

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.525/Jodhpur/2013

Jodhpur, this the 12th day of May, 2015

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Manish Vyas S/o Shri Harish Chandra Vyas, aged about 31 years, R/o 17-E-392, Chopasani Housing Board, Jodhpur, Rajasthan. The father of the applicant Shri Harish Chandra holding the post of Superintendent in the office of Respondent No.4.

.....Applicant

By Advocate: Mr. K.D.S. Charan, proxy for Mr. Kuldeep Mathur.

Versus

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

.....Respondents

By Advocate : Mr. M.S. Godara, counsel for respondents.

ORDER (Oral)

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 against the order dated 26.02.2013 (Annexure (A/1) seeking the following relief(s):-

- (iii) *That the respondents may kindly be directed to consider the case of the applicant for granting appointment on compassionate grounds in accordance with his qualification.*
- (iv) *That the respondents may kindly be directed to grant appointment to the applicant on compassionate grounds.*
- (v) *That exemplary costs be imposed on the respondents for causing undue harassment to the applicant.*
- (vi) *Any other relief, which this Hon'ble Tribunal deems fit and proper in favour of the applicant may be granted. The original Application may kindly be allowed with costs and all circumstantial benefits may be granted in favour of the applicant.*
- (vii) *Costs of this application be ordered to be awarded in favour of the applicant."*

2. Brief facts of the case as averred by the applicant are that the father of the applicant Late Shri Harish Chandra Vyas was working on the post of Superintendent in the respondent department and he died on 12.04.2012, while in service. The mother of the applicant Smt. Kaksha Vyas had untimely expired on 12.02.2002 i.e. much prior to the death of his father. Late Shri Harish Chandra Vyas left behind him two sons i.e. present applicant and Shri Nitin Vyas, who is elder to the applicant and is suffering from Physical Disability of more than 40% and looking to the family conditions the father of the applicant thought it fit to marry his younger son i.e. applicant at an early age, though he was fully dependent upon him. It has been further averred that the applicant after sudden death of his father submitted an application in prescribed proforma (Annexure-A/4) well within time to the respondents and requested to consider his candidature for appointment on compassionate grounds. To the utter disbelief and surprise to the applicant, the respondent No.3 passed an order dated 20.09.2012 (Annexure-A/5) whereby it was informed that the case of applicant

prescribed committee on 29.08.2012 and it is stated that in office letter No.F.C.18013/09/2010-Ad.IIIB dated 28-30 September, 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, 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. It has been further averred that the after receiving a copy of order dated 20.09.2012, the applicant submitted a representation dated 09.10.2012 to the respondents stating there in that after death of his father he is sole bread earner of his family and has also having liability of his elder brother as well who is handicapped. It has been further averred that the respondents vide order dated 26.02.2013 (Annexure-A/1) have informed the applicant that his request has been examined but the same cannot be acceded to in view of existing instruction on the subject. It has been submitted that the case of the applicant has been rejected only on the count that the married son/daughter are ineligible for seeking compassionate appointment and this is unreasonable because there is no rational nexus with the object sought to be achieved by the very Scheme of the compassionate appointment and as such classification is arbitrary and against the principles of Constitution of India. It has therefore been

prayed that the orders impugned dated 20.09.2012 (Annexure-A/5) and 26.02.2013 (Annexure-A/1) are liable to be quashed and set aside.

