

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 22nd May, 2006

ORIGINAL APPLICATION No 229/2005.

CORAM:

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

1. Smt. Prakash Wati
w/o late Shri Baney Singh,
Ex-A.S.A. aged about 47 years,
resident of 27/224-A,
Kaitwali Vakhar,
Mathura Gate,
Golbag Road,
Bhatarpur.
2. Shri Khem Raj
s/o Late Shri Baney Singh,
Ex-A.S.A., aged about 22 years,
r/o 27/224-A, Kaitwali Vakhar,
Mathura Gate,
Golbag Road,
Bhatarpur (Rajasthan).

..Applicants

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through
Chief Post Master General,
Rajasthan Circle, Jaipur.
2. Sr. Supdt. R.M.S.
Jaipur Division,
Jaipur - 302 001 (Rajasthan)

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER

Per M.L.Chauhan

Applicant No.1 is widow whereas applicant No.2 is son of late Shri Baney Singh. By way of this OA, the applicants have prayed that the letter dated 16.2.2005 (Ann.A1) be declared as null and void and respondents may be directed to consider the case for appointment on compassionate grounds.

2. Briefly stated, facts of the case are that late Shri Baney Singh while working as Sorting Assistant under Senior Superintendent, RMS, Jaipur Division, Jaipur died on 16.4.2003. The deceased employee left behind his widow, mother, two married sons and one unmarried daughter. It is the case of the applicant that vide letter dated 29.5.2003 (Ann.A4) request was made by applicant No.1 for appointment of applicant No.2 on compassionate grounds. The matter was placed before the Circle Selection Committee (for short CSC) in its meeting held on 1.2.2005 and 1.10.2005. The CSC rejected the case of the applicant thereby making the following observations:-

- “1. The ex-official expired on 16.4.2003.
2. As per synopsis the ex-employee had left widow, mother, two unmarried sons and one unmarried daughter.
3. As per educational qualification, the applicant was eligible for appointment on compassionate grounds on the post of Postman.
4. The family is getting family pension amounting to Rs. 2400+ DR
5. The family has received terminal benefits to the tune of Rs. 1,92,243.
6. In assets the family has own house to live in.
7. There is income of Rs. 7565/- P.month

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8. There is one/two earning member in the family. Widow is employed in State Govt.

The Committee considered the case in the light of instructions issued by DO P&T OM dated 9.10.98 followed by clarification issued vide OM dated 3/12/99, 20/12/99, 28.12.99 and 24.11.2000 and vacancy position of the Cadre.

The committee after objective assessment of financial condition of the family did not find the family in indigent condition and hence the case has been rejected.”

The said recommendations of the CSC was conveyed to the applicant No.2 vide letter dated 16.2.2005 (Ann.A1). It is this order which is under challenge in this OA. The challenge has been made on two grounds that the deceased employee was suffering from Cancer and huge amount of Rs. two lacs was spent on his treatment with other allied expenses and that the terminal benefits could not have been taken into consideration for coming to the conclusion that the family is in indigent circumstances.

3. The respondents have filed reply. The facts as stated above have not been disputed. The respondents have stated that applicant No.2 as per his educational qualification was eligible for the post of Postman/Mail Guard. The deceased employee left behind widow, his mother, two married sons and one unmarried daughter. The family is getting family pension of Rupees 2400 + DR per month and have received terminal benefits of Rupees 1,92,243/- and is also having his own house to live in. The value of the house is approximately Rs. 4 lacs. In addition to above, Smt.

Prakashwati wife of late Shri Baney Singh Ex. SA is an employee of State Government as per her affidavit submitted alongwith the application for compassionate appointment. She is drawing monthly income of Rupees 7565/- as per income certificate submitted by her to the Department of posts. The CSC after making comparative and objective assessment of financial condition of the families did not find the case of the applicant as most indigent in comparison to the cases for compassionate appointment for the post of Postman, which is reproduced herein below:-

"Sl.No.	Name of applicant	Date of Death of employee	Date of Superannuation	Family Pension	Terminal benefits
1.	Sh. Khem Raj s/o late Sh. Baney Singh	16.4.03	31.7.2015	Rs.2400+DR	192243
2.	Sh. Mahendra s/o late Sh. Chand Karan	23.6.02	30.6.2017	Rs.1755+DR	138353

