

**Central Administrative Tribunal Lucknow Bench, Lucknow**

**Original Application No. 107/2008**

**This, the 27<sup>th</sup> day of April, 2012**

**Hon'ble Sri S. P. Singh, Member (A)**

Chitrasen Verma, aged about 38 years S/o Lt. Sri Shiv Ram R/o villate-Ram chaura, Post-Banthara, Lucknow.

**Applicant**

**By Advocate Sri V. K. Srivastava.**

**VERSUS**

1. Union of India, through Secretary, Ministry of Science and Technology, New Delhi.
2. Director, National Botanical Research Institute, (CSIR) Rana Pratap Marg, Lucknow.
3. Council for Scientific and Industrial Research, New Delhi.

**Respondents**

**By Advocate Sri Pankaj Awasthi for Sri A. K. Chaturvedi.**

**(Order Reserved On: 20.4.2012)**

**ORDER**

**By Hon'ble Sri S. P. Singh, Member (A):**

This O.A. has been instituted by the applicant seeking following relief(s):

- "(i) To quash/set aside the order dated 22.8.2007 issued from the office of the opposite parties, the photo copy of which is contained in the Annexure-1 to the original application.
- (ii) To direct the opposite party No. 2 to appoint the applicant under the dying in harness rules in accordance to his qualification.
- (iii) To pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The applicant is questioning the validity of the order dated 22.08.2007 (Annexure-1) to the O.A. whereby, his application for appointment on compassionate ground was rejected by the respondents. He also seeks direction to the respondents for his appointment on compassionate ground.

3. The father of the applicant late Shiv Ram who was working on the post of Helper under respondent No. 2 died prematurely on 27.7.2001. He was suffering from Tuberculosis. He left behind him his widow Smt. Piara, the applicant and his elder brother and one unmarried younger sister.

4. Counter affidavit and rejoinder affidavit have also been filed by the parties concerned.

5. The applicant filed an Original Application No. 542/2003 which was decided by this Tribunal on 22.5.2007 (Annexure-4). The relevant paras of the order of this Tribunal in O.A. 542/2003 are reproduced below:-

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“7. I have given my anxious consideration to the submissions made by learned counsel on both sides. I find that the order dated 29.10.2003 is completely non-speaking. The respondents have not given any specific reason for rejecting the claim of the applicant for appointment on compassionate grounds. There is, thus, a complete non-application of mind on the part of respondent No. 3. It is an established law that an arbitrary and non speaking order is no order at all in the eye of law. Hence, the impugned order of respondent No. 3 deserves to be quashed and set aside on this ground itself.

8. I also find that the respondents in their counter affidavit dated 3.12.2004 have recorded the following reasons for rejecting the claim of the applicant for appointment on compassionate grounds.

(1) That the applicant's family was paid Death-cum-retirement Gratuity of Rs. 50,640/-

(2) That they were also paid Provident fund amounting Rs. 6,293/- Rs. 15,000 as Group Insurance, a part from family pension w.e.f. 28<sup>th</sup> July 2001 @ Rs. 11445/+ Relief Rs. 859 for a period of 7 years and Rs. 1275/- per month thereafter w.e.f. 27<sup>th</sup> July 2001. They also submit mention that sum of Rs. 12162/- was also recovered from the gratuity of the applicant on account of excess of Leave Salary paid to Late Sheri Shiv Ram before 27<sup>th</sup> July 2001.

(3) That the applicant's yearly Income from agriculture is Rs. 10,000/- per annum.

9. The reasons cited by the respondents do not appear to be reasonable and convincing. Moreover these reasons do not find any mention in the order dated 29.10.2003 of respondent No. 3. It is a settled law that deficiencies in an order cannot be made up by filing a counter affidavit. It has been held by the Apex court in the case of Mohinder Singh Gill and another Vs. Chief Election Commissioner New Delhi reported in [AIR (1978) SC 851] that the validity of an order must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in shape of affidavit or otherwise. Otherwise an order, bad in the beginning may, by the time it comes to court on account of a challenge gets validated by additional grounds later brought out.”

10. For the same reasons, the respondents contention that the case in question was not covered by 5% quota also does not merit any consideration as it does not find any mention in the order dated 29.10.2003 of respondent No. 3.

11. Moreover, even if we admit for a moment the reasons advanced by the respondents in their counter affidavit dated 3.12.2004 that the family of the applicant was paid death-cum-retirement gratuity amounting to Rs. 50,640/- provident fund amounting to Rs. 6293/- and Group insurance amounting to Rs. 15,000 plus family pension etc. it is a well settled principles of law that retiral dues or family pension shall not be taken into consideration while deciding the cases of eligible dependents of the deceased employees on compassionate grounds. This point of law is well settled by the decisions of various Hon'ble High Courts in the country. The family of the applicant was earning Rs. 10,000/-per year from agriculture does not find any mention in order dated 29.10.2001 of respondent No. 3 . As regards the terminal benefits, the Apex Court in Para 19 of their judgment in the case of Balbir Kauar and another Versus Steel Authority of India Ltd. And Others reported in [(2003) 3 UPLBEC-2005] as held as under:-

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"Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law Courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavor of the law Court would be to administer justice having due regard in the direction."

