

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 16-4-04

OA 246/2003

Duli Chand Gurjar s/o Late Shri Jagmal r/o Village & Post Basant Vihar  
(Paji ki Dhani) via Kharkara, Tehsil Khetri, District Jhunjhunu (Raj).

... Applicant

Versus

1. Director General, Geological Survey of India, 27 JLN Road, Kolkata.
2. Dy. Director General, Geological Survey of India, Western Region,  
Jhalana Doongri, Jaipur.
3. Rakesh Dhabhi s/o Late Shri Jagdish Narayan (Messenger), Geological  
Survey of India, Western Region, Jhalana Doongri, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.M.S.Gurjar

For the Respondents

... Mr.S.R.Samota, proxy counsel for  
Mr.Tej Prakash Sharma

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA u/s 19 of the Administrative Tribunals Act, 1985 has been  
filed to claim following relief :

"This original application may kindly be allowed and entire record  
relating to Compassionate Appointment Committee be called and after  
examining the record the order dated 18/19.4.2001 (Ann.A/4) passed  
by the respondent No.2 may kindly be quashed and set aside.  
Appointment of the respondent No.3 dated 13.11.2002 be quashed and  
set aside and the case of the applicant be considered for  
appointment as per Compassionate Appointment Seniority List in D-  
Group."

2. Facts of the case are that applicant is the eldest son of deceased  
government servant Shri Jagmal, Durwan (Class-IV), who died while in  
service on 21.10.99. His widow, Smt.Patasi Devi, submitted application  
(Ann.A/1) for compassionate appointment of her son Duli Chand Gurjar, <sup>the applicant</sup> as  
Class-IV employee with all required documents, in which all details of age  
and educational qualifications were mentioned. The respondent department  
sought further information regarding liabilities, family assets etc.,  
which were also submitted in time. The respondents have, however, vide  
their letter dated 18/19.4.2001 (Ann.A/4), the impugned letter, informed

that compassionate appointments committee has not recommended the name of the applicant for appointment on compassionate grounds. It is further averred that before coming to this decision the respondents did not give an opportunity of hearing nor have they mentioned any reason for rejecting the case, which makes the impugned letter/order illegal and arbitrary. That aggrieved by this, he submitted representation to respondent No.2 dated 23.5.2001 (Ann.A/5) and also personally approached him, but of no avail. Thereafter he came to know that respondent No.3 has been appointed on compassionate grounds, whose circumstances are less indigent than that of the applicant. He then submitted a notice for demand of justice to the respondents. It is further submitted that the applicant is a poor person. That application of rules governing compassionate appointment have not been carefully applied by the respondents in this case. Hence this OA.

3. The respondents have given a detailed reply. While accepting the facts regarding application by the mother of the applicant for compassionate appointment and completion of documentation, it is stated that his case was submitted to the Compassionate Appointments Committee on 11.1.2001 but the same was not recommended by the Committee. That the Committee took note of the fact that the widow receives pension of Rs.1608/- per month, had received DCRG payment of Rs.99113/-, GPF balance of Rs.31715/- and CGEG Insurance of Rs.19145/-. That the Committee subsequently considered the case of respondent No.3 in its meeting held on 3.4.2002 and found it indigent justifying appointment on compassionate grounds. That the case of the applicant is not comparable with the case of respondent No.3 because it was considered in a subsequent meeting held on 3.4.2002, whereas case of the applicant stood rejected on merits in the meeting held on 11.1.2001. It is further elaborated that the Compassionate Appointments Committee (CAC, for short) while considering the case of the applicant noticed that the deceased family comprises of six sons, all adults/major, and the applicant himself is 32 years of age is married, has his own family. The family has no liabilities as other

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sons are also adults/major and the widow receives sufficient pensionary benefits to manage her own affairs. That as per rules, compassionate appointment has to be given only in the most deserving cases to help them tide over the trauma caused by the <sup>sudden</sup> absence of the bread winner and it is not that it has to be given to a dependent of every deceased government servant. In this case, the Committee rejected the case in view of the pensionary benefits given to the wife of the deceased and other circumstances including the fact that she has grown up sons who can look after themselves, and cannot be considered liability upon the widowed mother. The respondents have drawn attention to the rules issued by the DOPT wherein it is repeatedly made clear that compassionate appointment should be considered in most deserving cases only and decision of this very Bench of the Tribunal in OA 298/2000, Palvindra Singh v. Union of India & Ors., decided on 19.10.2001, <sup>It is cited</sup> in which a series of earlier cases had been considered and the OA was rejected on the ground that the widow received sufficient amount as pensionary benefits and was regularly receiving family pension plus DA and had very limited liabilities, her children being grown up and capable of looking after their own affairs. The respondents also pleaded that compassionate appointment has to be given within 5% of the vacancies available for direct recruitment in Group-C & D posts during the year and, therefore, the recommendation of the Committee has to be restricted to that number only, which makes it necessary for the Committee to recommend only the most deserving cases and that the committee which met on 11.1.2001 did not find the case of the applicant deserving enough, and the impugned order was issued.

4. The applicant has filed a rejoinder largely denying the facts put forth by the respondents while repeating that the financial condition of the applicant's family is miserable and that the pensionary benefits received after the death of the deceased government servant are meagre and have already been exhausted and that the case of the applicant has been rejected by the respondents in an arbitrary manner.

