

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.514/2001

Date of order: 26/3/2002

Raj Kishore Rathore, S/o Late Shri Kaushal Kishore Rathore, R/o behind A-34, Nehru Nagar, Bani Park, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt of India, Mini.of Defence, New Delhi.
2. Engineer-in-Chief, Kashmir House, Army Headquarters, DHQ, P.O New Delhi.
3. Chief Engineer, Jaipur Zone, Power House Road, Bani Park, Jaipur.

...Respondents.

Mr.R.S.Bhadauria : Counsel for applicant

Mr.Arun Chaturvedi : Counsel for respondents.

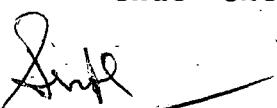
CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to direct the respondents to appoint the applicant on the post of LDC in place of his deceased father and in case no vacancy is available, the applicant may be considered for Chowkidar/Mazdoor to mitigate his long and continuous suffering.

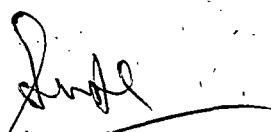
2. Facts of the case as stated by the applicant in brief are that father of the applicant Sh.Kaushal Kishore Singh Rathore was employed as LDC under respondent No.3 who died on 27.9.80 while in service leaving behind him his wife Smt.Gyarsi Devi and one son (the applicant). It is stated that the applicant was born prior to the death of the



deceased Govt employee therefore, mother of the applicant who was totally ignorant about the policy of employment on compassionate grounds remained dormant and the applicant when he attained majority filed an application dated 16.1.98 for considering his name for appointment, on compassionate grounds on the post of Chowkidar/Mazdoor though he was eligible for the post of LDC. It is stated that the application dated 16.1.98 was duly considered and the applicant was approved for the post of Mazdoor but the case of the applicant was placed under objection on the ground that dependent of the deceased employee are required to apply for appointment within 2 years. It is stated that the condonation application filed by the applicant was rejected vide order dated 5.9.2000. Aggrieved by this order, the mother of the applicant made representation to the Defence Minister but with no result. It is stated that there is a vacant post of Chowkidar under respondent No.3 for which the applicant submitted his application. The applicant was called for interview on 14.6.2001 but his name was not considered. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. In the reply, it is admitted that father of the applicant Sh.Kaushal Kishore Singh Rathore died on 27.9.80. It is also stated that the applicant filed an application for compassionate appointment after he attained the age of majority on 16.1.98 but the same was rejected by the competent authority after due consideration on the following reasons:

- a) The family does not present a picture of great indigence for providing employment assistance to the family to tide over the sudden financial crisis.

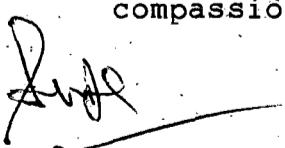


- b) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
- c) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family from financial destitution.
- d) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.
- e) Employment assistance under the scheme of compassionate appointment does not mean employment generation as per existing policy.

It is also stated that the applicant is entitled to be considered for appointment on compassionate grounds against 5% vacancies meant for this purpose. It is also stated that in view of the settled legal position, the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

4. Heard the learned counsel for the parties and perused written submissions filed by the counsel for the applicant and also the whole record pertaining to this case.

5. In the written submissions the learned counsel for the applicant has emphasised on the point that once an order is made for approval on a particular post in favour of the applicant the same cannot be taken away without affording an opportunity of being heard to the affected parties. I do not agree with the contention of the learned counsel for the applicant. No one has a vested right for appointment on compassionate grounds. Compassionate appointment can only be

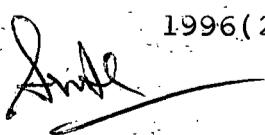


given as per the rules/instructions issued from time to time. Merely that at a particular point of time the applicant was approved for the post of Mazdoor does not confer any indefeasible right in favour of the applicant. Therefore, the contention of applicant has no force. On a perusal of the written submissions, I am of the considered opinion that the applicant has no case in his favour.

6. It appears that the applicant was born on 14.10.80 i.e. after the death of his father Shri Kaushal Kishore Singh Rathore who died on 27.9.80 therefore, the applicant is not entitled to be considered for appointment on compassionate grounds as he born after death of his father. No convincing evidence could be produced by the applicant to the effect that he was not born on 14.10.80 and he born during the life time of his father.

7. Hon'ble Supreme Court set at rest the controversy regarding claim of appointment by the son of the deceased Govt employee on compassionate grounds if he makes a prayer for such appointment after a long delay when he attains majority and held that emergent nature of crisis on account of the death of the employee cannot be said to have continued till now and there cannot be a reservation of a vacancy till such time as the petitioner become major after a number of years unless there is some specific provision.

8. In Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301, Hon'ble Supreme Court has observed that the very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the family. In the case of Union of India Vs. Bhagwan Singh, 1995(6) SCC 476, in Haryana State Electricity Board & Anr. Vs. Hakim Singh, JT 1997 (8) SC 332 and in Haryana State Electricity Board Vs. Naresh Tanwar 1996(2) SLR SC 11, the Hon'ble Supreme Court has taken a



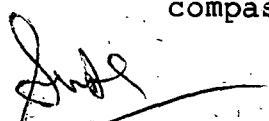
similar view.

10. In the case of State of U.P Vs. Paras Nath, AIR 1998 SC 2612, Supreme Court set aside the judgment of Allahabad High Court and laid down as under:

The purpose of providing employment to a dependent of a Govt 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 Govt servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

11. In Sanjay Kumar Vs. State of Bihar, AIR 2000 SC 2782, it has been laid down that such reservation on compassionate grounds are made only with an intent to provide immediate relief to the family of the deceased employee. There cannot be a reservation of a vacancy till such time as petitioner becomes major after a number of years unless there is some specific provision. The very basis of compassionate appointment is to see that family gets immediate relief.

12. In Narayan Bhattacharya & Anr. Vs. UOI & Ors, ATJ 2001(I) 601, Calcutta Bench of the Tribunal held that claim of appointment by the son of the deceased Govt employee on compassionate grounds is not sustainable because nearly 8



years have already expired after the death of Govt employee, therefore, emergent nature of crisis on account of death of employee cannot be said to have continued till now. Hence, the family cannot be said to be in considerable financial stringency.

13. In the instant case, admittedly, the father of the applicant died on 27.9.80 and at the time of death of the deceased employee even the applicant was not born as he himself admitted his date of birth according to his school record is 14.10.80. Now, after more than 21 years, the applicant is seeking appointment on compassionate grounds as there was no other responsibility left out by the deceased Govt employee. Therefore, in view of the facts and circumstances of this case and settled legal position as mentioned above, the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

14. The applicant has also filed an application for delay condonation for filing this application. The delay of 21 years, in view of the settled legal position of the Hon'ble Apex Court, the delay cannot be condoned. Therefore, the delay condonation application is also not sustainable.

15. In view of above all, this O.A is dismissed with no order as to costs.


(S.K. Agarwal)

Member (J).

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Dated 8/4