointment. The Hon'ble Supreme Court has held in this regard:



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- "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;"***

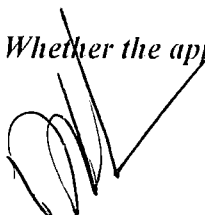
11. *These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient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

12. xxxxxxxxxxxx

13. *The Courts should endeavour to find out whether a particular case in which sympathetic consideration is 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."*

9. It emerges from above that compassionate appointment being a special dispensation from the Government to a particular class of employees is limited in character. Even if a person were eligible it does not imply that he will necessary be appointed. The impugned order also mentions that no cases are considered individually at the Unit/Office level at the level of the Army Headquarters for the entire country by a Board of Officers to find the most deserving cases in acute financial distress/more indigent in comparison to other similar cases. This amounts to a competitive eligibility in hardship. A person may remain eligible and yet not appointed while the dependants of an employee dying at a later date may on account of more severe hardship. Merely dying in harness does not bestow eligibility. This brings us to the next issue.

Whether the applicant no.2 is eligible for grant of appointment on compassionate grounds?



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10. The impugned order is a speaking order wherein both the criterion for selection have been outlined and the reasons for rejection have been explained. Both the daughters of the applicant are married. After the death of the deceased employee there is no family member dependant on him except for the applicant no.1 who is also in receipt of all terminal benefits. While the basic eligibility arises from the incident of death of the deceased employee it does not transform into overall eligibility unless the aforementioned conditions were met. I, further, find that the applicants seek employment as per the qualification of applicant no.2 while this Scheme only offers employment against Group 'C' and 'D' posts. It has already been clarified that is for the appointing authority to go into basic reasons like eligibility, competitive eligibility etc. The Tribunal can only intervene when some Rule or statutory provisions get violated. In the instant case, I do not find either happening. In conclusion, I hold that the impugned order is a well considered speaking order not hit by any procedural latches or infirmities. The applicants have submitted nothing that warrants any intervention on part of this Tribunal.

What relief, if any, could be granted to the applicant?

11. In consideration of the above facts the OA fails. The party must bear its own costs.



(B K SINHA)

ADMINISTRATIVE MEMBER