

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 397 of 2011

Order Reserved on 29.4.2014.

Order Pronounced on 23/05/2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Aizaj Ahmad, aged about 35 years, son of Late Shri Mukhtyar Ahmad, Group 'D' Amausi Aerodrome, P.O. Lucknow Resident of Village and Post Office Sadrauna, District Lucknow.

Applicant

By Advocate Sri B. N. Shukla.

Versus

1. Union of India, through the Secretary, Department of Post, Government of India, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Postmaster General, U. P. Lucknow.
3. Senior Superintendent of Post Offices, Lucknow

Respondents

By Advocate Sri Rajdendra Singh for Shri R. Mishra.

ORDER

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

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

- (i) To Issue appropriate order or direction to set aside the order dated 22.2.2007 as contained in Annexure No. 1 to this Origin Application.
- (ii) Issue appropriate order or direction directing the respondents to appointment the applicant in the department of posts according to his qualification and ability under the Dying in Harness Rules.
- (iii) Any other relief which this Hon'ble Tribunal deems fit and proper in the interest of justice, may also kindly be passed in favour of the applicants.
- (iv) That cost of the claim petition be awarded to the applicants.

2. The brief facts of the case are that the applicant is the son of late Mukhtar Ahmad, who was working in the respondents organization and died on 19.3.1999. The mother of the applicant immediately thereafter applied for granting of compassionate appointment under dying in

harness rules. The case of the applicant was rejected vide order dated 30th April 2004. the applicant filed the O.A. challenging the order dated 30th April 2004 whereby, it was indicted to the applicant that his case was considered by the CRC under the provisions of the DOP&T O.M. dated 26.9.1995 as well as 9.10.1998 and 3.12.99 and other instructions issued from time to time and the same could not be recommended by the committee taking into account the liability of the family like education of minor children and many other conditions. The applicant being aggrieved by the said order preferred O.A. 238/2004. The said O.A. was disposed of by the Tribunal vide order dated 16th December, 2005 and direction was issued to the respondents to consider and decide the case of the applicant within a period of two months. After the said order of the Tribunal, the respondents have again considered the case of the applicant and passed an order dated 22nd February 2007 which is challenged by means of the present O.A..

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, it was indicated by the respondents that the father of the applicant was working as Group B employee at Amausi Airport Post Office died in the month of March 1999 after rendering 28 years 6 months and 18 days of service. The ex employee received terminal benefits amounting approximately Rs. 3 lacs and also getting the family pension @ Rs. 1875/- +DA. The respondents also pointed out that the case of the applicant was considered by the CRC in its meeting held on 20th, 22nd and 23rd January, 2004 but the case of the applicant could not be approved for appointment on compassionate grounds. As such, the case of the applicant and decision was communicated to the applicant. After the decision of the Tribunal, in O.A. 238/2004, the case of the applicant was again considered by the CRC in its meeting held on 16th & 18th January, 2007 and again, it could not be materialized. As such, the same was rejected by the authorities. Apart from this, the learned counsel for the respondents also relied upon

number of decisions of the Hon'ble Apex Court and pointed out that as a rule appointment in public service should be made strictly on the basis of open invitation of application and merit and appointment on compassionate ground is an exception to the rule and not only this, the whole aspect of granting compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family of the deceased from financial destitution and to get over emergency and compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

4. The learned counsel appearing on behalf of the applicant filed his rejoinder and through rejoinder mostly the averments made in the O.A. are reiterated. The learned counsel for the applicant has pointed out that the financial condition of the applicant is not as good as has been mentioned in the impugned orders and it requires financial assistance from the respondents.

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

6. The applicant is son of late Mukhtar Ahmad who was working in the respondents organization and died on 19.3.1999. The mother of the applicant immediately thereafter applied for granting of compassionate appointment under dying in harness rules and the respondents vide Annexure A-9 to the O.A. dated 30th April 2004 considered the case of the applicant and rejected the same. Thereafter, the applicant preferred O.A. 238/ 2004 and through which, the Tribunal directed the respondents to reconsider the case of the applicant and pass an order in accordance with law as well as on the basis of other relevant circulars on this subject. The case of the applicant was again considered by the CRC in its meeting held on 16th & 18th January, 2007 and when the case of the applicant was again not found fit for compassionate appointment, the same was rejected and communicated through impugned order dated 22.2.2007. While passing the orders, the respondents have categorically

pointed out that the object of the scheme for compassionate appointment is to provide support to the family of a government servant who is left in penury and without any means of livelihood so as to help it to get over the financial crisis. Such appointment are also required to be limited up to 5% of the vacancies available for direct recruitment quota of the year. The applicant has also received sum of Rs. 2,89,000/- as terminal benefits and apart from this, the applicant's family is getting family pension @Rs. 1875 + DA as admissible from time to time per month. The respondents have also taken a ground that the ex-employee died in the year 1999 and his case was considered subsequently by the respondents and when it was not found fit to be considered, the same was rejected by the authorities.

