

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**Original Application No. 522/2010**

This the day of 12<sup>th</sup> April, 2013

**Hon'ble Sri Navneet Kumar, Member (J)**

Manoj Masih, aged about 35 years, son of late Johnson resident of 21, Vikramaditya Marg, Christian Colony, P.S.Hazratganj, Lucknow.

Applicant

By Advocate: Sri Alok Mishra

**Versus**

1. Union of India through Secretary Ministry of Defence, Government of India, New Delhi.
2. Commandant, Central Ordnance Depot, Kanpur, U.P.
3. Personnel Officer (Civil), Central Ordnance Depot, Kanpur, U.P.

Opposite Parties

By Advocate : Sri Rajendra Singh

**O R D E R(Oral)**

**BY HON'BLE SHRI NAVNEET KUMAR, MEMBER (J)**

The present original application is preferred by the applicant under Section 19 of AT Act 1985 with the following relief/s:-

- (i) Issue an order or direction quashing the order dated 19.10.2010 passed by the opposite party no. 2 as contained in Annexure No. 1 to this original application with all consequential benefits.
- (ii) Issue an order or direction to the opposite parties to consider and provide compassionate appointment to the applicant within such specified time as this Hon'ble Court deems just and proper in the facts and circumstances of the case.
- (iii) Pass any other order or direction which this Hon'ble Tribunal may deem just and proper in the circumstances of the case in favour of the applicant.
- (iv) Award the costs of the original application to the applicant.

2. The brief facts of the case are:-

That the father of the applicant no. 1 was working in respondents organization died in harness on 13.04.2004. Subsequently, the mother of the applicant applied for family pension and other terminal benefits, along with a request for providing compassionate appointment to the applicant in place of her husband. The respondent no. 2 intimated the applicant that one another application was received by them from one Smt. Jenifar claiming herself to be the wife of the deceased and she claimed for compassionate appointment of her son as such the claim could not be accepted. The learned counsel for the applicant also pointed out that the applicant as well as Smt. Jenifar preferred succession suits bearing no. 169/70/2005 and 122/70/2005 respectively and thereafter an order was passed dated 30.09.2008 whereby Smt. Jenifar was not found the wife of the deceased but her two sons were considered to be legitimate sons of the deceased. As again the said order of the suits the appeal was preferred by Smt. Jenifar which was also dismissed with cost vide judgment dated 18.08.2009. In pursuance thereof the succession certificates were issued for  $\frac{1}{4}$  part each in favour of the applicant and his mother by the Civil Judge, Kanpur Nagar. After that the applicant applied for compassionate appointment before the opposite party no. 2 on 7.10.2008. Subsequently, it was pointed out to the applicant that her case was considered but the applicant could not be selected on the basis of laid down criteria to determine relative hardship in the fact of more deserving cases and limited number of vacancies at the juncture. And finally the case of the applicant was rejected on 19.10.2010. The applicant being aggrieved by the said order preferred the present original application.

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply it was pointed out that points allotted to the applicant were very low. The case of the applicant could not be considered for grant of compassionate appointment and the said points were given on the basis of

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terminal benefits received by the applicant. It is also pointed out by the respondents that cut off points 100 scaling system of selection in the year 2008-09 was 52 whereas the applicant obtained 48 marks out of 100 only. Apart from this the respondents have also pointed out that 45 vacancies are allowed for compassionate appointment of 5% quota but the case of the applicant was considered for number of times but not considered for appointment. As such finally the respondents issued an order dated 29.03.2012 and rejected the claim of the applicant by means of the detailed speaking order.

4. The learned counsel for the applicant filed the rejoinder and in the rejoinder mostly the averment made in the original application are reiterated.

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

6. Admittedly, the husband of the applicant no. 1 and father of the applicant no. 2 died in harness while he was in service and thereafter the applicant no. 2 made representation for grant of compassionate appointment in 2004. The case of the applicant was considered and finally it was rejected by means of order dated 19.10.2010 and thereafter it was again rejected by means of order dated 29.03.2012. The order dated 29.03.2012 clearly provides that the applicant could not secure required points as such the case was not considered by the authorities for grant of compassionate appointment. The said order was also challenged by the applicant by means of the present original application.

7. 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.



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. In **SAIL Vs. Madhusudan Das** this Court held:

"15. The 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 in penury."

12. 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 orders dated 19.10.2010 and 29.03.2012. As such the O.A. is fit to be dismissed.

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

W.R. Aroorwal  
(Navneet Kumar)  
Member (J)

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