

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 290/00424/2013

Reserved on: 22.05.2015

Jodhpur, this the <sup>4<sup>th</sup></sup> June, 2015

**CORAM**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Bharat Jain s/o Late C.R.Lalwani, aged 32 years, r/o 135, Jawahar Society, Mahaveer Nagar, Guro Ka Talab Road, Jodhpur.

.....Applicant

By Advocate: Mr. Manish Guriya

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, Hudco Vishala Building, Bhikaji Cama Palace, New Delhi.
2. Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi.
3. The Chief Commissioner, Central Excise (Jaipur Zone), Central Excise, Statue Circle, C-Scheme, Jaipur, Rajasthan
4. The Deputy Commissioner, Central Excise Department, Jodhpur

.....Respondents

By Advocate : Mr.M.S.Godara

**ORDER**

This OA has been filed by the applicant under Section 19 of

case for compassionate appointment and praying for the following reliefs:-

- 1) The impugned letters dated 20.09.2014 (annex. A/1) as well as letter dated 28/30.09.2012 and 23.09.2010 (annex.a/2) may kindly be quashed and set aside.
- 2) The non applicants may kindly be directed to consider the case of applicant no.1 for granting the appointment on compassionate grounds in accordance with his qualification.
- 3) The non applicants may kindly be directed to grant appointment to the applicant no.1 on compassionate grounds.
- 4) Any other appropriate order as may be deemed just and proper in the facts and circumstances of the case be passed.
- 5) Costs of the proceedings may kindly be ordered to be awarded in favour of the applicant.

2. It has been averred in the OA by the applicant that father of the applicant late Shri Chandraraj Lalwani, working on the post of Administrative Officer, died on 20.3.2012 while in service with respondent No.4. Immediately on 30.3.2012, mother of the applicant moved an application in the prescribed proforma well within the time, to the non-applicants and requested to consider candidature of her son for appointment on compassionate grounds. After submitting the application, the non-applicants asked to provide requisite information, which was duly submitted by the applicant on 22.5.2012. As no action was taken by the respondents, the applicant addressed letter dated 6.9.2012 seeking status of the application and also requested to grant

(Annex. A/1), the respondent No.3 passed an order whereby it was informed that case of the applicant seeking appointment on compassionate grounds was considered by the prescribed committee on 29.8.2012 and it is stated that in office letter (F.No.C/18013/09/2010-Ad.IIIB) dated 28/30.09.2010 of Central Board of Excise and Customs, New Delhi read along with a copy of DOPT's U.No.71435/10/ET.D (II) dated 23.09.2010 (Annex.A/2), married son/daughters have been considered ineligible for appointment on compassionate grounds. Therefore, the committee has recommended to close the case of applicant being a married son, for consideration of appointment on compassionate grounds. Immediately, the applicant addressed an application dated 5.10.2012 (Annex. A/4) to respondent No.2 seeking information regarding the letters dated 28/30.9.2010 as well as 23.09.2010, but he did not get the requisite information and two consecutive letters dated 18.10.2012 and 15.11.2012 (also at Annex. A/4) were sent to the non applicant No.3 which remained unanswered. In these circumstances, the applicant moved an application under the Right to Information Act, seeking copies of letters dated 28/30.9.2010 as well as letter dated 23.9.2010 (annex.A/2) relied upon by the non- applicants for rejecting the candidature of applicant but the applicant was not supplied the information and therefore, applicant moved application dated

copies of requisite letters vide communication dated 27.11.2012 (Ann.A/7). These communications say that consideration of case of married son/daughter for appointment on compassionate grounds would be against well established law on compassionate appointment, therefore, the married son/daughter should not be considered for appointment on compassionate grounds. The applicant has averred that these letters are violative of Article 14 and also against the basic object of compassionate appointment.

