

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW.**

ORIGINAL APPLICATION NO: 477/2010

This, the 8th day of February, 2013

Hon'ble SRI SUDHIR KUMAR, MEMBER (A)

Preeti Kumari, aged about 23 years, D/o Late Kedar Nath, R/o
14/440, Udaiganj, Nai Basti, Murad Ali Lane, Lucknow (U.P.).

Applicant

By Advocate Sri R. K. Dubey

Versus

1. Union of India through its Secretary, Department of Income Tax, New Delhi.
2. Chief Commissioner, Income Tax, Income Tax Bhawan, Ashok Marg, Hazratganj, Lucknow.
3. Additional Commissioner, Income Tax (Headquarters) Income Tax Bhawan, Ashok Marg, Hazratganj, Lucknow.

Respondents

By Advocate Sri R. Mishra.

(Reserved On 7.2.13)

ORDER

By Hon'ble Sri Sudhir Kumar, Member (A)

The applicant of this O.A. is before this Tribunal praying for issuance of an order or direction to the respondents to appoint her on an appropriate post on compassionate grounds, as per the procedure prescribed in this regard, and to issue any other order or direction which this Tribunal may deem fit, just and proper in the nature and circumstances of the case, and to allow the application with costs.

2. The brief facts of the case are that the father of the applicant, late Kedar Nath, who was working in the office of Chief Commissioner, Income Tax on the post of (Notice Server) Group 'D', died on 14.1.2001 leaving behind his wife Smt. Laxmi Devi, one son Ranjeet and two daughters, the applicant being the younger one. Later on, the respondents issued the Pension Payment Order through Annexure -2, after noting that the deceased Government Servant had put in a service of nearly

20 years, and sanctioning the family pension payable in favour of the family of the deceased. Since the family of the deceased was in penury, the widow submitted an application through Annexure -3 dated 25.4.2001 to the Additional Income Tax Commissioner Special Range-I, Lucknow, praying for appointment of her son on compassionate grounds. A reply was thereafter issued by the respondents to the son of the deceased through Annexure -4 dated 13.9.2001 stating that since no vacancy in the Group 'D' compassionate appointment quota was available in the department, his application for compassionate appointment would be considered sympathetically as and when the vacancies are available. Thereafter, it so happened that the wife of the deceased government servant also expired on 5.4.2008, Annexure-5.

3. The family was visited with further calamity when the son of the deceased ~~of the~~ government servant, who was the applicant for compassionate appointment, also expired on 17.6.2009, due to a head injury sustained by him in a road accident, Annexure-6. This sequence of repeated calamities in the family prompted the present applicant before us to apply for compassionate appointment to the Chief Commissioner of Income Tax Lucknow through her petition dated 12.8.2009, Annexure-7, pointing out that she has nobody left in her family to look after the day to day needs for survival, and that her financial position is that of absolute ~~of~~ penury and with this, she also submitted her application praying for compassionate appointment, enclosing therewith a certificate of her belonging to the SC, along with the certificates in respect of her having passed the High School in the year 2002, Intermediate in the year 2004, and the B.A Part III final examination from the University of Lucknow in the year 2007, and another certificate regarding her competency in computers. The applicant is aggrieved that the respondents have still not considered her case for compassionate appointment, and

has taken the ground that since her sister had got married in February 2008 itself, while her mother was alive, and after the deaths of her mother and brother after the death of her father, she is fully eligible for grant of compassionate appointment on the ground of her father having passed away in harness, and hence this O.A.

4. The respondents filed their counter affidavit on 11.2.11 and submitted that the applicant's application for appointment on compassionate ground filed on 12.8.2009 had been considered by the relevant Departmental Committee, but the Committee did not recommend the name of the applicant for appointment on compassionate grounds, and, therefore, the contention of the applicant that her case has not been considered is without any basis, and therefore, the O.A. deserves to be dismissed. It was submitted that earlier the case of the applicant's brother, who had since passed away in road accident, had also been sent along with the applications of 52 other candidates seeking appointment on compassionate grounds which had been considered on 18.1.2008, but had not found favour with the Committee.

5. It was submitted that no cause of action has accrued to the applicant to file the present O.A. before this Tribunal, and that the grounds taken by the applicant in the O.A. are not tenable in the eyes of law, and as such, the applicant is not entitled for any relief, or any interim relief, as prayed for in the O.A and the respondents had prayed that the O.A. be dismissed with costs. Along with this CA, they had enclosed Annexure CR-1, by which the case of the applicant had been sent for consideration by the relevant Committee.

