

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

O.A.101 of 2012

This the 2nd day of May, 2013

Hon'ble Shri Navneet Kumar, Judicial Member

Sumit Singh, aged about 24 years,
S/o Late Shambhu Nath Singh
R/o 10-A, Hewett Road, Shivaji Marg,
Lucknow

.....Applicant

(By advocate Shri P.K. Srivastav)

V e r s u s

1. Union of India through the Secretary,
Department of Communications,
Govt. of India, New Delhi

2. The Post Master General
Department of Post, U.P. Circle
Govt. of India, Lucknow

.....Opposite Parties

(By advocate Shri S.K. Awasthi)

O R D E R

Present original application has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.(i) to quash the order dated 19.01.2012 contained in Annexure No. 1 along with the decision of the Relaxation Committee mentioned therein and further to declare Rule 7 in so far as it provides ceiling to the extent of 5% of the vacancies falling under direct recruitment quota in Group C & D posts for compassionate appointment ultravires to Article 14 & 21 of the Constitution of India and also the object of the Rules/ Scheme and accordingly directing the opposite parties to reconsider the matter of appointment of the applicant notwithstanding the ceiling of 5% and award of merit points in compliance of circular dated 20.01.2010.

(ii) to declare letter/ order dated 20.01.2010 ultra vires to Article 14 of the Constitution of India and as such liable to be quashed.

(iii) to issue any other order or direction as this Hon'ble Tribunal deems fit and proper may also be passed along with the costs of the writ petition.”



2. Brief facts of the case are that the applicant's father died in harness on 13.02.2009. As the applicant was not having any other source of income, he applied for grant of compassionate appointment which was subsequently considered and rejected by the competent authorities vide their orders dated 19.01.2012 and the said order is challenged by the applicant by means of the present original application.

3. Ld. counsel appearing on behalf of the respondents filed their reply and through their reply it was pointed out by the respondents that the widow of the deceased employee received sufficient amount as terminal benefit she is also getting monthly pension of Rs.8785/-. Apart from this, the respondents have also taken a ground that applicant secured only 53 points and the last selected candidate secured 71 points, as such, case of the applicant was not considered and he was not granted compassionate appointment.

4. It is also pointed out by the respondents that after death of the ex employee the case of the applicant was forwarded to the Circle Office vide order dated 22.09.2010 and the Circle Relaxation Committee considered the case for compassionate appointment of the applicant in its meeting dated 05.01.2012 and 06.01.2012 and not recommended the case of the applicant for grant of compassionate appointment, as such, the order dated 19.01.2012 was communicated to the applicant.

5. Ld. counsel for the applicant filed rejoinder and through rejoinder mostly the averments made in the original application are reiterated. However, it is also pointed out that the calculation of the vacancies of the compassionate appointment made by the respondents is arbitrary and wrongful as the compassionate appointment cannot be left on mere chance and limiting the vacancy to 5% and considering all candidates under this quota depending on mere chance for those who are claiming appointment on compassionate ground.

6. Heard ld. counsel for the parties and perused the records.


7. The facts of the case are undisputed to the extent that the applicant's father namely Sri Shamboo Nath Singh who was working in respondents' organization died in



harness on 13.02.2009 and subsequently his wife Smt. Vijay Laxmi Singh applied for compassionate appointment for her son. The entire paper was forwarded to the Circle Office vide letter dated 22.09.2010. Case of the applicant was considered by the Circle Relaxation Committee in their meeting held on 05.01.2012 and 06.01.2012 and it was not recommended for grant of compassionate appointment and accordingly the applicant was communicated with the decision vide letter dated 19.01.2012. The family of the deceased employee also received approximately Rs.9,50,000/- towards terminal benefits and also getting the monthly pension of Rs.8785/-. Apart from this the applicant secured only 53 points whereas the last selected candidate secured 71 points. It is also to be pointed out that the O.M. dated 09.10.1998 clearly provides that compassionate appointment can be made only upto a maximum of 5% vacancies falling under direct recruitment quota in Group 'C' and Group 'D' posts. The respondents also pointed out that the Circle Relaxation Committee considered the case of the applicant absolutely in accordance with the DOP&T's rules and instructions.

8. Hon'ble Apex Court in the case of **Umesh Kumar Nagpal v. State of Haryana** reported in **1994 SCC(L&S)-930** has been pleased to observe that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis. In another case of **State Bank of India & Another v. Raj Kumar** reported in **(2011)1 SCC(L&S)-150** the Hon'ble Apex Court has been pleased to observe that compassionate appointment is not a source of recruitment. It is an exception to general rule and recruitment to public service should be on the basis of merit by open invitation providing equal opportunity to all equitable persons to participate in the selection. Para 8 of the said judgment reads 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. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever



outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

In the case of **State of Chhattisgarh v. Dhirjo Kumar Sengar** reported in (2009)13

Supreme Court Cases-600 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 v. Madhusudan Das* this Court held:

"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."

11. This Court in *I.G. (Karmik) v. Prahalad Mani Tripathi* carved out an exception to the ordinary rule of recruitment, stating:

"6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies of who becomes incapacitated while rendering services in the Police Department.

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7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on Compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made 'on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

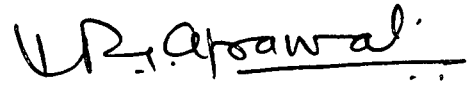


■ In the case of **Union of India v. Sasank Goswami** reported in **AIR 2012 SC-2294**

Hon'ble Apex Court has been pleased to observe that compassionate appointment cannot be claimed as a right and it is not any source of recruitment. In the case of **State Bank of India v. Jaspal Kaur** reported in **2007(9) SCC-571** the Hon'ble Apex Court has been pleased to observe that whether the deceased left the family in penury and without any means of livelihood is to be decided by the competent authority and court should not normally interfere with the decision of the authority and compassionate appointment cannot be claimed by way of right.

9. In the instant case, the case of the applicant was duly considered by the Circle Relaxation Committee and the applicant could secure only 53 merit points and candidates securing better points were given appointment, as such, there appears to be no illegality in the order dated 19.01.2012 passed by the respondents. As such, I do not find any reason to interfere in the present original application.

10. Accordingly the O.A. is dismissed. No order as to cost.


(NAVNEET KUMAR)
MEMBER(J)

s.b