3. By way of reply, the respondents have submitted that the applicant has challenged the letter dated 28/30.09.2010 of the under Secretary to the Government of India, Ministry of Finance, Central Board of Excise and Customs, New Delhi and the said letter was based on the note dated 21.09.2010 of the DoPT, and 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 and a married son is not considered dependent on a Government servant, thus, there is no violation of Article 14 of the Constitution of India. It has been further averred that the DoPT in Frequently Asked Question (FAQ) on compassionate appointment issued vide dated 30th May, 2013 in reply to question No.13 “whether married son can be considered for compassionate appointment? has answered “No”. Further, a married son is not considered dependent on a Government servant for grant of benefit of various other schemes also viz. Leave Travel Concession, Central Government Health Scheme etc and it has also been submitted that under the CCS (Pension) Rules, 1972, a son is eligible for family pension till he

applicant, it has been submitted that the case of compassionate appointment of the applicant was sympathetically considered by the department in the meeting of the screening committee held on 29.08.2012 following the 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 and 8 dependents of the deceased government employees whose case 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 instruction/ regulations mentioned supra. It has been submitted that the case of the applicant was closed in consonance with the instructions issued from the nodal authority i.e. DoPT. Hence, the action taken by the respondents can be held as reasonable, just and constitutional and the respondents have thus prayed for dismissal of the OA.

4. Heard. Counsel for applicant contended that in this OA, the claim for compassionate appointment of the applicant has been rejected by the respondent authorities vide letter dated 20.09.2012 Annexure-A/5 and he was further informed vide Annexure-A/1 dated 26.02.2013 with reference to his letter/representation dated 09.10.2012 that his request was not acceded to in view of existing instructions on this subject. In the rejection letter dated 20.09.2012 (Annexure-A/5)

Customs Department, New Delhi dated 28/30.09.2010 and DoPT's U.No.71435/ 10/ ET.D (ii) dated 23.09.2010, according to which married son has not been eligible for claiming compassionate appointment. During the course of the arguments, counsel for the applicant submitted a note of DoPT dated 25th February, 2015 in which it has been mentioned that the married son can be considered for compassionate appointment, if he otherwise fulfils all the other requirements of the Scheme.

5. Counsel for the respondents also agrees that this clarification has been issued by the DoPT vide note dated 25th February, 2015.

6. Counsel for the applicant further contended that this Tribunal has also decided a similar case relating to Ministry of Defence wherein the question of whether the married son can be considered for compassionate appointment has been considered by this Tribunal and this Tribunal vide its judgment dated 09th April, 2015 passed in OA No.287/2014, has taken the following views:

“Considered the rival contentions of the parties and perused the record as well as the order cited by the counsel for the applicant. It appears that the case of the applicant has been rejected by the respondent department only on the ground that the married son is not entitled to appointment on compassionate ground on the basis of DoP&T OM 16.1.2013 and 30th May, 2013 and not on the ground of indigent condition of the family of the deceased employee. Since the 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

far as the provision in the clarification dated 25th February, 2015, that the cases already settled w.r.t. the OM dated 30th May, 2013 may not be reopened is concerned, since the action of the respondent has been challenged in the present OA, therefore, the matter cannot be said to be settled.

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 clarification dated 25th February, 2015 within a period of three months from the date of receipt of a copy of this order. No order as to costs."

7. Considered the rival contentions and perused the record. . In this case the compassionate appointment has been refused to the applicant only on the ground of his being a married son of the deceased employee and as the DoPT has now issued a clarification dated 25th February, 2015 in this regard the respondents are required to reconsider the case of the applicant in the light of the DoPT clarification dated 25th February, 2015. So far as the provision in the clarification dated 25th February, 2015, that the cases already settled w.r.t. the OM dated 30th May, 2013 may not be reopened is concerned, since the action of the respondent has been challenged in the present OA, therefore, as held by this Tribunal in order dated 09th April, 2015 passed in OA No.287/2014, the matter in this case also cannot be said to be settled.

8. In view of the above aforesaid position and taking into account order of this Tribunal dated 09th April 2015 passed in OA 287/2014, it is proposed to dispose of this OA with certain directions.

9. The respondent department is directed to reconsider the case of the applicant for appointment on compassionate grounds in the light DoPT clarification dated 25th February, 2015 within a period of three months from the date of receipt of a copy of this order.

Accordingly the OA is disposed of with no order as to costs.

Meenakshi Hooja
(MEENAKSHI HOOJA)
Administrative Member

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