

Central Administrative Tribunal, Lucknow Bench, Lucknow
Original Application No. 120/2012

Reserved on 19.12.2014

Pronounced on 24-12-2014

Hon'ble Sri Navneet Kumar, Member (J)

Smt. Gudda Devi aged about 35 years wife of late Ram Pratap Yadav r/o 578/42 A, Gram Gaura Bazar, Sarojininagar, Lucknow.

Applicant
By advocate: Sri Amit Verma for Sri A. Moin

Versus

Union of India through

1. Secretary, Ministry of Information and Broadcasting, New Delhi.
2. Prasar Bharti, Broadcasting Corporation of India, All India Radio, New Delhi through its Chief Executive Officer,
3. Additional Director General (CRI) All India Radio, Prasar Bharti Broadcasting Corporation of India, Akashwani Vidhan Sabha Marg, Lucknow.
4. Station Director, Prasar Bharti Broadcasting Corporation of India, Akashwani, Vidhan Sabha Marg, Lucknow.

Respondents
By Advocate; Sri Pankaj Awasthi for Sri Rajendra Singh

ORDER

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

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- i) To quash the impugned order dated 23.11.2011 passed by respondent No.3 as contained in Annexure A-1 to the O.A.
- ii) To direct the respondents to appoint the applicant on compassionate grounds on any suitable post in the Ministry of Information and Broadcasting or any other Ministry as provided under compassionate appointment dated 9.10.1998 within a specified time.
- iii) to direct the respondents to pay the cost of this application.
- iv) any other order which this Hon'ble Tribunal deems just and proper in the circumstances of the case be also passed.

2. The brief facts of the case are that the applicant is the widow of ex-employee who died on 30.7.2007 leaving behind the applicant, one son and four daughters. Immediately after the death of the ex-employee, the applicant submitted proforma specified by the respondents in 2008. The case of the applicant was placed before the Screening Committee and the same was considered by the competent authority. The applicant also preferred an O.A. for grant of compassionate appointment to the applicant vide O.A. No. 207/2011. The said O.A. was disposed of with direction to the respondents to consider the representation of the applicant dated 26.7.2010 and shall pass a speaking order in accordance with law. When nothing was heard, the applicant preferred a contempt petition and the respondents thereafter passed the order dated 23.11.2011 which is impugned in the present O.A. The learned counsel for the applicant has categorically indicated that there are no reasons assigned in the impugned order and also indicated that the DOP&T guide liens in regard to compassionate appointment was also not considered by the authorities. It is also argued by the learned counsel for the applicant that as per the DOP&T circular dated 9.10.1998, the provision of 7E and 7 F were also not considered by the competent authority, as such, it requires interference by the Tribunal.

3. On behalf of the respondents, detailed counter reply is filed and it is submitted by the learned counsel for the respondents that provisions of para 7 E and 7 F of DOP&T O.M. of 1998 stands withdrawn in June 2001 and in the absence of any vacancy, it is not possible to consider the case of the applicant for grant of compassionate appointment. Not only this, the learned counsel for respondents has also relied upon the decision of the Hon'ble Apex Court in the case of **Umesh Kumar Nagpal v. State of Haryana &Ors. (1994) Supreme Court Cases (L&S) 930** as well as in the case of **Union of India and Another Vs. Shaishank Goswami**

and another reported in AIR 2012 Supreme Court 2294 and indicated that the compassionate appointment cannot be claimed as a matter of right. Not only this, the respondents also vehemently argued that ex-employee died in 2007 and family of the deceased employee could survive till 2014, as such there is no financial stress upon the applicant. Therefore, the claim of the applicant is liable to be rejected.

4. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder reply, the applicant reiterated the contents of the O.A. and denied the averments made in the counter reply. However, it is once again pointed out by the learned counsel for the applicant that the Hon'ble High Court in the case of Chief Commissioner, Central Excise and Customs Vs. Prabhat Singh and another reported in (2011) 4 UPLBEC 2843 has directed the respondents to give appointment to the claimant. The learned counsel for the applicant has also relied upon a decision of this Tribunal in O.A. No.120/2008 (Manoj Kumar Singh Vs. UOI and others) and indicated that this Tribunal has also indicated that when the order passed by the authority is not clear that on what basis the CRC came to the conclusion that the family is not in financial distress, then the order is bad in the eyes of law.

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

6. The applicant is wife of the deceased employee who was working with the respondents organisation as a peon and after rendering 20 years of service, died on 30.7.2007 leaving behind 4 daughters and one son. After the death of the ex-employee, the applicant applied for grant of compassionate appointment in a prescribed proforma in 2008 itself and as per the averment of the applicant, the same was considered by the authorities in the meeting .The applicant also preferred an O.A. before the Tribunal vide O.A. No. 207/2011 which was disposed of by the Tribunal with direction to the respondents to dispose of the representation of the applicant dated 26.7.2010 within a

period of three months from the date of certified copy of this order is produced. In pursuance thereof, the respondents passed order dated 23.11.2011 which is impugned in the present O.A.

7. While deciding the claim of the applicant, it is indicated by the respondents that due to non-availability of vacancy under 5% prescribed quota, no one could be recommended by the screening committee. After the direction of the Tribunal, the case of the applicant was reconsidered in its meeting held on 18.11.2011 and the claim of the applicant along with claim of other candidates were considered against one available vacancy under 5% quota. But the committee did not find the case of applicant as most deserving as such her case got closed on completion of three years time limit.

8. The learned counsel for the applicant has also relied upon the DOP&T O.M. dated 9.10.1998 and has indicated that para 7 E and 7 F and also pointed out that in case sufficient number of vacancy are not available in any particular office to accommodate the persons, it is open to the administrative Ministry/ Department/ office to take up the matter with the other ministries /departments/ offices of the Govt. of India to provide at an early date appointment on compassionate grounds. During the course of arguments, learned counsel for the respondents has categorically indicated that the said provision of O.M. stands withdrawn in 2001 itself as such the same is not applicable in the case of the applicant. Apart from this, learned counsel for respondents has also indicated that the compassionate appointment can only be considered against 5% of the clear vacancy and in the absence of any vacancy, the same could not be considered.

8. Neither the claim of compassionate appointment cannot be treated as a matter of right nor it can be treated as another source of recruitment.

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. (supra)**, 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** (*supra*) 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.**”

16. In the Hon'ble Apex Court in the case of **State of Gujarat and others Vs. Arvind Kumar T.Tiwari and another** reported in **(2012) 9 SCC 545** has been pleased to observe as under:-

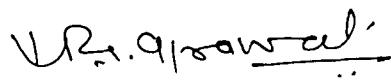
“8. It is a settled proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with rules, regulations or administrative instructions governing the subject , taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate appointment is to enable the family of the deceased to over come the sudden financial crisis it finds itself facing, and not to confer any status upon it.”

17. In the case of **Life Insurance Corporation Vs. Asha Ramchhandra Ambekar** reported in (1994) 2 SCC 718, it is observed by the Hon'ble Apex Court that "**the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointment on compassionate grounds when regulations framed in respect thereof do not cover and contemplate such appointments.**"

18. The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread earner. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits received by the family, the age, dependency and marital status of members, together with the income from any other source of employment.

19. Considering the observations made by the Hon'ble Apex Court as well as facts of the case of the applicant, I do not find any reason to interfere in the present O.A.

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


 (Navneet Kumar)
 Member (J)

HLS/-