

Reserved

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.272 / 2011

This, the 12th of April, 2013

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

Laxman, aged about 26 years son of late Shobh Lal, resident of Raja Bodh Ka Purwa, kpost Dabhaj Semar, District Faizabad Permanent resident of Village Kiddipur, post Chaurey Bazar, District Faizabad.

Applicant

By Advocate Sri R. S.Gupta.

Versus

1. Union of India through Secretary, Department of Post and Telegraph, Central Secretariat, government of India, New Delhi.
2. Chief Postmaster General U.P. Circle, Lucknow.
3. Senior Superintendent (Post Office), Fazabad Division, Faizabad.

Respondents

By Advocate Sri A. P. Usmani.

(Reserved On 9.4.13)

Order

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:-

- (a) To issue and appropriate order to set aside the recommendation made by the opposite party No. 2 whereby the applicant's case was not recommended for appointment on compassionate ground discriminating him with other cases for Gr. D approved during 2004, 2005 and 2007 after quashing the order dated 9.2.2011 as contained in Annexure No. 1 to the O.A. with all consequential benefit.
 - (b) To issue an appropriate order or direction to the oppo. Parties to appoint the applicant on a group D post on a compassionate ground.
2. The brief facts of the case are that that the father of the applicant was in respondents organization and he died-

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in-harness on 14.3.2001 and in 2001 itself, the applicant said to have made a representation to the authorities for grant of compassionate appointment. When the said application remained un-disposed of, the applicant made another representation in 2002 and the case of the applicant was considered in the year 2004, 2005 and 2007 and he was not found fit for getting appointment on compassionate ground. As such, the claim of the applicant finally rejected and communicated to the applicant vide order dated 9.2.2011. The applicant feeling aggrieved by the said decision, preferred the present O.A.

3. The learned counsel appearing on behalf of the respondents have filed their counter reply and through counter, it is categorically pointed out by the respondents that the ex-employee expired on 14.3.2001 while in service leaving behind his widow, one major son, one minor son and three unmarried daughters. The amount of Rs. 2,03,506/- was received by him as retiral benefits and he is getting family pension of Rs. 3500/- +DA. The respondents also pointed out that after completion of usual formalities for compassionate appointment, the case of the applicant was considered by Circle Relaxation Committee keeping in view the various instructions on the subject and availability of vacancies for compassionate quota. The case of the applicant could not be approved for compassionate appointment within the limited number of vacancies available under 5% quota of direct recruitment. The decision of the CRC dated 28.4.2004 was communicated to the applicant against which the applicant filed O.A. 187/2006 and the said O.A. was disposed of with a direction to the respondents to reconsider the claim of

the applicant. In subsequent meeting, of CRC, the claim of the applicant was again considered and it was again rejected by the competent authority and the applicant feeling aggrieved, preferred the present Original Application. The learned counsel for the respondents has also pointed out that there is no specific rules for compassionate appointment of SC candidates and the case of the applicant could not found appropriate for grant of compassionate appointment. As such, his case was rejected.

4. The learned counsel for the applicant filed their rejoinder and through rejoinder, mostly the averments made in the O.A. are reiterated.

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

6. Admittedly, the applicant's father, who was in service, died in harness in the year 2001, and subsequently, the applicant made another representation, in 2002, and thereafter, the case of the applicant was considered by the CRC in 2004, and the case of the applicant was not found fit for consideration, and the same was rejected and decision taken by the respondents were communicated to the applicant. Against the said order, the applicant preferred O.A. and it was directed by means of the decision of the O.A. for reconsideration of the claim of the applicant which was reconsidered by the respondents in the year 2005, and 2007 and the decision so taken by the respondents, rejected the claim of the applicant was communicated to the applicant in 2011 as well. It is also pointed out that the applicant's father died in harness in 2001 and the family of the applicant could have survive for a period of 12 years without any financial assistance. W

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7. Apart from this since the family of the applicant could survive for a period of 12 years from the date of the death of the applicant's father, the case is clearly hit by the decision rendered in the case of **Haryana State Electricity Board v. Hakim Singh reported in (1997) 8 SCC 85**. Relevant portion is reproduced below:-

"12. We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crises befallen the dependants on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in **Haryana SEB v. Naresh Tanwar**. In that case the widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This Court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in *Umesh Kumar Nagpal v. State of Haryana*, the other in *Jagdish Prasad v. State of Bihar*. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to ride over the sudden crises. The object is not to give a member of such family a post much less a post for the post held by the deceased." In the latter decision, which also was rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family". The learned Judge pointed out that if the claim of the dependant which was preferred long after the death of the deceased employee is to be countenanced it would amount to another mode of recruitment of the dependant of the deceased government servant "which cannot be encouraged, de hors the recruitment rules".

14. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the

Board dated 1.10.1986. The respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

15. We, therefore, allow the appeal and set aside the impugned judgment of the High Court."

8. In another decision in the case of **Jagdish Prasad v. State of Bihar (1996) 1 SCC 301** the Hon'ble Supreme Court has observed as under:-

"3. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules.

4. The appeal is accordingly dismissed."

9. In the case of **Life Insurance Corporation of India v. Smt. Asha Ramchandra Ambekar(Mrs.) and Another** reported in **JT 1994(2)SC 183** the Hon'ble Supreme Court has been pleased to observe that the court and Tribunals cannot give direction for compassionate appointment on the ground of sympathy disregarding the instructions on the subject, but can merely direct consideration of the claims for such an appointment. Relevant portion of the judgment reads as under:-

"Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In *Brij Mohan Parihar v. M.P.S.R.T. Corpn.* it is stated as under :

"The provisions of the Motor Vehicles Act and in particular Sections 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorized trafficking in permits. Therefore the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply



his bus as nominee of the Corporation on the route in respect of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee."

10. 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."

11. 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."

12. 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:-

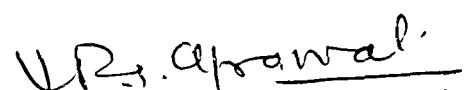
"10. Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. Nobody can claim appointment by way of inheritance. In SAIL Vs. Madhusudan Das this Court held: (SCCp. 566 Para15)

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefore viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme must be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."

12. This Court, times without number, has held that appointment on compassionate ground should not be granted as a matter of course. It should be granted only when dependants of the deceased employee who expired all of a sudden while being in service and by reason thereof, his dependents have been living in penury."

13. Considering the observations made by the Hon'ble Apex Court as well as on the basis of the facts of the present case, this Tribunal is not inclined to interfere in the impugned order dated 9.2.11. As such the O.A. is fit to be dismissed.

14. Accordingly, the O.A. is dismissed. No order as to costs.


(Navneet Kumar)
Member (J)