

CENTRAL ADMINISTRATIVE TRIBUNAL
CAMP AT AURANGABAD
ORIGINAL APPLICATION NO:392/2000
DATED THE 26th DAY OF MARCH, 2004.

CORAM:HON'BLE SHRI S.G.DESHMUKH, MEMBER(J)

1. Smt.Kalpana Vasant Chauk,
2. Shri Nayan Vasant Chauk
Shani Mandir Ward, Khalama Road,
Near Sona Photo Studio
Bhusawal - 425 291.
Dist. Jalgaon (Maharashtra) ... Applicants

By Advocate Shri R.P.Saxena

V/s.

1. Union of India, through
The Chairman,
Ordnance Factory Board,
10-A Khudiram Bose Road,
Calcutta - 700 001.
2. The General Manager,
Ordnance Factory,
Bhusawal,
Dist.Jalgaon (Maharashtra) ... Respondents.

By Advocate Shri R.R.Shetty

(ORDER)

Per Shri S.G.Deshmukh, Member(J)

The present OA is filed for a declaration that the order dated 16/8/1999 is bad in law and declaring that the applicant is entitled to be re-considered for appointment against Group 'C' post on Compassionate grounds. Shri Vasant M Chauk who expired on 26/7/1998 was working as Highly Skilled Grade I in Ordnance Factory, Bhusawal. He met with an accident while returning to residence from duty on 9/7/98 resulted in coma due to head injury and died on 26/7/1998 leaving behind him the widow Smt.Kalpana Vasant Chauk, three sons and two married daughters. The applicant no.1 submitted an application for providing employment on compassionate grounds to her eldest son Nayan. It is contended that her second son had been residing in Gujarat along with his family and he was not a source of support to other members of the family. Her second son was terminated from his service on 23/4/1999. The respondents rejected the request of employment on compassionate grounds vide letter dated 16/8/99.

It is also contended that the respondents did not consider the fact that a sum of Rs.1.25 lacs have been incurred on medical expenses of the deceased employee. Even they have not considered the fact that the second son is residing in Gujarat and not supporting the other members of the family. It is also contended that the application for compassionate appointment cannot be rejected merely on the ground that the family of the deceased government servant has received the benefit under the various welfare schemes. The respondents have not considered that the retirement benefits of the deceased have to be inherited according to personal law, by all the surviving members of the deceased's family.

2. The respondents by their counter affidavit contested that ^{WV} according to the ^{WV} respondents they have acted in accordance with the rules and the regulations on the subject and have not violated any of the binding rules. The respondent's contended that the deceased employee rendered total 36 years 4 months and 22 days service and was 56 years old at the time of his death. He was due for superannuation on 31/1/2002. The respondents have paid

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|------|---------------------------------------|-----------------|
| i) | Compensation | Rs.01,28,330.00 |
| ii) | Death cum retirement gratuity | Rs.01,95,228.00 |
| iii) | CGEIS | Rs.00,38,616.00 |
| iv) | Encashment of leave | Rs.00,11,832.00 |
| v) | GPF balance | Rs.00,70,000.00 |
| vi) | Family Pension @ Rs.2550/- + 38% D.R. | |

3. It is contended ^{by} ~~that~~ the applicant no.1 herself that the second son Ramakant Chauk is employed as Stenographer at Surat. Since there being an earning member, in the family, the case was forwarded to the O.F.Board, Calcutta for consideration as per directives contained in Para 10 of the DOP&T O.M. dated 9/10/1998. The O.F.Board Calcutta after due consideration of the case, rejected the same vide letter dated 30/7/1999. It is contended that the members of the family of the deceased are major in age and cannot be held as dependents in the family. There is no minor son in the ^{WV} family out of the three sons, two of Major age and married

and they cannot be considered as dependents. There is no unmarried daughter in the family. It is also contended that while considering the case the amount paid as compensation i.e. 1,28,330.00 has not been taken into account. It is also contended that the family of the applicant did not submit their claim for medical reimbursement to the respondents. The applicants herself had intimated that second son got employment again in another company vide letter dated 19/5/99. The family of the deceased is not in distress condition. The applicant filed rejoinder and contended that the respondents have given prime weightage to the monetary benefits received by family of the deceased ^{against the principles laid down by} ~~though~~ the Hon'ble Supreme Court in Balbir Kaur & Anr. V. Steel Authority of India Ltd & Ors reported in JT 2000(6)SC 281. It is contended that the respondents might have observed the existing rules. The principles laid down by the Apex Court was not in existence while rejecting the request for compassionate appointment. Therefore it requires re-consideration. It is also contended that the amount of Rs.1.25 lacs were incurred by the family of the deceased and the said huge amount deserves to be excluded from the monetary benefits received by family of the deceased. It is also contended that the family pension has been shown as Rs.2550/- it should be Rs.2295/- as per the PPO. It is also contended by the applicant that the ^{claim for} medical reimbursement was made but not accepted by the concerned section of the Factory on the pretext of Government orders for treatment in private hospital.