There is no rational nexus with the object sought to be achieved by the very scheme of the compassionate appointment. Therefore, the orders impugned are liable to be quashed and set aside and this classification made by the non applicants is arbitrary and against the principles of the Constitution of India. It has been further averred that in deciding the application seeking compassionate appointment, the authority are required to examine the case while considering the financial status, liability and person dependent upon the deceased. In the instant case wife of the deceased and his two sons are dependent and mother of the applicant is seeking appointment for her son, therefore, the reason assigned by the non applicants is having no justification in the present set of facts and prayed that the impugned orders are liable to be quashed and set aside.

*[Handwritten signature/initials with a checkmark]*

3. By way of reply, it has been submitted that the last cause of action took place in this case on 20.9.2012. The respondents have not received the grievance dated 29.11.2012 said to be made by the applicant on the portal of the Department of Administrative Reforms and Public Grievances. The applicant has submitted that he has preferred the application for condonation of delay along with the present application but he has not put forth the reasons as to why he could not file the present original application well within the time. It has been further submitted that the application dated 22.5.2012 of the applicant was received at the Headquarter Office through the Deputy Commissioner, Central Excise Division, Jodhpur's letter dated 31.5.2012 and 4.6.2012. There were 12 more cases of other applicants which were also due for consideration for compassionate appointment. After collecting required details from such applicants, a meeting of the prescribed committee was held on 29.8.2012 and vide letter dated 20.9.2012, the applicant was intimated about the closure of his case for compassionate appointment on the recommendation of the Committee. The applicant's letter dated 6.9.2012 was received in the office of respondent No.3 through the Additional Commissioner (P&V), Central Excise, Jaipur-II only on 3.10.2012. Copy of the applicant's application dated 5.10.2012 was received in the office of respondent No.3 along with his other applications

20.9.2012, the applicant had already been intimated about the final closure of his case on the basis of recommendation of the prescribed committee and the basis on which the committee gave such recommendation, no further action was warranted. With regard to averments regarding RTI application, it has been clarified that the applicant preferred RTI application dated 21.11.2012 and preferred another RTI application dated 11.12.2012 in which information has been provided to him vide letter dated 27.12.2012. The applicant has challenged the letter dated 20.9.2012 issued from the respondent office as well as the letter dated 28/30.9.2010 of the Under Secretary to the Government of India, Ministry of Finance, Central Board of Excise and Customs, New Delhi and note dated 21.9.2010 of the Department of Personnel and Training, New Delhi. This submission of the applicant is not acceptable in view of the facts that the DOPT is the nodal authority to issue instructions in such type of matters and the same are binding on all the authorities concerned. The basic object of the scheme for compassionate appointment is to grant appointment on compassionate grounds to a dependent family member of a government servant. A married son is not considered dependent on government servant, thus, there is no violation of Article 14 of the Constitution of India. It is further stated that as per the Scheme for compassionate

further consolidated vide office memorandum dated 16.1.2013, the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a government servant. As per para No.2 ibid, the scheme is applicable to a dependent family member of a Government servant who dies while in service As per Note-1 below the aforesaid para No.2, "Dependent Family Member" means:-

(a) spouse; or

(b) son (including adopted son); or

(c) daughter (including adopted daughter);

or ..... who was wholly dependent on the government servant at the time of his death in harness.

The Department of Personnel and Training in "Frequently Asked Questions (FAQs) on compassionate appointment" issued vide No. 14014/02/2012-Estt.(D) dated 20.5.2012, in reply to question No.13 "Whether married son can be considered for compassionate appointment? Has answered 'No. A married son is not considered dependent on a government servant ?

The respondents have further submitted that the Hon'ble Supreme Court's judgment dated 4.5.1994 in the case of Umesh Kumar Nagpal vs. State of Haryana and others (JT 1994 (3) S.C.

harness leaving his family in penury and without any means of livelihood can be appointed on compassionate grounds. Further, married sons are not considered dependent on a Central Government servant for grant of benefit of various schemes also viz. Leave Travel Concession, Central Government Health Scheme etc. and it has also been mentioned that under CCS (Pension) Rules, 1972, a son is eligible for family pension till he attains the age of 25 years.

