

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No. 484/2010

This, the 9th day of April, 2013

Hon'ble Mr. Navneet Kumar, Member (J)

Kr. Arti, aged about 21 years, daughter of Sri Maikoo, resident of Village-Ishwari Khera, Post, Uttrethiya, Lucknow.

Applicant

By Advocate Sri Dharmendra Awasthi.

Versus

1. Union of India, through engineer-in-Chief, E-in-C's Brach (EIC(14) Integrated HQ of Mod (Army), Kashmir House, DHQ-PO, New Delhi-11.
2. Chief Engineer (EIC(1), HQ, Central Command, Lucknow-02.
3. CWE Lucknow, GE(E&M), Lucknow.
4. ACE (WKS) for Chief Engineer, (EIC (1), HQ, Central Command, Lucknow-02.

Respondents

By Advocate Sri Ashish Agnihotri.

Order(Oral)

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application has been preferred under Section 19 of the Central Administrative Tribunal Act, 1985 with the following reliefs:-

- (i) To quash the impugned order dated 8.10.2010, passed by the respondent No. 4, which is contained as Annexure No. 1 to this Original Application.
- (ii) To direct the respondents to consider the claim of the applicant for compassionate appointment.
- (iii) To pass any other suitable order or direction which this Hon'ble Tribunal may deem, fit, just and proper under the circumstances of the case in favour of the applicant.
- (iv) To allow the present original applicant of the applicant with costs.

2. The brief facts of the case are that the father of the applicant, who was working as Group D employee died in October, 2006 and the case of the applicant was rejected by the authorities vide letter dated 8th October, 2010 taking shelter of circular dated 5.5.2003. The learned counsel appearing on behalf of the applicant has categorically pointed out that the said

circular dated 5.5.2003 stands quashed by the Hon'ble High Court in the case of Hari Ram Vs Food Corporation of India and the Hon'ble High Court has been pleased to observe that "scheme of compassionate appointment has to be made on human and sympathetic consideration." The learned counsel for the applicant has also pointed out that in view of the said direction of the Hon'ble High Court, the rejection order dated 8th October, 2010, which is impugned in the present O.A. is bad in the eyes of law and is liable to be quashed.

3. The learned counsel appearing on behalf of the respondents filed their counter reply and through counter reply, they have admitted this fact that considering the case of the applicant and as per the OM dated 5.5.2003, the consideration for compassionate appointment in three years from the date of death of the deceased was taken up and no case is made out. As such, the case of the applicant was rejected. Apart from this, it is also pointed out by the learned counsel for the respondents that as per the policy in vogue compassionate appointment in any Group 'C' and 'D' posts is subject to availability of 5% vacancies under direct recruitment quota. Apart from this, it is also pointed out by the respondents that the applicant's father, who died in harness in October, 2006 has received good amount as retrial benefits, as such, the family of the applicant is not having any financial problems.

4. The Hon'ble Apex Court in the case of Govind Prakash Verma Vs. Life Insurance Corporation of India and Others (2005) 10 SCC 289, it is observed that "scheme of compassionate appointment is over an above whatever is admissible to the legal representatives of deceased employee as benefit of service which they get on the death of employee. Therefore, compassionate appointment cannot be refused on the ground that any member of family ha received such benefit." In another judgment of the Hon'ble High Court reported in (2009) 3 UBLBEC-2212, in the

case of Hari Ram Vs Food Corporation of India, it was observed that "scheme of compassionate appointment has to be made on human and sympathetic consideration." The Hon'ble Apex Court in the case of Mukesh Kumar Vs. Union Of India and Others reported in (2207) * SCC 398 has been pleased to observe that "the applicant's request for compassionate appointment rejected on the ground that the family was not in indigent condition and there is no indication is available how the departmental authorities arrived at this conclusion." In the aforesaid case, the Apex Court also observed that "there is no indication as to on the basis of which material before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition." The applicant is also relied upon the two decisions of this Tribunal passed in O.A. Nos 121/2003 Vinod Kumar Nigam Vs. Union of India and Others and O.A. No. 187/2008 Sri Shashi Kant Ojha Vs. Union of India and Others.

5. The similar issue was heard by this Tribunal and the O.As were allowed. The law has been settled on this point. The receipt of family pension and terminal benefits cannot be sole ground for denying the compassionate appointment. If that is accepted ask plausible reason for refusing such appointments, no dependent of central government can get it because monthly pension is invariably more than 1767.20 which is the poverty line, which has been taken as a benchmark for assessing the financial condition of the family.

6. In view of the aforesaid discussions, I come to the conclusion that impugned order dated 8.10.2010 rejecting the claim of the applicant on the ground of indigency criteria was without any basis. Besides everything, having regard to the settled principles of legitimate expectation also the respondents are required to consider and provide the compassionate appointment to the applicant in pursuance of his offer of compassionate appointment. \

7. In view of the above, the O.A. is allowed. The impugned order dated 8.10.2010 is hereby quashed. The respondents are directed to consider for providing compassionate appointment to the applicant in pursuance of his application for compassionate appointment. The same may be done within a period of three months from the date a certified copy of this order is produced before them. No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

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