6. The applicant filed a rejoinder affidavit on 14.10.2011, reiterating her contention that her application was still eligible for being considered, as the instructions laid down in the DO^P&T guidelines that the maximum time period for which an

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application can be kept for consideration for offering compassionate appointment would be three years had been struck down by the Hon'ble High Court of Allahabad, in the case of **"Hari Ram Vs. Food Corporation of India and others, reported in 2009 (3) UPLBEC 2212"**, which has since been followed by another ~~by~~ concurrent bench of this Tribunal also in its judgment dated 7.9.12 in **"O.A. 32/2011 Gaurav Shukla Vs. Union of India and Others"**. It was, therefore, submitted that in view of this legal position, the bland averment of the respondents that her case had been considered by the Committee concerned, and was not found ~~fit~~, was liable to be set aside, and that the applicant's case for compassionate appointment was liable to be considered on the basis of above cited case, ignoring the three years' boundary limit beyond the date of death of the deceased government servant, which had been prescribed in DOP&T Memo struck down by the Hon'ble Allahabad High Court, and which judgment has ^{been} followed by the coordinate bench. It was, therefore, prayed that the applicant is fully entitled for grant of reliefs by this Tribunal as prayed for, and the applicant is eligible and entitled for compassionate appointment as per law, and it was prayed that the O.A. may be allowed, as otherwise the applicant would suffer irreparable loss which cannot be compensated.

7. Further supplementary counter reply was filed thereafter by the respondents on 17.2.12, and it was submitted that the application of the applicant is still being considered by the Departmental Committee for compassionate appointment recruitment year wise, but the said Committee had not yet recommended her case for appointment as per the criteria laid down in the scheme. It was submitted that the averments of the applicant in her rejoinder affidavit ^{are} not true and correct, and the actions of the department so far are fully justified, legal,

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and as per the guidelines/ rules, and hence the O.A. is liable to be dismissed with costs.

8. Heard. The case was argued very forcefully and vehemently by both the sides. It is seen that in the case of **Hari Ram** (Supra) , the Hon'ble Allahabad High Court was pleased to strike down the instructions contained in the DOP&T OM dated 5.10 2003 fixing the time limit of three years for compassionate appointment as irrational, arbitrary , unreasonable, and violative of Articles 14 and 16 of the Constitution of India. Also , it is apparent from the order of the concurrent bench dated 7.9.12 in the case "**Gaurav Shukla**" (Supra) that this Tribunal has since noted that after the judgment of the Hon'ble Allahabad High Court, holding the OM dated 5.10.2003 of DOP&T as ultra vires, the DOP&T has themselves since withdrawn that OM, and the cap of three years is no longer now applicable.

9. Here, in this case, the death of the applicant's father had taken place on 14.10.2001, and from the counter reply, filed by the respondents, it is apparent that the request for compassionate appointment of the deceased government servant's son, who has also since expired, was considered at least once, and that after the death of her brother, the case of the applicant before this Tribunal has also been considered once by the concerned departmental Committee. But it is clear that the cases(of both the applicant and her deceased brother) for compassionate appointment in place of the deceased government servant have not been considered three times, as had been laid down even in the since withdrawn DOP&T policy in regard to compassionate appointments. Now when that policy itself has been withdrawn, the time limit of three years does not apply, but it cannot be said that the Respondents' responsibility to consider the compassionate appointment case at least on three occasions has also got obliterated with the withdrawal of the DOP&T O.M concerned, following the Hon'ble Allahabad High


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Court judgment. Also, the consideration for compassionate appointment should not only be a consideration, as a formality, but it has to be effective consideration, after marshalling vacancies under the 5% quota reserved for compassionate appointments even in the erstwhile policy, which criteria and requirement also perhaps cannot be said to have been withdrawn after the withdrawal of the DOP&T O.M. concerned.

10. In the instant case, this Tribunal is confronted with the case of an applicant who has been visited with repeated calamities in her family successively on 3 occasions, and after the marriage of her elder sister while her mother was still alive, the applicant has been rendered the sole member of her family, without any source of income. It appears that if ever there were cases which deserved consideration for compassionate appointment, on account of penury and repeated visits of calamity in the family of a deceased government servant, the case of the present applicant would certainly qualify to be one amongst them. Therefore, this O.A. is allowed, and the respondents are directed to consider the case of the applicant for compassionate appointment, with the rider that such consideration should be an effective consideration, after marshalling of vacancies under the relevant quota for compassionate appointment, and the Committee concerned being informed about the full sequence of events of the death of her brother also after the death of her father, in whose place she is seeking compassionate appointment.

11. With these directions, O.A is disposed off as allowed, but there shall be no order as to costs.


(Sudhir Kumar)
Member (A) 08/02/2013