The case of the compassionate appointment of the applicant was sympathetically considered by the department in the meeting of the screening committee held on 29.8.2012 following instructions/guidelines of the DOPT as well as of the Ministry issued from time to time. 13 cases for compassionate appointment were considered in the said meeting. 8 dependents of the deceased Government employees whose cases were also considered in the said meeting, including the applicant, were married as such the committee was not having any other alternative except to recommend closure of such cases in view of the instructions/regulations mentioned supra.

Further, the submission of the applicant that there is no other earning member in the family to supplement the loss of income from the bread winner is also misleading. The applicant in the prescribed application form has himself mentioned that he as well

as his younger brother are employed and getting emoluments amounting to Rs. 15,000 (gross) and Rs. 13,000 (basic) respectively. Further, the family pension has been mentioned as Rs. 11975 + Dearness Allowance (DA) per month. Therefore, the case of the applicant for compassionate appointment otherwise also does not have merits. Thus, the action of the respondents to close the case of the applicant is sustainable in the eyes of law.

In view of above reason, married son of a Central Government employee cannot be treated as dependent for grant of benefits of various scheme including scheme for compassionate ground and thus, are not eligible for the same and on the above grounds the respondents have prayed for dismissal of the OA.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

5. Heard. Counsel for the applicant submitted that in the scheme of compassionate appointment son is included as dependent and there is no reference whether he is married or otherwise and he can be considered for compassionate appointment, if he fulfils all the required conditions and no discrimination can be made between a married and unmarried son. The counsel for the applicant also submitted circular No. 14014/02/2012-Estt.(D) of DoPT dated 25.2.2015 in which it has been clarified that a married son can be granted compassionate

appointment subject to fulfilment of other requirements. Counsel for the applicant, thus prayed that no discrimination can be made between married and unmarried son and the applicant is entitled to the reliefs as prayed for.

6. Per contra, counsel for the respondents contended that the DOPT is the nodal department for issuing instructions on compassionate appointment and vide communication of DoPT "Frequently Asked Questions" (FAQs) on compassionate appointment issued vide No. 14014/02/2012-Estt (D) dated 30.5.2012 it has clearly been mentioned that married son is not entitled to be considered for compassionate appointment and even the latest instruction of DoPT dated 25.02.2015 is prospective and does not apply to this case, which has been settled before 13.1.2013.

7. Considered the rival contention and perused the record. In this case, it is seen that the case of the applicant has been rejected only on the grounds that he is married son and not on the ground of indigent condition of the family of the deceased employee and now the DOPT has issued circular "Frequently Asked Questions" (FAQs) on compassionate appointment issued vide Note No. 14014/02/2012-Estt (D) dated 25<sup>th</sup> February, 2015 by which a married son can be considered for compassionate appointment, if



object of the scheme for compassionate appointment is to assist the family of the deceased employee who left the family in penury and without any means of livelihood, therefore, it will be in the interest of justice, if the respondent department reconsider the case of the applicant in view of the DOPT clarification dated 25<sup>th</sup> February, 2015. So far as the provision in the clarification in aforesaid circular dated 25<sup>th</sup> February, 2015, that cases already settled w.e.f. the OM dated 30<sup>th</sup> May, 2013 may not be reopened is concerned, since the action of the respondents has been challenged in the present OA, therefore, the matter cannot be said to be settled, and this view has been held by this Tribunal in several cases including in OA No. 287/2014 decided on 9<sup>th</sup> April, 2015.

8. Accordingly, the OA is disposed of with direction to the respondents to re-consider the case of the applicant for appointment on compassionate grounds in the light of the DOPT clarification "Frequently Asked Questions" (FAQs) on compassionate appointment issued vide No. 14014/02/2012-Estt (D) dated 25<sup>th</sup> February, 2015, within a period of four months from the date of receipt of a copy of this order. No order as to costs.



(MEENAKSHI HOOJA)  
Administrative Member

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