

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00569/2014

DATE OF ORDER: 03.12.2015

CORAM

HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER

1. Nusrat Jahan W/o late Shri Mohd. Asaduddin, aged 53 years, R/o House No. 27, Idgah Colony, Laxman Dungri Ke Nichey, Delhi Bye-pass Road, Jaipur.
2. Mohmmmeduddin S/o late Shri Mohd. Asaduddin, aged 23 years, R/o House No. 27, Idgah Colony, Laxman Dungri Ke Nichey, Delhi Bye-pass Road, Jaipur.

...Applicant

Dr. Saugath Roy, counsel for applicant.

VERSUS

1. The Union of India through Deputy Accountant General (Administration), Indian Audit and Accounts Department, Principal Accountant General (A&E), Jaipur, Rajasthan.
2. The Accounts Officer (Administration), Indian Audit and Accounts Department, Principal Accountant General (A&E), Jaipur, Rajasthan.

...Respondents

Mr. Arun Sharma, counsel for respondents.

ORDER

The Original Application is filed seeking a direction to the respondents to consider the case of the applicant No. 2 for compassionate appointment against the Class-IV post lying vacant with the respondent-department and seeking to quash the orders of rejection of the candidature of the applicant no. 2 for compassionate appointment dated 06.05.2014 (Annexure A/1) and 12.07.2010 (Annexure A/2).

2. Shri Mohd. Asaduddin expired on 06.05.2004 while in service of the respondent-department. Applicant No. 1 is wife and applicant No. 2 is son of the deceased Govt. servant. The

applicants are aggrieved by the impugned orders of rejection of the candidature of the applicant no. 2 for compassionate appointment dated 06.05.2014 (Annexure A/1) and 12.07.2010 (Annexure A/2).

3. The applicant no. 1's husband Shri Mohd. Asaduddin expired on 06.05.2004 while in service leaving behind the family consisting of his wife, four sons and six daughters. At the time of death of the deceased Govt. servant, all the children except one were minors. Out of all the 10 children, only the eldest son namely Ahmeduddin has crossed the minority age. The deceased Govt. servant was the sole bread-earner of the family. All the family members were dependent upon the deceased Govt. servant. Applicant no. 1 applied for compassionate appointment nominating the name of her eldest son Ahmeduddin. Later on, due to medical reasons, the applicant no. 1 nominated the name of the applicant no. 2, Mohammeduddin.

4. The respondent no. 2 issued Annexure A/3 letter dated 15.12.2009 informing the applicant to appear in interview scheduled to be held on 22.12.2009. The respondents rejected the request of the applicants vide order dated 12.07.2010 (Annexure A/2) on the ground that the committee found a discrepancy in the date of birth of the applicant no. 2 as mentioned in the school certificate and service record of the deceased employee. The Committee found that according to the school certificate, date of birth of the applicant no. 2 is shown as 06.07.1991 but in the service record of the deceased employee, the date of birth of the applicant no. 2 is shown as 20.01.1988.

In Annexure A/2 order dated 12.07.2010, it is also stated that at the time of personal talk before the committee, the applicant no. 2 could not reply satisfactorily about this deviation and whereabouts of his elder brother. The committee further found that this is a belated case having no proper justification by the applicant no. 2.

5. On coming to know about the rejection of request for compassionate appointment vide order dated 12.07.2010 (Annexure A/2), the applicant no. 1 submitted a representation dated 12.07.2010 (Annexure A/4) before the respondent-authority submitting that his eldest son is not fit for the job as he is partially mentally retarded. As such, she nominated the applicant no. 2 for appointment on compassionate grounds. As regards the discrepancy in the date of birth of the applicant no. 2, she submitted that she being illiterate, mistakenly mentioned the date of birth as 06.08.1991 at the time of the admission of the applicant no. 2 in the school, whereas in the official record her husband shown the date of birth of the applicant no. 2 as 20.01.1988 and, as such, the discrepancy arose. The respondents vide Annexure A/1 order dated 06.05.2014 rejected the representation of the applicant no. 1.

6. It is submitted by the applicants that there are 11 members in the family who were totally dependent on the deceased employee, who was employed in the office of Chief Accountant at Jaipur and he died while in service on 06.05.2004. It is also submitted that the family is still living in hardship and there is no

other bread-earner in the family and till date no other person is in government job.

7. It is further submitted that the family is incurring lot of expenditure on the medical treatment of the eldest son Mohd. Ahmeduddin, who is mentally partially retarded. It is pointed out that looking to the family circumstances; the applicants were repeatedly requesting the respondents to offer appointment on compassionate grounds in favour of the applicant no.2.