12. The Hon'ble Delhi High Court in the case of Jagwati Devi Vs. Union of India and Others reported in (2003) 1 Civil Nirnaya Patrika 377 decided on 25<sup>th</sup> September 2002 has also reiterated the same view. In view of this, I find that the parameter, on the basis of which the case of the applicant for compassionate ground has been rejected is not maintainable in law. Hence I quash and set aside the impugned order dated 29.10.2003 of Director National Botanical Research Institute, Lucknow and direct all the respondents No. 1 to 3 to reconsider afresh the case of the applicant for appointment on compassionate grounds. The whole exercise should be completed within a period of three months from the date of receipt of a certified copy of this order.

5. The committee for compassionate appointment of National Botanical Research Institute considered the case of the applicant for compassionate appointment in its meeting held on 22.8.2007 along with 12 other cases. In case of the applicant, the remarks/recommendations of the committee is as under:-

स्व० राम किशन

स्व० श्री राम किशन का आकस्मिक निधन 21.01.1996 को इस संस्थान की कुल 31 वर्ष सेवा करने के उपरांत हुआ था। मृतक के परिवार में पत्नी श्रीमती विन्ध्या देवी आयु 61 वर्ष के अतिरिक्त 01 पुत्र श्री बुद्धि राम आयु 32 शैक्षिक योग्यता हाई स्कूल पास है ने स्वयं को नौकरी दिये जाने हेतु अनुरोध किया है।

पूर्व में भी दिवंगत की पुत्र श्री बुद्धि राम ने स्वयं को नौकरी प्रदान किये जाने हेतु अनुरोध किया था जिस पर अनुकम्पा समिति की दिनोंक 25.05.2000 को आयोजित बैठक में विचार किया तथा स्वीकार योग्य नहीं पाया। तत्पश्चात मृतक के पुत्र श्री बुद्धि राम के प्रार्थना पर माननीय कैट द्वारा अपने आदेश दिनोंक 13.08.2004 में दिवंगत के परिवार की अनुकम्पा के आधार पर नियुक्ति हेतु प्रार्थना पर इस संस्थान द्वारा पुनः विचार करने का आदेश दिया। चूंकि 2004 से कोइ पद अनुकम्पा के आधार पर नियुक्ति हेतु उपलब्ध नहीं था। अतः इस वर्ष एक पद उपलब्ध होने पर विचार हेतु रखा गया है।

तदनुसार इस समिति ने मामले में पुनर्विचार करते हुए श्री बुद्धि राम द्वारा दिनोंक 09.04.2007 को प्रस्तुत निर्धारित प्रपत्र में पारिवारिक विवरण का ध्यान पूर्वक अवलोकन किया जिसके अनुसार वर्तमान में दिवंगत के परिवार में पत्नी के अलावा केवल एक विवाहित पुत्र, पुत्रवधू एवं एक पौत्र है। स्व० श्री राम किशन की मृत्योपरान्त उपके परिवार को

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dated 6.7.2012*

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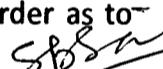
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रु0 145,081.00 प्राप्त करवाये गये और 2932.00 की पारिवारिक पेंशन प्राप्त हो रही है।

6. Heard the counsel for the parties and perused the material on record.
7. Learned counsel for the applicant submitted that from perusal of the remarks/recommendations of the committee enclosed with accompanying letter (Annexure-A-1), nowhere a speaking order as was ordered to be passed in the case of the applicant has been passed. Whatever, reasons have been given at page 14 of the annexure are not sustainable in terms of the rules applicable to the applicant at the time of the death of his father. These are also not complete as the issues raised by the applicant in his previous O.A. and this O.A. have not been dealt by the committee. At this stage, the learned counsel for the applicant prayed that the applicant will be satisfied if his request for compassionate appointment is considered once more by the competent authority.
8. The learned counsel for the respondents submitted that he has no objection to the prayer of the applicant for reconsideration in light of the facts and circumstances stated above.
9. In view of the position stated by the parties, the impugned order dated 22.8.2007 is quashed. The respondents are directed to dispose of this matter in stipulated time. The applicant will accordingly produce a copy of this order before the competent authority who will pass a reasoned order as per the existing rules within a period of 6 months.
10. The O.A. is finally disposed of with the above direction. No order as to cost.

  
(S. P. Singh)  
Member (A)

Vidya