Family Member	Property	Income of family	Unmarried		Minor		Remarks
			Son	Daug.	Son	Daug.	
5	Own house Value 4 lacs	7565/- P.M. from salary	2	1	1	nil	rejected as the Widow is Employee of State Govt.
4	Own house Value Rs.50000/-"	nil	2	1	1	1	approved

Thus, according to the respondents, against available vacancy only one candidate was approved. The respondents have relied on the decision of the Apex Court in the case of Himachal Road Trnaspport Corporation vs. Dinesh Kumar, AIR 1996 SC 2226 in which it has been held that appointment on compassionate grounds can be made only if a vacancy is available for the purpose. The respondents have also

relied upon the decision of the Apex Court in the case of HSEB vs. Krishna Devi [JT 2003 (3) SC 485 in which it was held that compassionate appointment cannot be claimed as a matter of right against the guidelines prescribed by the Govt. Regarding the fact that the deceased was suffering from Cancer, as such, the amount of terminal benefit has been spent on his treatment, the respondents have categorically stated that there is provision under Medical Rules for reimbursement of expenditure incurred by the Govt. servant in the treatment. Whatever bills submitted by the applicant for reimbursement of medical claim have been sanctioned. Therefore, the version of the applicant regarding spending the amount on the treatment is not tenable. It is on this basis the respondents have stated that the applicant has no case whatsoever.

4. The applicant was given opportunity to file rejoinder. The learned counsel for the applicant submits that the applicant does not intend to file rejoinder. Accordingly, the matter was listed for hearing.

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

6. I am of the view that the applicants are not entitled to any relief for the reasons stated hereinbelow:

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6.1 The learned counsel for the applicants has raised two fold submissions, namely that the deceased employee was patient of Cancer, as such, huge amount of Rs. two lakhs was spent on his treatment and secondly that the terminal benefits cannot be taken into consideration for the purpose of coming to the conclusion that the family is in indigent circumstances. So far as the first submission of the applicants is concerned, the respondents have categorically stated that the deceased employee was entitled to medical reimbursement, as such, the amount spent on his treatment was reimbursable and has already been sanctioned as per Medical Rules. This part of averment made by the respondents in the reply has not been controverted by the applicant. Thus, the vague assertion that amount Rs. two lakhs was ~~Spent~~ on the treatment of the deceased employee cannot be accepted. In any case, such expenditure was incurred during the life time of the deceased employee whereas the terminal benefits were released in favour of the family after the death of the deceased employee. It is not the case pleaded by the applicant in the OA that the applicant has taken loan for the purpose of medical treatment of the deceased employee which amount was liquidated from terminal benefits. As already stated above, the applicant has made a vague assertion that the deceased employee was suffering

from Cancer, as such, huge amount of Rs. two lakhs was spent on his treatment. Thus, the contention of the applicant that huge amount was incurred on the medical expenses of the applicant cannot be accepted, more particularly, in view of the stand taken by the respondents that the claim of the applicant for treatment was sanctioned.

6.2 So far as second contention of the applicant that retiral benefits cannot be taken into account for the purpose of considering the indigent circumstances of the family, the matter is no longer res-integra. The decision relied by the learned counsel for the applicant in the case of Govind Prakash vs.L.I.C. 2005 (10) SCC 289 was taken into consideration by this Tribunal in OA No.593/2005, Smt. Urmila Devi and anr. Vs. Union of India and ors. decided on 10.1.2006 and this Tribunal after taking notice of some of the relevant provisions of the scheme for compassionate appointment as well as decision of the Apex Court in the case of Punjab National Bank and ors. vs. Ashwini Kumar Taneja [2005 (1) SCC 30] in which it was held that retiral benefits is valid consideration for compassionate appointment and it was observed that the decision rendered by the Apex court in the case of Govind Prakash (supra) was rendered under different scheme and is not applicable to the facts and *iel* circumstances of the case. At this stage, it will be

