

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

O.A. No. 470 of 2009

This, the 4th day of October, 2013

HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

Km. Renu aged about 32 years daughter of Late Sri Jiya Lal
R/o C3/6, Lal Colony, Nirala Nagar Lucknow.

Applicant

By Advocate: Sri Manish Kumar Singh.

Versus

1. Director General Council for Scientific and Industrial Research, New Delhi.
2. Director, Central Drug and Research Institute, Chhattar Manjil, Palace, Lucknow.
3. Administrative Officer, Central Drug and Research Institute, Chhattar Manjil, Palace, Lucknow.


Respondents

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

**(Order Reserved on 26.9.2013)
ORDER**

By Hon'ble Shri Navneet Kumar, Member (J)

The present Original Applicant is preferred by the applicant
under Section 19 of the AT Act, 1985 with the following reliefs:


- “(I). Issue a direction or order thereby declaring that the impugned order dated 9.7.2007 passed by the Respondent No. 3 contained in Annexure No. 1 is arbitrary, illegal and without authority of law and very ground to quash the same accordingly.
 - (II) Issue a direction or order thereby directing the respondent No. 3 to reconsider the case of the applicant in respect of given the appointment on the compassionate grounds as per educational qualification in Group D service in compliance of the order dated 21.3.2007 passed by this Hon'ble Tribunal.
 - (III) Issue a direction or order thereby directing the respondent No. 3 not to denial made on the ground that 5% vacancies is not available.
 - (IV) Issue such other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case to meet the ends of justice, and
 - (V) Allow the application with cost.”
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2. The brief facts of the case are that the applicant, who is the daughter of the deceased employee applied for grant of compassionate appointment. The learned counsel appearing on behalf of the applicant pointed out that earlier, the applicant had preferred an Original Application No. 331/2005 which was considered and decided by the Tribunal and while deciding the O.A., the Tribunal quashed the order dated 18.6.2004 with a direction to the respondents to reconsider the case of the applicant for grant of compassionate appointment in terms of guidelines dated 5.5.2003 within a period of 4 months. When no decision was taken, the applicant preferred Contempt Petition No. 42/2007 and the said Contempt Petition was dismissed by the Tribunal. The learned counsel for the applicant also pointed out that in pursuance of the said order, the respondents have passed an order on 9.7.2007 whereby the case of the applicant was considered and dismissed. Feeling aggrieved by the said order dated 9.7.2007, the applicant preferred the present O.A. The learned counsel for the applicant pointed out that in the year 2004, one person was appointed and the financial condition of the family of the deceased employee is also very pathetic and the applicant is suffering great financial hardship, as such requires that the impugned order dated 9.7.2007 may be quashed and the respondents may again be directed to reconsider the case of the applicant for grant of compassionate ground.

3. The learned counsel for the respondents filed their reply. Apart from the reply, the respondents also filed the objections. In the counter reply, the respondents pointed out that the claim of the applicant for compassionate appointment was initially considered by the Compassionate Appointment Committee in its



meeting held on 25.3.2004 along with 8 other applicants for appointment on compassionate ground and only one person, against only the one post available for appointment was recommended which was subsequently accepted by the authorities on 29.3.2004. Accordingly, the decision was communicated to the applicant's mother through letter dated 13.4.2004. Subsequently, the applicant again moved an application on 30.4.2004. The applicant was accordingly informed vide letter dated 18.6.2004, which was subsequently challenged by the applicant in O.A. 331 of 2005 and the Tribunal directed the respondents to reconsider the case of the applicant for grant of compassionate appointment. Subsequently, the Committee consist of 5 members including Chairman again considered the case of the applicant in its meeting held on 25.6.2007 and since no vacancy was available under 5% quota, as such, the case of the applicant could not be recommended for appointment on compassionate ground. Accordingly, the decision was communicated to the applicant on 9.7. 2007. Feeling aggrieved by the said order, the applicant preferred the present O.A. The learned counsel appearing on behalf of the respondents pointed out that not only in one but a number of cases it has been observed by the Hon'ble Apex Court that the compassionate appointment cannot be claim as a matter of right and it has to be seen only on the ground of the financial condition of the deceased employee. The respondents could not find good ground for recommending the case of the applicant for grant of compassionate appointment, as such, the Committee consist for the same did not recommend the name of the applicant for grant of compassionate appointment. Accordingly, it was rejected by the authorities. Learned counsel for the respondents has also pointed out that the present O.A. is barred by limitation since,



the order which was challenged by the applicant was passed in 2009 as such, the O.A. is liable to be dismissed.

4. The learned counsel appearing on behalf of the applicant has filed the rejoinder affidavit and through rejoinder, mostly the averments made in the O.A. are reiterated and no new facts are mentioned in the RA.


5. Heard the learned counsel for the parties and perused the record.

6. Admittedly, the applicant is the daughter of the deceased employee who was in service. The applicant made an application for grant of compassionate appointment and when the said application was not considered, the applicant made another request for grant of compassionate appointment which is subsequently considered and decided by the respondents. The applicant preferred an O.A. 331/2005 before the Tribunal and the Tribunal after considering the entire aspects of the matter, directed the respondents to consider the case of the applicant which was subsequently again reconsidered by the respondents and in the absence of any vacancy, the case of the applicant could not be recommended for grant of compassionate appointment. The averments of the respondents cannot be disputed to the extent that the case of the applicant was considered by the duly constituted committee and its committee after considering all the aspects of the matter could not found fit for grant of compassionate appointment. The learned counsel for the applicant has also filed the Scheme for Compassionate Appointment issued by the Department of Personnel and Training, in 1998 and as per the said scheme, it is provided that appointment on compassionate ground should be made only on regular basis and that too only if regular vacancies meant for this purpose are available and the same can be made up to a

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maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category. It is also pointed out that a person appointed on compassionate grounds under the scheme should give an undertaking in writing that he/she will maintain properly the other family members who were dependent on the Government servant/member and the appointments made on the ground of compassion should be done in such a way that persons appointed on the post do have the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.

7. The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants Dying in harness retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While, considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities including the benefits received under the various welfare schemes mentioned above and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family has to be taken due care of.



8. As observed by the Hon'ble Apex court in the case of **Umesh Kumar Nagpal Vs. State of Haryana 1994 SCC (L&S) 930**, the Hon'ble Apex Court has been pleased to observe as under:-

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

9. The Hon'ble Apex Court has also been pleased to observe in the case of **State Bank of India and Others Vs. Raj Kumar reported in (2010) 11 SCC 661** and has been pleased to observe that the compassionate appointment is not a source of recruitment. It is an exception to general rule, that recruitment to public services should be on basis of merit, by open invitation, providing equal opportunity to all eligible persons to participate in selection process. Further it was observed by the Hon'ble Apex Court as Under:-

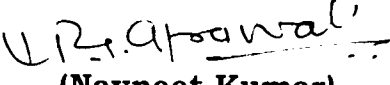
"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis."

10. In the case of **State of Chhattisgarh and Others Vs. Dhirjo Kumar Sengar reported in (2009) 13 SCC 600**, the Hon'ble Apex Court has been pleased to observe as under:-



“ 10. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance.

11. Considering the submission made by the learned counsel for the parties as well as the observations made by the Hon'ble Apex Court, the case of the applicant was duly considered by the respondents way back in the year 2004 then in 2007 as such, I do not find any reason to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to cost.


(Navneet Kumar)
Member (J)

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