

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 473 of 2005

Jabalpur this the 14th day of March, 2006.

Hon'ble Mr. G.Shanthappa, Judicial Member

1. Neemiya Devi, W/o late Gujrat Singh Singh,
Aged about 43 years, R/o village - Ramtila,
P.O.-Bijadandi, District Mandla (MP).

2. Ranjit Kumar, S/o late Gujrat Singh Singh,
Aged about 23 years, R/o village - Ramtila,
P.O.-Bijadandi, District Mandla (MP).

- Applicants

(By Advocate - Shri V.Tripathi)

VERUS

1. Union of India through its Secretary,
Ministry of Health and Family Welfare,
New Delhi.

2. The Director General of Health Services,
C.G.H.S.Division, Nirman Bhawan,
New Delhi-11

3. The Joint Director, Central Govt. Health Services,
249, Napier Town, Jabalpur (MP) **- Respondents**

(By Advocate - Shri S.K.Mishra)

ORDER(Oral)

The above Original Application was filed under Section 19 of the Administrative Tribunals Act, 1985, claiming the following main relief :-

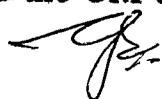
“Set aside the order dated 6.1.2005 Annexure-A-1 & the order dated 1.3.2005 Annexure-A-2. Direct the respondents to consider the applicant No.2 for appointment on a suitable post. If necessary set aside the office memorandum

(Signature)

No.14014/9/2002 Estt.(D) dated 5.5.2003 issued by the DOPT".

2. The brief facts of the case according to the applicant are that the father of applicant no.2 died in harness on 26.6.2001 leaving behind applicants 1 & 2 and Sunil Kumar his son and Ranjita his daughter. The daughter is minor. The first applicant was granted family pension and the second applicant submitted his representation for compassionate appointment, immediately after the death of his father, on 8.10.2001. The representation was referred to the competent authority to take a decision. The second respondent has rejected the request of the applicant on 6.1.2005 on the ground that there are no vacancies at Jabalpur and that since the claim of the second applicant was pending for three years, the belated application cannot be considered. Subsequently one more order was issued on 1.3.2005. Since there was already an order on 6.1.2005, the same reasons are assigned in the order dated 1.3.2005. The applicants are challenging the said impugned orders on the ground that the second respondent has failed to consider the case of the second applicant for compassionate appointment within a period of three years as per OM dated 5.5.2003. Hence the impugned order is illegal, bad in law and violates Articles 14 and 16 of the Constitution of India.

3. The respondents have filed a detailed reply rejecting the relief of the applicant. The respondents have supported the impugned orders on the ground that they have considered the case of the applicant as per OM dated 9.10.1998. As per the OM dated 5.5.2003 an application for grant of compassionate appointment can be considered if there are vacancies under 5% direct recruitment quota. Since only one vacancy was available, the second applicant was not eligible to be considered. Accordingly, the impugned order was issued on 6.1.2005. The respondents have supported the action taken by them on the ground that they have complied the OM dated 5.5.2003 also. Along with the reply, they



have produced the OM dated 5.5.2003 and the order dated 6.1.2005.

4. The applicant has filed rejoinder. In the rejoinder, he has requested for a direction to call for the records from the respondents, relating to consideration of compassionate appointment between the years 2001 and 2005.

5. While arguing the case, the learned counsel for the applicant has produced the orders of this Tribunal in OA 917/2005 (Kalyan Ashish De Vs. Union of India & ors) dated 9.3.2006; Division Bench judgment of the Hon'ble High Court of Madhya Pradesh in the case of T.Swamy Dass Vs. Union of India and others, 2002 (3) MPLJ 242; and OM dated 9.10.1998. The learned counsel for the respondents has asserted that the said judgment is not applicable to the facts of the present case.

6. I have heard the learned counsel of both the parties and perused the pleadings and documents available on record.

7. It is an admitted fact from either side that the father of the applicant died in harness on 26.6.2001 and the second applicant has submitted his representation for compassionate appointment on 8.10.2001. As on the, date of the death of the father of the second applicant and on the date of the representation submitted by the second applicant, the OM dated 9.10.1998 was applicable. The ground taken by the applicant is that the respondents have not complied the OM dated 5.5.2003.

8. I have carefully examined the impugned orders which refers that as per OM dated 5.5.2003, "if compassionate appointment to genuine and deserving cases is not possible in the first year, due to non-availability of regular vacancy the prescribed committee may review such cases to evaluate the financial conditions of the family to take the case into the second year for consideration subject to availability of a clear vacancy, but the maximum period upto which the case can be considered is for three years only. After this



period the case will be finally closed and need not be considered again".

9. Para 8 of the OM dated 9.10.1998, which is applicable to the facts of the present case, relates to the belated request for compassionate appointment, which reads as under"

"(a)Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the level of the Secretary of the Department/Ministry concerned.

