

Central Administrative Tribunal Lucknow Bench Lucknow.

Original Application NO. . 522/2006

This, the ^{16th} Day of February, 2009

Hon'ble Dr. A. K. Mishra, Member (A)

Shashi Devi aged about years, W/o Late Sri Mithai Lal, resident of -Type-II-140, Sector Q, GSI colony, Aliganj, Lucknow

Applicant.

By Advocate Sri Praveen Kumar.

Versus

1. The Director, General Geological Survey of India (Northern region), Aliganj) Lucknow.
2. The Deputy Director General, Geological Survey of India (Northern Region), Aliganj, Lucknow.

Respondents.

BY Advocate Sri S. K. Awasthi.

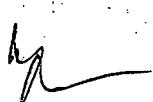
ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

The applicant has challenged the order dated 18th July 2006 of Respondent No. 2 rejecting the case of the applicant for compassionate appointment on reconsideration following the direction of this Tribunal in O.A. No. 174/2006.

2. The only ground on which her application was rejected was that she had received more than Rs. 10, 65836/- by way of death benefits on account of premature accidental death of her husband while he was engaged in government duty and also for the fact that she was getting family pension of Rs. 5,599/- per month which was sufficient for her to sustain her family.

3. The impugned order has been challenged on two grounds:-



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(i) That it could not have been rejected on the sole ground of her getting death benefits and monthly pension to which she is entitled as a matter of right.

(ii) That her husband was working for the department in inclement condition of Himtah Glacier of Kullu District, Himanchal Pradesh and died while performing his official duty. As such, she was given an ex-gratia amount of Rs.5,00,000/- in addition to other terminal benefits. The fact that the family pension will be reduced by half after 10 years and that a major amount has been spent in medical treatment of her mother in law and in liquidating the debts she had to incur to sustain herself till receipt of terminal benefits were not taken into account.

(ii) that her case should have been considered by the committee concerned for three years before it is finally closed as per the instructions of the government communicated in the OM dated 9.10.1998 and 5.5.2003 of the DOP&T to which, a reference has been made in the impugned order of the respondents.

4. The learned counsel for the applicant cited the following case law:-

(I) (i) (2005) 10 SCC-289, Govind Prakash Verma Vs. LIC
(ii) (2000) 2 LBESR0503 (SC), Balbir Kaur Vs. SAIL
(iii) (2001) 2 LBCSR-502 SBI Vs. Ram Piarey
(iv) (2003) 1 LBESR-935; Smt. Padma Pathak Vs. MD/PNB
(v) (2004) 22 LCD-950; of Allahabad High Court in Ashutosh Mishra Vs. U.O.I.
(vi) (2004) 103 FLR 1236 of Allahabad High Court in CGM, SBI Vs. Durgesh Kumar Tiwari

to the effect that terminal benefits and family pension etc. cannot be a ground for rejection of claim of compassionate appointment;

(II) (i) O.A. 348 of 2006; Rajeev Rastogi Vs. U.O.I..
(ii) O.A. No. 240 of 2005; Anand Kumar Sing.
(iii) O.A. No. 31 of 2004; Shiv Kumar vs. U.O.I.

to the effect that at least on 3 consecutive occasions, the case should have been considered as per O.M. dated 05.05.2003;



(III). (i). 1978 (i) SCC 405; Mohinder Singh Gill vs.

to the effect that reasons mentioned in the impugned order cannot be supplemented by way of Affidavit.

5. The ratio of all these judgments is that the case for compassionate appointment of applicant should not be rejected only on the ground that he/she had received terminal benefits and family pension. As against this citation, the learned counsel for the respondents cited the judgment of Hon'ble Supreme Court in Punjab National Bank and Others Vs. Ashwini Kumar Tenaja reported in (2004) 7 SCC 265 to the effect that the retiral benefits should not be excluded while considering the request for compassionate appointment. This decision was made in the special context of the scheme for compassionate appointment of the Punjab National Bank formulated for employees who died in harness and this scheme specifically provided that income from pension and terminal benefits could be considered along with others.

6. However, taking an over all view of the ratio of the judgments of the Hon'ble Supreme Court, it can be held that though the family pension and other benefits could be taken into consideration while assessing the comparative penurious condition of a family, it should not be the sole criterion on which an application could be rejected. On the other hand, all other factors such as liabilities on the family, absence of any other bread earner, size of the family, the ages of children, the educational need of minor children, the responsibility of looking after aged parents, availability of a dependable and secure shelter and other relevant factors should be taken into consideration in assessing the comparative merits of the applicant along with other applicants. The scheme of the DOP&T refers to some of these factors in its guidelines.



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7. It is seen that the original application for compassionate appointment filed on 9.8.2004 was returned to her asking her to resubmit with complete information about income details etc. The scheme of compassionate appointment circulated by DOP&T in Officer Memorandum (O.M.) dated 9th October 1998 clearly mentions that the welfare officer in each Ministry/Department /Office should meet the members of the families of the employee in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. It should have been the duty of the department to help the present applicant in filling up the application instead of returning it in a cavalier manner. Even if no welfare officer was available any one who is conversant with the subject should have been deputed to help the poor widow whose husband died in tragic circumstances while performing government duty.

8. I find that her case was taken up only on a direction from this Tribunal on 3.7.2006. If there were others who were more deserving of compassionate appointment in that year, her case should have been taken up in succeeding two years before closing the case finally.

9. Under the circumstances, I find that her application for compassionate appointment has not been considered in terms of government instructions contained in the relevant OMs circulated by the DOP&T. Accordingly, the impugned order is set aside and it is directed that her case should be considered again as per the government instructions and judicial pronouncements made from time to time. It should not be rejected solely on the ground of the terminal benefits which she received. No costs.

Aprije 16/02/07
(Dr. A. K. Mishra,
Member (A))