8. The deceased employee, Mohd. Asaduddin, was maintaining a large family at the time of his death. The details of the family as shown in paragraph 4.1 of the OA containing the name and age of each and every member of the family would show that the family consists of the mother and 10 children. All of them except one were minors at the time of death of the deceased employee. Out of 10 children, six are female of different age. From the facts and circumstances noticed above, it is clear that the family was suffering from untold miseries consequent on the death of the deceased employee. The eldest member of the family is a mental patient and the other children were minors who are undergoing studies at the time of death of the deceased employee.

9. Annexure A/2 order dated 12.07.2010 would show that the authorities did not apply their mind to the issue. On a reading of Annexure A/2, it is seen that the committee has approached the issue in a negative manner. It is the duty of the committee and the Directorate of Accounts Department to ascertain the

economic distress of the family members, having regard to number of dependents, assets and liabilities left by the govt. servant, income of the earning members and his liabilities, etc. and if the number of candidates found fit for compassionate appointment by the departmental screening committee exceeds the number of vacancies available for the purpose, preference in offering appointment should be given to the families in which there is no earning member. Annexure A/2 order is silent on the above parameters to be followed while examining the issue.

10. Learned counsel for the applicants submits that if the criteria on the subject are applied in letter and spirit, the authorities ought to have found that the applicant no. 2 is fit for appointment on compassionate grounds. It is also submitted that the respondents without going into the family circumstances outrightly rejected the candidature of the applicants without application of mind and without following the basic object and rules for grant appointment on compassionate grounds.

11. This Tribunal took the note of the contention raised in the detailed reply and the submissions made by the learned counsel for the respondents. In para 1 of the reply, it is admitted that the husband of the applicant no. 1 died on 06.05.2004 and she submitted a letter received on 03.06.2004 in the office of respondent no. 1 requesting to consider the case of her elder son for grant of compassionate appointment. It is true that in the first request, she requested to consider her elder son for compassionate appointment. Later on she requested to consider the case of applicant no. 2. The applicant no. 1 vide affidavit

dated 26.05.2009 informed the respondents that her elder son is not willing for the job and at that time applicant no. 2 was minor.

12. The respondents contended that the OA was filed after four years from the letter dated 12.07.2010 (Annex. A/2) whereby the decision of the competent authority was communicated to her, and that the case of the applicant no. 2 is not fit for consideration on compassionate grounds.

13. Learned counsel for the applicants brought the notice of the Tribunal on the Office Memorandum No. 14014/3/2011-Estt. (D) dated 26th July, 2012 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training, New Delhi, whereby a decision has been taken to withdraw the instructions contained in the OM dated 05.05.2003 in which a time limit of three years' time was prescribed for considering the cases of compassionate appointment. The OM further instructed that cases of compassionate appointment may be regulated in terms of instructions issued vide OM dated 09.10.1998 as amended from time to time and that the onus of examining the penurious conditions of the dependent family will rest with the authority making compassionate appointment.

14. In the OM No. 14014/6/1994-Estt. (D) dated 09.10.1998 (supra), it is provided that Ministries/Departments can consider the requests for compassionate appointment even where the death or retirement on medical grounds of a Govt. servant took

place long back, say five years or so. It is also said in the OM that while considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. servant in order to relieve it from economic distress.

15. In the reply to the OA, the respondents, inter alia, contended that the family has survived for the last 10 years without any Govt. job and that the said circumstances show that they are able to survive without a job on compassionate grounds. The said stand of the respondents is strange. Every family will have to survive even if a job is denied by the Govt. How they have survived these 10 years in the context of the death of the deceased employee is relevant. They might have undergone miseries in life and untold sufferings on account of the death of the sole earning member. The respondents did not apply their mind to the issue instead they have put forward technical reasons for denying a legitimate claim. In fact the scheme for compassionate appointment is intended to serve the family in distress left behind by the deceased.

16. In para 4.5 of the reply, it is contended that after lapse of reasonable period, compassionate appointment cannot be granted, further there was deviation in the date of birth and for that the applicant could not reply satisfactorily to the committee. In para 4.6, it is averred that the family has survived for 10 years, therefore, now after 10 years, it is difficult to justify the requirement of compassionate appointment.

17. The primary objective of scheme for compassionate appointment circulated vide OM No. 14014/6/94-Estt (D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Govt. servant from financial destitution i.e. penurious condition.

