

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 89 of 2011

Order reserved on- 06.04.2017

Order pronounced on - 12.04.2017

Hon'ble Mr. Justice V.C. Gupta, Judicial Member.

Ramesh Kumar Yadav, aged about 28 years, son of Late Jagan Nath Yadav, resident of Village Poorey Manohar (Besarwa), Post Pakar Kaon, Block Tiloi, District, Raeabreli.

....Applicant

By Advocate: Sri M.S. Wasim.

Versus

1. Union of India, through the Secretary of Geological Survey of India, New Delhi.
2. Director of Geological Survey of India, Northern Region Center (E), Aliganj, Lucknow.

...Respondents.

By Advocate: Sri R.P.S. Chauhan.

ORDER

By means of this O.A. the applicant has claimed compassionate appointment on account of death of his father on 19.10.2006 in harness. The father of applicant was working as class - IV employees in the office of respondent no. 2 at Lucknow. The wife of deceased applied for grant of compassionate appointment for his son, Ramesh Kumar Yadav on 11.06.2007. It has been contended that when the case was not considered, the applicant has filed an original application No. 210 of 2010 which was decided on 11.05.2010 with direction to decide the representation of the applicant by reasoned and speaking order but the same was not complied with, then contempt petition No. 64 of 2010 was filed. During the pendency of the contempt petition, the representation given by the applicant in pursuance of order dated 11.05.2010 was disposed of vide an order dated 10.12.2010 which is impugned in this original application. For ready reference the same is extracted herein below:



"Government of India
Geological Survey of India
Northern Region, Sector 'E'
Aliganj-Lucknow

A-12012/236/07/Rectt.

Dated : 2010

OFFICE ORDER

In compliance of the order dated 11.05.2010 passed by the Hon'ble CAT, Lucknow Bench, Lucknow in OA No. 210/2010 filed by Sri Ramesh Kumar Yadav S/o Late Jagan Nath Yadav, Ex-Durwan, Village, Pure Mani Manohar Post: Pakargaon, Tehsil Tiloi, Dist. Amethi (UP) compassionate appointment committee met on 09.12.2010 to re-consider the case for appointment on compassionate ground in respect of Shri Ramesh Kumar Yadav S/o Late Jagannath Yadav, Ex-Durwan as per directives passed by the Hon'ble CAT.

The erstwhile Compassionate Appointment Committee observed that late Sri Jagannath, Ex-Durwan died on 19.10.2006 leaving behind his wife aged 52 yrs. two sons aged 34 & 25 yrs. after the death of the Govt. servant, the family received death benefits amounting to Rs. 221616/- and has also been receiving the family pension to the tune of Rs. 3713/- per month. The wife of the deceased Govt. servant had applied for compassionate appointment of her son named Shri Ramesh Kumar Yadav vide her application dated 11.06.07 in the Prescribed Proforma. Her case was placed before the Compassionate Appointment Committee on 08.10.2007.

The committee examined the case, taking into consideration all aspects in accordance with the scheme formulated by DOPT O.M. dated 9.10.1998 and subsequent amended order of DOPT dated 5.5.2003. The Compassionate Appointment Committee observed that the death benefits paid to the family of the deceased Govt. servant to the tune of Rs. 2,21,616/-, and the monthly pension being received by the applicant @ Rs. 3713/- per month which will increase due to grant of Dearness Relief from time to time. The committee examined the size of the family, liability etc and observed that the both sons of the deceased Govt. Servant are major and therefore can earn their livelihood and there is no liability on the wife on the deceased Govt. servant, hence this is not a fit case for appointment on compassionate ground.

Accordingly, Smt. Rajdei, the widow of Shri Jagan Nath Yadav, has been informed vide this office letter no. 4002/A-12012/1/83/Rectt. Dated 17.12.2007.