4. The respondents have filed Sur Rejoinder and contended that they have acted judiciously in accordance with the guidelines and binding rules of the Government with regard to the consideration of the case of the applicants for appointment on compassionate grounds. It is contended

that as per instructions contained in DOPT OM No.1401466/94 dated 9/10/98, marks are to be allotted taking into account the parameter of selective approach such as:- Family Pension, Other terminal benefits, Movable/Immovable property, Number of minor sons and un-married daughters, other dependents in the family, Left over service of the deceased Government servant, Whether any member of the family is employed. Each of the factors are allotted weightage/marks as per guidelines prescribed in the said instructions and that the weightage have not been allotted only on basis of monetary benefits. It is also contended that a total amount of Rs.04,44,006.00 has been paid to the applicants whereas only an amount of Rs.02,45,676.00 has been taken for computation of marks towards terminal benefits which comes to 02 marks as per the DOP&T instructions. It is also contended that the respondents did propose the family pension @ Rs.2550/-p.m. to the CDA (Pensions) Allahabad but the same has not been accepted under the provisions of sub rule 3 (b) (i) of Rule 54 of the CCS (Pension) Rules 1972 as the family has received a sum of Rs.1,28,330.00 towards compensation under the Workman's Compensation Act and therefore granted a sum of Rs.2295/- towards family pension which does not vary the weightage /marks allotted for Rs.2550/- or Rs.2295/- as per the subject directives. The applicant has also filed Sur Sur Rejoinder, and have contended that the respondents have given prime weightage to the monetary benefits received by family of the deceased though it is not that monetary benefit would be the replacement of the bread earner. It is also contended that the cases referred by the applicant for appointment on compassionate grounds are dealt with as per the NJSC agreements 1983 and 1989. Tripartite agreement between the Steel Authority of India and employees, whereas

the applicants case is goverened by the guide lines/instructions issued by the DOP&T. The rules and regulations on the subject are different. The facts and circumstances cited by the applicant being different, this is not helpful to the applicant. Each case has its own merit and cannot be compared with.

5. Heard Shri R.P.Saxena, Counsel for the applicantt. The learned counsel for the applicant has relied on Smt.Anar Kali & Anr. V/s. Union of India & Ors reported in 2001(2) ATJ 387 and Balbir Singh supra.

5. Heard Shri R.R.Shetty, Counsel for the respondents. He relied on OM Kumar & Ors V/s. Union of India 2001 SCC (L&S) 1039.

6. It is well settled that the object of the compassionate appointment is to tide over the crises on account of untimely demise of sole earning member of the family. It is not a vested right which can be claimed, Mere death of an employee in harness does not entitle his family to such source of livelihood. The financial condition of the deceased employee should be examined and only if it is satisfied that without the source and provision of employment the family will not be able to meet the crises that a job is to be offered to the eligible member of the family. The Compassionate appointment has to be given according to the policy of the department on the subject. It is also well settled that if reasons given by the department to refuse compassionate appointment is a matter of policy, there is no scope for Court to compel the exercise to grant relaxation. It is apparent from the affidavit filed by the respondents that the request for compassionate appointment has been considered and rejected as per Government rules and policy. The Board of Officers have taken various aspects such as family members, including ages of the children, amount of terminal benefits, any minor

children, etc at the time of the death of the employee to find out the case of any financial distress.


7. In Umesh Kumar Nagpal V/s. State of Haryana and Ors 1994(4) SCC 138 ^{Applicant's} ~~had~~ held that offering appointment on compassionate grounds as a matter of course irrespective of financial condition of the family of the deceased or medically retired Government servant is legally impermissible. It is apparent that monetary benefits considered by the respondents is one of the factors and no prime weightage is given to monetary benefit.

8. Each case has its own merits. In the instant case the deceased employee has rendered 26 years 4 months and 22 days service and he was due for superannuation on 31/1/2002. All the members of the deceased employee's family are major in age. It has also come on record that the second son Ramakant Chauk was in service at the time of death of deceased employee. According to applicant, his services have been terminated thereafter, but as per her own contention he got the job. The elder son for whom the compassionate appointment is sought is a major married person having a child. He cannot be said to be dependent on the deceased at the time of his death. The Board of Officers have considered the size of the family, the earning members, amount of terminal benefits, etc while finding out the financial condition of the applicant. There is no minor son in the family of the applicant, no unmarried daughter. The respondents have ^{mentioned} ~~confirmed~~ that the case of the applicant has scored 45 points. The letter dated 16/8/99 mentions that all the sons are major and there is no unmarried daughter and thus the applicant has been informed that her request for employment assistance on compassionate grounds cannot be acceded to. The

...7.

applicant could not establish that the family was in need of immediate assistance having no earning member in the family. The record shows that one of the son of the deceased employee was an earning member in the family.

The department has given the reasons to refuse the compassionate appointment as per their policy. There is no scope for interference. The OA has no merit and is dismissed. No order as to costs.


(S.G. DESHMUKH)
MEMBER (J)

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