18. The Hon'ble Apex Court in its judgment dated 05.04.2011 (Civil Appeal No. 2206/2006) in the case of Local Administration Department vs. M. Selvanayagam @ Kumaravelu has held that an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and, hence, quite bad and illegal. It was also held that in dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

19. In para 6 of the rejoinder, it is stated that the scheme of compassionate appointments is welfare legislation and the object of the scheme will be frustrated if a balance and objective assessment is not carried out of the financial condition of the family taking into account the assets and liabilities and other relevant factors. All the family members were totally dependent on the deceased and no one in the family is in Govt. service and the family is still living in indigent circumstances. It is averred that under indigent circumstances, the family has just managed

to survive by taking monetary loans from the relatives. It is also stated that the aspects which ought to have been considered by the committee were not taken into consideration in the case of the applicants despite the fact that they have submitted representations from time to time and the case of the applicants has been decided by the respondents without application of mind.

20. Learned counsel for the applicants submitted that from time to time, Office Circulars by DOPT had been issued prescribing therein, inter alia, the parameters to bring uniformity in cases of compassionate appointments. It is provided in the circular of the DOPT vide OM No. 14014/6/94-Estt (D) dated 09.08.1998 that while considering a request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made, taking into account, its assets and liabilities and all other relevant factors, such as presence of earning member, size of the family, ages of the children and the essential need of the family, etc. In this case, admittedly, the vital issues referred to above were not taken into consideration by the committee while deciding the case of the applicants. Even not a single factor was considered in the case of the applicant no. 2 for appointment on compassionate grounds and it was rejected on flimsy and technical reasons stating that there was a deviation in the date of birth of the applicant no. 2.

21. The respondents have brought the notice of the Tribunal on the Annexure R/6 which is a birth certificate of the applicant no.

2 issued by the Nagar Prishad, Jaipur in which the date of birth of the applicant is mentioned as 20.01.1988. The respondents also produced Annexure R/7 i.e. marks-sheet of the applicant no. 2 for Secondary School Examination, 2006 issued from the Board of Secondary Education, Rajasthan in which the date of birth of the applicant no. 2 is mentioned as 06.08.91. Learned counsel for the respondents argued that the committee found a discrepancy in the date of both of the applicant no. 2.

22. The applicants produced Annexure A/5 birth certificate issued from the Municipal Corporation, Jaipur in which the date of birth of the applicant no. 2 is mentioned as 06.08.1991. In Annexure A/6 which is driving licence of the applicant no. 2, his date of birth is mentioned as 06.08.1991. Annexure R/7 produced by the respondents also proves that the date of birth of the applicant no. 2 is 06.08.1991.

23. In the case of **Shah Nawaz vs. State of Uttar Pradesh & Another**, (2011) 13 SCC 751, the Hon'ble Apex Court has laid down the procedure to be followed in determining the age. It was held that the entry relating to date of birth entered in marks-sheet as well as school leaving certificate are valid proofs for determination of age and that medical opinion from Medical Board should be sought only when matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available.

24. - In view of the ratio decided by the Hon'ble Apex Court in the case of **Shah Nawaz vs. State of Uttar Pradesh &**

Another (supra) this Tribunal is of the considered opinion that the entry relating to date of birth entered in marks-sheet as well as school leaving certificate are valid proofs for determination of age. In the case of the applicant no. 2, the respondents themselves produced Annexure R/7 i.e. marks-sheet of the applicant no. 2 for Secondary School Examination, 2006 issued from the Board of Secondary Education, Rajasthan in which the date of birth of the applicant no. 2 is mentioned as 06.08.91. The marks-sheet of the applicant no. 2 is an authentic document to ascertain the correct date of birth of the applicant no. 2. The respondents ought not to pay importance to the statement of the uneducated lady / applicant no. 1 about the date of birth of her children. Therefore, the respondents shall treat the date of birth of the applicant no. 2 as 06.08.1991 as has been shown in Annexure R/7 i.e. marks-sheet of the applicant no. 2 for Secondary School Examination, 2006 issued from the Board of Secondary Education, Rajasthan and Annexure A/5 birth certificate issued from the Municipal Corporation, Jaipur.

25. In the case of **Canara Bank and another vs. M. Mahesh Kumar** (Civil Appeal No. 260/2008 date of judgment 15.05.2015) the Hon'ble Apex Court has held that insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application on compassionate appointment. The Hon'ble Apex Court also observed that Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered

appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority.

26. In the facts and circumstances noticed above, I am of the considered view that the applicant is entitled to the relief sought for in the Original Application. The Original Application is, therefore, allowed. The impugned orders dated 06.05.2014 (Annexure A/1) and 12.07.2010 (Annexure A/2) are quashed and set aside. The respondents are directed to consider the case of the applicant no. 2 for appointment on compassionate grounds against the class-IV post lying vacant with the respondent-department and pass appropriate order within a period of three months from the date of receipt of a copy of this order. The applicants shall produce a copy of this order before the respondents within a period of fifteen days. There shall be no order as to costs.



(JUSTICE HARUN-UL-RASHID)
JUDICIAL MEMBER