

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of November, 2010

T.A. No. 08/2010
(CWP No. 5071/2008)

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Smt. Sumanta Devi
Widow of late Shri Virendra Prasad,
r/o Plot No.86, Gopi Nagar,
Kalwad, Govindpura,
Jaipur

.. Applicant

(By Advocate: Shri Hari Prasad Jangid proxy counsel for Shri Jai Raj Tantia)

Versus

1. Union of India
through Ministry of Defence,
Government of India,
New Delhi.
2. The Chief Engineer,
Military Engineering Services,
Power House Road,
Bani Park,
Jaipur

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

The applicant is widow of late Shri Virendra Prasad who while working in the office of Chief Engineer, Military Service, Jaipur as Class-IV employee expired on 22.1.2003. Immediately after death of

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late Shri Virendra Prasad, application for compassionate appointment was moved. The case of the applicant was considered sympathetically and appointment letter dated 28.4.2005 was issued to the applicant. It is case of the applicant that after death of her late husband, the applicant lost mental balance and remained under treatment for a long time. Thus, she could not join pursuant to the aforesaid appointment letter. It is further pleaded that the applicant represented on 7.1.2005 to respondent No.2 with a request that date of joining be extended. However, her said request was rejected vide letter dated 21.2.2006 (Ann.A/2). It is further pleaded that thereafter another representation dated 25.7.2007 was sent to the respondents which was again rejected on 1.8.2007 (Ann.A/5) on the ground that appointment letter issued to her has already been cancelled. Thereafter the applicant submitted legal notice dated 22.11.2007 and ultimately filed SB Writ Petition before the Hon'ble High Court, which was registered as SB Civil Writ Petition No.5071/2008. The said writ petition was transferred to this Tribunal as the Hon'ble High Court has no jurisdiction to entertain the matter at the first instance and registered as TA No.08/2010.

2. The respondents have filed reply. The facts, as stated above, have not been disputed by the respondents. The respondents have placed ~~on record~~ ⁴ copy of appointment letter dated 28.4.2005 on record as Ann.R/1 and communication dated 2.2.2006 (Ann.R/4) whereby respondent No.2 was informed that since the individual

has failed to report for duty by 15th May, 2005, she cannot be given appointment, besides rejection letter dated 21.2.2006 (Ann.R/5).

3. I have heard the learned counsel for the parties and gone through the material placed on record.

4. The case as projected by the applicant in this TA is that although the applicant was given appointment on compassionate ground vide letter dated 28.4.2005 but in that letter no date of joining was given and when the applicant went to join in the month of June, 2005 she was not permitted to join. Thereafter the applicant was regularly approaching the respondents and when no response was given, a written application was moved on 7.12.2005, which was rejected vide impugned order dated 21.2.2006 (Ann.A/2). It is further pleaded that it is for the first time that factum of joining duty by 15.5.2005 was disclosed by the respondents and as the applicant was suffering from depression and was under regular treatment, as such, she could not joined duty. It is under these circumstances, the applicant has prayed that writ of mandamus may be issued to the respondents to permit her to join as Class-IV employee pursuant to letter dated 28.4.2005. The contention raised by the applicant based on the aforesaid facts, deserve out right rejection. As already stated above, the respondents have produced copy of appointment letter dated 28.4.2005 on record in which one of the conditions which is stipulated in the appointment letter and find mention at Para (P) is to the follow effect:-

"(p) You should report for duty to the office of HQ Chief Engineer, Jaipur Zone, Jaipur on or before 15 May, 2005. The offer of appointment will automatically stands cancelled if you do not report for duty by the date specified in this letter."

Thus, in view of this stipulation in the appointment letter, the contention raised by the applicant that she was not aware about the date of joining is wholly misconceived and deserve out right rejection. Under these circumstances, I see no infirmity in the action of the respondents whereby representation of the applicant for permitting her to join duty after a lapse of aforesaid period was rejected vide impugned order dated 21.2.2006 (Ann.A/2) and writ of mandamus cannot be issued in the facts and circumstances of this case.

5. That apart, the applicant is not entitled to any relief at this stage. Admittedly, the husband of the applicant died on 22.1.2003. The Writ Petition was filed before the Hon'ble High Court in the year 2008 which was transferred to this Tribunal and then entertained in the year 2010. The Hon'ble Apex Court repeatedly held that compassionate appointment cannot be claimed or offered after a lapse of reasonable period, when the crisis is over.

6. Law on this point is no longer res-integra. The Apex Court in the case of Haryana State Electricity Board vs. Naresh Tanwar and Anr., 1996 SCC (L&S) 816 in Para-9 has made the following observations:-

"9. It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is

intended to meet the immediate financial problem being suffered by members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who dies in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years." (emphasis supplied).

7. In State of U.P. vs. Paras Nath, 1998 SCC (L&S) 570, the effect of long delay in applying for compassionate appointment was considered. That was a case where the deceased employee left behind two years old son. The application for compassionate appointment was made after a period of 17 years. However, no application was made by other family members. The Apex Court while setting aside the judgment given by the High Court in para-5 has made the following observations:-

"5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased is made after a long period of time such as seventeen years in the present case."

8. In Sanjay Kumar vs. State of Bihar, 2000 SCC (L&S) 895 the Apex Court has observed that there cannot be reservation to a vacancy till such time as the petitioner becomes major after a number of years and the very basis of compassionate appointment is to see that the family gets immediate relief and in para 3 made following observations:-

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education vs. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petition. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family get immediate relief (emphasis supplied).

9. In Haryana State Electricity Board vs. Krishna Devi, 2003 SCC (L&S) 248, the Apex Court in para 7 held as under:-

"7. As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of the law and allowed the writ petition relying on an earlier decision of the High Court."

10. In State of J&K vs. Sajad Ahmed Mir, 2006 SCC (L&S) 1195 in para-11 has made the following observations:-

"11..... Normally, an employment in the 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 from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

11. Thus, from the principle as laid down by the Apex Court as noticed above, it is evident that compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate appointment cannot be claimed and offered after a lapse of time and after the crisis is over. The very fact that family has survived for a considerable long period apparently shows that family has pulled on without any difficulty. Thus, according to me, the applicant is not entitled to any relief on this count also.

12. Viewing the matter from any angle, I am of the view that the applicant is not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.



(M.L.CHAUHAN)
Judl. Member

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