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5. During arguments learned counsel for the applicant further emphasised the fact that the impugned order is violative of rules because rejection is based entirely on pensionary benefits received by the widow. He quoted a decision of Rajasthan High Court in the case of Suresh Kumar Sharma v. Union of India & Ors., 2003 WLC (Raj.) UC 317, by which such a decision has been held bad in law. He also mentioned that the applicant is an OBC, that all sons of the deceased government servant, six in number, are unemployed, the two hectare of land owned by them in Jhunjhunu District is un-irrigated and although they own a house in the village, the family have no other source of income. He also stated that the financial condition of respondent No.3, who has been given compassionate appointment by the respondents, is far better than his, which makes rejection of his case arbitrary and violative of Articles 14, 16 & 21 of the Constitution of India. He also drew attention to a certificate issued by Sarpanch of Village Kharkara, Panchayat Samiti Khetri, dated 15.10.2003 (Ann.A/7), which eloquently describes the indigent condition of the family and also brings out the fact that they live in a kachcha house, land owned by them is largely un-irrigated and barren and unfit for farming etc. He also stated that as per his information the next meeting of the CAC is due to be held in June, 2004 and due to the indigent condition of the applicant, the Tribunal may direct the respondents to reconsider the case of the applicant in that meeting.

6. Learned counsel for the respondents vehemently denied the fact that deliberation of the department on this application was arbitrary inasmuch as the CAC, which met and rejected the case of the applicant on 11.1.2001, had in fact, after careful comparison of the circumstances of all the pending applications, recommended the case of the dependent of some other deceased government servant whose condition was found more indigent by them. The Committee could not consider more cases in view of paucity of vacancies which according to rules have to be limited to 5% of the direct

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recruitment vacancies of the year during which consideration is made. It is also noteworthy that the applicant is 32 years of age and also married. He drew attention to a decision of Jodhpur Bench of the Tribunal in OA 109/2003, Omprakash v. Union of India & Ors., decided on 18.7.2003, in which it has been observed as follows;

"3. At the very outset a query was put to the applicant as regards the age of the applicant at the time of death of his father i.e. deceased government servant. He has submitted that the applicant's age on the date of death was about 27 years. This Bench of the Tribunal as well as a coordinate Bench at Jabalpur have taken a consistent view that a person who is above 25 years of age may be son or daughter cannot be considered to be a dependent family member and, therefore, the case of such person cannot be considered for grant of compassionate appointment. One of such decision delivered at Jabalpur Bench in OA No.6954/98, Shiv Charan v. UOI, on dated 29.4.2002 wherein both of us were party to the judgement, is being placed on record. The controversy involved in the present case is squarely covered on all fours and we do not think it necessary to repeat the discussion afresh and have no hesitation in following the said judgement in the present case. Since the applicant has admittedly completed more than 25 years of age at the time of death of his father, the applicant cannot be considered to be a dependent family member for the purpose of grant of compassionate appointment and, therefore, he is not entitled for the relief he has claimed for."

In these circumstances also, the case is not fit for consideration. On this analogy even other five sons of the deceased employee are adults/major, three of whom are married and cannot be considered dependent on the widow. It is admitted by the applicant that the family owns a house and as per record the land owned by them though largely un-irrigated does give some income. As such, the sons cannot be considered liability on the widow who is thus left with family pension she receives to manage her own affairs. He also pointed out that reconsideration of this case in subsequent meeting of the CAC held on 3.4.2002 was not possible in view of the fact that the committee's meeting held on 11.1.2001 had not found the case deserving enough for reconsideration, and the circumstances remaining unchanged there is no ground for reconsideration of the case in subsequent meetings of the CAC also.

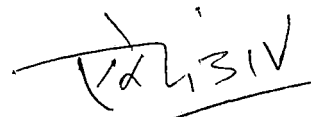
7. I have given thoughtful consideration to all the pleadings and am

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convinced that even though the deceased government servant had a large family, the pensionary benefits received by the widow and the regular family pension she is receiving are substantial for her to manage her own affairs. Her six sons, all of whom are grown up, the applicant himself being 32 years of age at the time of this decision cannot be considered liability upon her as they are grown up and capable enough to look after themselves. The rules regarding compassionate appointment are very clear that this extra-ordinary method of recruitment is an exception to the general rule of appointment in government service which is based on merit and at no point was meant to provide employment to dependants of every deceased Govt. Servant. The number of vacancies available to the respondents have also to be borne in mind while comparing the cases available for consideration with the CAC and recommendation has to be judiciously made in favour of only the most indigent cases. The applicant has relied on the argument that his application has been rejected solely on the basis of pensionary benefits and he has cited a recent decision of Hon'ble High Court in the case of Shiv Kumar Sharma v. Union of India, DB Civil Writ Petition No. 2147/2002, decided on 31.12.2003, in which it was held that retiral benefits received by heirs of the deceased Govt. servant cannot be made ground for rejecting the application for compassionate appointment. During arguments, he has placed reliance on decision of Hon'ble Supreme Court in case of Balbair Kaur & Anr. v. Steel Authority of India Ltd. & Ors., Civil Appeal No. 11881/1996, decided on 5.5.2000, reported at 2000 SCC (L&S) 767. However, I find that the facts of these cases are distinguishable from the facts of this OA inasmuch as rejection in this OA is not solely on the basis of pensionary benefits but other facts of comparative liability of the widow, <sup>dependants &</sup> limited number of vacancies available to the respondents and the aim of the policy of compassionate appointment being that appointment has to be given to only the most deserving cases, have also been taken into account while issuing the impugned order. Above all, I am inclined to rely on the decision of Jodhpur Bench of the Tribunal in case Omprakash v. Union of India,

(supra), in which after careful consideration of the age and capacity of grown up sons and daughter of the deceased Govt. Servant, it was decided that the applicant being above 25 years of age cannot be considered to be a dependant family member for the purpose of compassionate appointment.

8. In view of the above, the present application is found to be bereft of merit and is dismissed with no order as to costs.



(A.K. BHANDARI)

MEMBER (A)