As per directives passed by the Hon'ble CAT, Lucknow Bench, Lucknow vide order dated 11.05.2010 in OA No. 210/2010, the Compassionate Appointment Committee reviewed the case of the applicant Shri Ramesh Kumar Yadav S/O Late Jagan Nath Yadav taking into consideration the representation dated 24.05.2010 alongwith with documents attached therewith and observed that:-

1. The contention of the applicant that large amount of the money has been spent on the treatment of his father and brother are not maintainable, as every Govt. servant is entitled to free medical services for all forms of recognizes medical systems.
2. The applicant after the death of Govt. servant had received Rs. 2,70,784/- as Gratuity, GPF, Leave Encashment, Insurance. The latest Pension fixed as per Sixth Pay Commision is Rs. 6076/- P.M. and this will keep on increasing from time to time due to grant of dearness Relief. The amount should be sufficient for the family to meet-out its day to day liabilities.
3. The family has been surviving on the above mentioned amount for the last three & half-years. Hence, it should be able to live on the above amount in future also with an increase in the Dearness Relief from time to time.
4. The surviving son is major and aged about 28 years, it is presumed that he must have been earning for the sustenance of family during this period.



5. The family at present comprises only two members i.e. mother and one surviving son. Hence the pension amount is quite sufficient for two persons.
6. The family is in of possession of irrigated agricultural land. The earning for this land is supplement the income of the family.

In the light of above, the committee is of the opinion that the representation dated 24.05.2010 preferred by Sri Ramesh Kumar Yadav for compassionate appointment is not maintainable hence rejected.

In view of the above, I am in full agreement with the observation of the Committee that the family of the deceased Govt. Servant is neither in distress nor facing any financial hardship. The family can very well sustain with the death benefits paid to the family as mentioned above besides family pension of Rs. 6076/- per month which will increase in future due to grant of additional dearness relief from time to time. Therefore, the case has no merit to accord any compassion to the applicant and as such the claim of the applicant for appointment on compassionate ground is rejected.

Sd/-10.12.2010
(Sumant Gupta)
Dy Director General, N.R.

To,

Shri Ramesh Kumar Yadav,
S/o Late Jagnath Nath Yadav
Village -Pure Mani Manohar,
Post: Pakargaon, Tehsil: Tiloe
Distt- Rae bareli (UP)

No. A-12012/236/07/Rectt.

Dated : 13.12.2010

Copy to the Sr. Adm. Officer, Legal Cell, GSI, NR Lucknow for information and necessary action.

(Sumant Gupta)/10.12.2010
Dy Director General, N.R."

2. The aforesaid order was challenged on the ground that the amount received as terminal benefit after death of his father was spent repayment of loan taken from relatives by his mother for treatment of his father and brother. By filing supplementary affidavit this fact has been brought on records that his elder brother has also died due to element of kidney failure living behind his wife and 3 female minor children who are also now dependent on the income received as family pension. It was further contended that his family has unirrigated land of 1.5 bigha which has not sufficient to fulfill the needs of the family. It has been admitted that there is no sister of the applicant and family consist only of his mother and elder brother who during the pendency of this O.A. had passed away.

3. Counter affidavit has been filed alleging therein that there is nothing to substantiate any of the grounds taken by the applicant. Every government servant is entitled to get free medical services. The free medical services are also available to the dependent of the deceased employee. It was further contended that no document has been brought on records to



substantiate the expenses incurred in the treatment of his father and brother. No evidence has been brought on record that his elder brother died due to kidney failure. Mother of the applicant is getting family pension of Rs. 6076/- per month which increases with enhancement of dearness relief from time to time and subject to revision at the time of implementation of every pay commission. The fact that he has no irrigated land has not been proved by placing any record or document.

4. The counsel for the applicant after relying upon the judgment delivered in **Rajendra Prasad Gond Vs. U.O.I. & others, 2011 (1) UPLBEC 2005 (All HC)** submitted that the claim of the compassionate appointment cannot be rejected on the grounds of receipt of benefits of various welfare scheme.