(b) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration".

Here is the case, where the applicant has submitted his representation immediately after the death of his father.

10. Para 12 of the OM dated 9.10.1998, which relates to the procedure to be followed while considering the case for compassionate appointment, reads as under:

"12. Procedure

(a) The pro forma as in Annexure may be used by Ministry/ Departments/ Offices for ascertaining necessary information and processing the cases of compassionate appointment.

(b) The Welfare Officer in each Ministry/Department/Office should meet the members of the family of the Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds. The applicant should be called in person at the very first stage and advised in person about the requirement and formalities to be complied by him.

© An application for appointment on compassionate grounds should be considered in the light of the instructions issued from time to time by the Department of Personnel and Training (Establishment Division) on the subject by a Committee of Officers consisting of three officers – one Chairman and two Members – of the rank of Deputy Secretary/ Director in the Ministry/Department and officers of equivalent rank in the case of Attached and Subordinate Offices. The Welfare Officer may also be made one of the Members/Chairman of the Committee depending upon his rank. The committee may meet during the second week of every month to consider cases received during the previous month. The applicant may also be granted personal hearing by the Committee, if necessary, for better appreciation of the facts of the case.

© Recommendation of the Committee should be placed before the Competent Authority for a decision. If the Competent Authority disagrees with the Committee's recommendation, the case may be referred to the next higher authority for a decision".

11. I have carefully considered the reply submitted by the respondents, in which they have contended in para 4 of the reply-statement that 92 applications had been received for compassionate appointment from various CGHS units. The respondents have considered the case of the second applicant, including the other 92 applicants. But due to lack of vacancy, no appointment on compassionate ground could be made.

12. I have carefully examined the impugned orders. The impugned orders refers only to OM dated 5.5.2003 and they have rejected the request of the second applicant, merely on the ground that the case of the second applicant was pending for more than three years. That is not the spirit of OM dated 9.10.1998 and dated 5.5.2003. The ingredients of the said OM have not been properly applied. Accordingly, the impugned orders are not sustainable and are liable to be quashed and accordingly, I quash the impugned orders.



13. The learned counsel for the applicant has cited the order of this Tribunal in the case of Kalyan Asish De (supra). Para 4 of the said order is relevant and is reproduced as under:

“4. In this context, the Committee constituted under Clause 12 of the Scheme published by the Government of India, Department of Personnel & Training vide OM No.14014/6/94-Estt(D) dated 9.10.98, available at page 308 (sic – 302) onwards of Swamy’s Pension Compliation-16th Edition published in 2002 is relevant. The committee has to bear in mind, inter alia, Clause 1 – Object; Clause-5-Eligibility, Clause-12-Procedure, particularly sub Clause C thereto and Clause 16C and (e). I do not propose to expatiate the said provisions in this case. Admittedly, the impugned order does not deal with all those relevant matters. In the circumstances, I quash the order dated 15.4.2005(A-1) and direct the Committee to consider the matter afresh strictly in compliance with the provisions of this Scheme particularly the relevant Clauses mentioned above and to take a decision in accordance with law and in the light of the observations contained herein above by passing a speaking order within a period of three months from the date of receipt of this order. The applicant will produce a copy of this order before the 1st respondent for compliance”.

In the judgment of the Hon’ble High Court of Madhya Pradesh which relates to the compassionate appointment, the decision of the respondents applying policy of 1998 was set aside. There was a direction to the respondents to consider the case of petitioner for appointment on compassionate ground against Group-D post on the basis of policy dated 13.6.1987. In that case, the father of the petitioner died on 20.10.1992 for which the policy dated 13.6.1987 was applied, as per para 8 and 10 of the said judgment.

14. Here, the impugned orders are not speaking orders. No reasons are assigned. Hence I quash the impugned orders with a direction to consider the case of the applicant in accordance with the scheme - OM dated 9.10.1998, and subsequent clarification by way of OM, which was in force as on the date of death of the father of the second applicant.



15. With the above observation, the OA is allowed in part and the respondents are directed to consider the case of the applicant as observed in para 12 to 14 above. No costs.

G. Shanthappa

(G. Shanthappa)
Judicial Member

rkv

पूळांकन सं ओ/व्या.....जबलपुर, दि.....
प्रतिलिपि अधोधितः—

- (1) राधिव, उच्च न्यायालय दा.ए हुमेरियाज, जबलपुर
- (2) आदेदा श्री/ श्रीमती/ द्वा. के काउंसल
- (3) प्रत्यक्षी श्री/ श्रीमती/ द्वा. के काउंसल
- (4) वंशपाल, के.प्र.जा., जबलपुर द्वारा दीउ

V-Tripathi *PNJBP*
S.K. Mishra *PNJBP*

सूचना एवं आवश्यक कार्यालय
कार्यालय
कार्यालय
कार्यालय

For seal
20/3/06