8. Learned counsel for applicant has also relied upon a decision of this Tribunal passed in O.A. No. 2/2012, wherein the Tribunal considered the O.M. dated 5.5.2003 and also considered the decision in the case of Hari Ram Vs. Food Corporation of India and others reported in(2009) 3 UPLBEC 2212 and allowed the O.A. The Hon'ble Apex Court not only in one but in number of cases has been pleased to observe that **"Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. The object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/ group of post. The appointment on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."**

9. As observed by the Hon'ble Apex Court in the case of **State Bank of India and others Vs. Jaspal Kaur** reported in (2007) 9 Supreme Court Cases, 571, the Hon'ble Apex Court has been pleased to observe as under:-

"A major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made. The criteria of penury has to be applied and only in cases where the condition of the family is "without any means of livelihood" and "living hand to mouth" that compassionate appointment was required to be granted."

10. In the case of **Umesh Kumar Nagpal v. State of Haryana & Ors.** (1994) Supreme Court Cases (L&S) 930,, the Hon'ble Apex Court has been pleased to observe that the ***"whole object of granting compassionate appointment is to enable the family to get over sudden financial crisis. The object is not to give a member of such family a post much less a post for post held by the deceased."***

11. In the case of **Bhawani Prasad Sonkar Vs. Union of India and others** reported in (2011) 4 Supreme Court Cases 209, the Hon'ble Apex Court has been pleased to observe as under:-

"While considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated

employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

12. In the case of **State of Chhatisgarh Vs. Dhirjo Kumar Sengar** reported in (2009) 13 Supreme Court Cases 600, the Hon'ble Apex Court has been pleased to observe that the *"Appointment on compassionate ground is an exception to the constitutional scheme of equality as adumbrated under Article 14 and 16 of the Constitution of India. No body can claim appointment by way of inheritance."*

13. In the case of **State of J&K and others Vs. Sajad Ahmed Mir** reported in (2006) 5 Supreme Court Cases 766, the Hon'ble Apex Court has been pleased to observe as under:-

"The compassionate appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

14. In the case of **State Bank of India and another Vs. Raj Kumar** reported in (2010) 11 Supreme Court Cases 661, the Hon'ble Apex Court further reiterated that *"Compassionate Appointment is not a source of recruitment. It is an exception to general rule, that recruitment to public services should be on the basis of merit, by open invitation providing equal opportunity to all eligible person to participate in the selection process."*

15. The Hon'ble Apex Court once again in the case of **Union of India and Another Vs. Shashank Goswami and another** reported in AIR 2012 Supreme Court 2294 has been pleased to observe that *"Appointment on compassionate ground cannot be claimed as a matter of right and the same is based on the premises that the*

applicant was dependant on the deceased employee. Strictly such a claim cannot be upheld on the touch stone of Article 14 or 16 of Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service."

In the case of Umesh Kumar Nagpal (Supra) Hon'ble Apex Court laid down the following principles:

- (i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- (ii) The posts in Group 'C' and 'D' (formerly Class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post i.e., in the Group 'A' or Group 'B' category is expected or required to be given for this purpose as it is legally impermissible.
- (iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.
- (iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
- (v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.
- (vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- (vii) Compassionate appointment cannot be offered by an individual functionary on a ad hoc basis."

In the case of Auditor-General of India and Others Vs. G.

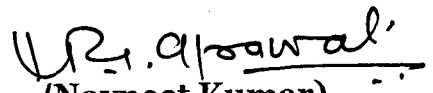
Anantha Rajeswara Rao reported in (1994) 1 SCC 192, Hon'ble Apex

Court observed as under:-

“appointment on grounds of descent clearly violates Article 16 (2) of the Constitution; but if the appointment is confined to the son or daughter or widow of the Government servant who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable.”

16 On the basis of observations made by the Hon'ble Apex Court as well as on the basis of facts of the case, the case of the applicant was considered twice and when it was not found feasible by the respondents to grant appointment on compassionate ground to the applicant, it was rejected. As such, I am not inclined to interfere in the impugned order passed by the respondents.

17. Accordingly, the O.A. is fit to be dismissed. Accordingly, it is dismissed. No orders as to cost.


(Navneet Kumar)

Member (J)

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