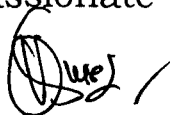
5. This petition was heard and finally disposed of on 01.03.2012 whereby the claim of the applicant was rejected on the ground of delay. The order passed by this Tribunal was set aside in Writ Petition No. 866 of 2012 filed by the applicant vide order dated 04.01.2017. The operative portion which is relevant for deciding this petition is extracted herein below:

"In view of the aforesaid submission we have examined the material and found that definitely the petitioner's case was dealt with by the departmental authority on merit, but the learned Tribunal rejected the petitioner's Original Application wholly on the ground of limitation. Whereas we are of the view that the learned Tribunal was under obligation to address the finding given by the departmental authority which had been the basis for rejecting the petitioner's claim on compassionate appointment. Therefore, we hereby quash the order impugned dated 01 March 2012 and restore the Original Application No. 89 of 2011 to the record of the Central Administrative Tribunal, Lucknow Bench, Lucknow and direct the Tribunal to decide the application on merit after noticing the other concerned parties.

The writ petition stands allowed, accordingly."

6. The perusal of impugned order reveals that the claim of the applicant was earlier considered and dismissed on merit vide an order dated 17.12.2007. Thereafter, applicant filed representation before the authority concerned to review the order of dismissal of claim. The applicant reminds the authorities to decide the representation but the same was not decided. Thereafter OA No. 210 of 2010 was filed wherein directions were issued to decide the representation which the applicant may give afresh and thereafter representation was decided by impugned order.

7. Hon'ble Supreme Court in **State Bank of India & others Vs. Jaspal Kaur, 2007 (9) SCC 571**, ruled that it is the competent authority to decide whether deceased left family in penury and without any means of livelihood. The court should not normally interfere with the decision of the competent authority. The compassionate appointment cannot be claimed



as of right nor public office is heritable. The competent authority arrived on a decision that family of deceased is not living in penurious condition on the basis of materials available before him. Thus, declining the compassionate appointment should not be disturbed in the light of findings of the competent authority. It is important to mention here that terminal benefit received by family member after death of the employee in harness is one of the impotent component apart from other considerations for deciding the penurious condition of the family and cannot be ignored while considering the claim for compassionate appointment.

8. In fact the claim of the applicant was already declined on 17.12.2007 as mentioned in the impugned order. The applicant instead of challenging the order proceeded to make a request to review the order of declining the claim.

9. Almost 11 years has already been passed from the date of death of the deceased employee. The grounds taken by the applicant for assailing the order could not be substantiated by producing any cogent evidence or un-rebuttable document. The applicant failed to bring any document on record;

- i. That his father or brother was ill
- ii. That his brother died of kidney failure
- iii. That how much expenses were incurred in the treatment of his father or brother and whether any reimbursement of the expenses was claimed from department or not and if claimed the amount was reimbursed or not
- iv. That he has no irrigated land or land possessed by the family is un irrigated.
- v. From whom and to what extent loan to meet the expenses of treatment had been taken and when it was paid.


10. Apart from it the claim was not only declined on the basis of receipt of terminal benefit but also considering the other source of income, like income from agricultural land and the liabilities of the family. Both the sons of deceased were major and one of them was married and having family. It can safely be presumed that there was some source of lively hood with his elder brother. There is no sister to marry. The applicant is now married, as informed by the learned counsel for the applicant. Almost 11 years has been passed after death of his father. It can be presumed that the family is able to fulfill needs from earnings of family members and family pension payable to the mother of applicant. The applicant is ablebodied and is now married must have doing something to meet the economic needs of his own family and the dependents. The appointment under dying in harness rule cannot be claimed only being legal heir of the deceased not can be claimed as an



alternative mode of appointment. The time period in such type of appointments plays an important role. It is well settled that such appointments are governed by scheme formulated for the same. The case decided by any court in the light of particular scheme cannot be used as precedent while considering the claim in the light of other scheme. This Tribunal is of the view that applicant fails in substantiate his claim.

11. In view of the above discussion made herein above no interference is warranted in the impugned order. The petition lacks merit and is accordingly dismissed.

12. There shall be no order as to costs.


(2/04/2017)
(Justice V.C. Gupta)
Judicial Member

JNS/-