useful to quote para 6 to 9 of the judgment which is in the following terms:-

"6. Even on merits, the applicants have no case. The object of compassionate appointment is to enable the penurious of the deceased employee to tide over sudden financial crisis and not to provide employment. This is because as a rule appointment in public service should be made strictly on the basis of open invitation of applications and no other mode of appointment nor any other consideration is permissible. However, to this general rule, which is to be followed strictly in all cases of public appointment, there are certain exceptions carried out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee died in harness and leaving his family in penury and without any means of livelihood. In such cases out of humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased employee, who may be eligible for such employment. So, the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis. Laying down the above principle in Umesh Chandra Nagpal vs. State of Haryana, (1994) 4 SCC 138; Jagdish Prasad vs. State of Bihar (1996) 1 SCC 301 and S.Mohan vs. Govt. of T.N. (1998) 9 SCC 485, the Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by the deceased employee.

7. Mere death of an employee is not sufficient to entitle the dependent of the family for compassionate appointment. The Government or the public authority concerned has to examine the financial condition of the family, and it is only when it is satisfied that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The Supreme Court has cautioned that it must be remembered that as against the destitute family of the deceased, there are millions of other families, which are equally, if not more destitute. It is, therefore, pointed out by the Supreme Court in Umesh Chandra

Nagpal and Jagdish Prasad (supra); Director of Education (Secondary) vs. Pushpendra Kumar, (1998) 5 SCC 192 that an exception to the general rule that all appointments in public service shall be made strictly on the basis of open selection on merits, is made in favour of the family of the deceased employee in consideration of the services rendered by him and the legitimate expectations and changes in the status and affairs of the family engendered by erstwhile employment which are suddenly upturned. The Supreme Court also indicated that the compassionate appointment cannot be granted after a lapse of reasonable period if that be so, it must be specified in the rules and the object being to enable the family to tide over the financial crisis which it faces because of sudden death of the sole bread-earned, the compassionate appointment cannot be claimed and offered after long lapse of time moreso, when the crisis is over, it is because, the consideration of such employment is not the vested right which can be exercised at any time in future.

8. The learned counsel for the applicants has argued that the respondents have rejected candidature of the applicant solely on the ground that her financial condition does not bring her in the category of indigent, which is contrary to the decision rendered by the Apex Court in Govind Prakash vs. L.I.C., 2005 (10) SCC 289 whereby in para 6 of the judgment the Apex Court has held that the scheme for compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as the benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amount admissible under the rules and also that the income of the elder brother who was engaged in cultivation, cannot be taken into consideration. I am of the view that the judgment relied by the applicant is not applicable in the facts and circumstances of this case. That was a case which was decided under L.I.C. scheme whereas in the present case scheme of compassionate appointment is entirely different. At this stage it will be useful to notice some of the relevant provisions of the scheme of compassionate appointment dealing with balanced and objective assessment of financial condition while considering compassionate appointment. Para 9(d) of the

scheme which was circulated vide DOPT OM dated 30.6.1987 is in the following terms:-

“(d) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government such as the following which have made a significant difference in the financial position of the families of Government servants dying in harness. The benefits received by the family under these schemes may be kept in view while considering case of compassionate appointment.

1. Under the Central Government Employees' Insurance Scheme financial assistance to the family of the deceased Government servant is as under-

Group 'D' Employees	...	Rs. 10,000
Group 'C' Employees	...	Rs. 20,000
Group 'B' Employees	...	Rs. 40,000
Group 'A' Employees	...	Rs. 80,000

In addition, nearly 2/3rd of the amount contributed by the Government servant to the fund is also payable along with the above amount.

2. Benefit of encashment of leave to the credit of the deceased Government servant at the time of his death subject to a maximum of 240 days.
3. Entitlement of additional amount equal to the average balance in the GPF of the deceased Government servant during the three years immediately preceding the death of the subscriber subject to certain conditions under the Deposit Linked Insurance Scheme.
4. Improved family pension.
5. Assistance from Compassionate Fund, wherever necessary.”

Para 9(d) was further clarified vide OM dated 23.9.1992, relevant portion of which is in the following terms:-

“It is clarified that the intention behind the instructions contained in para 9(d) of this Department's OM dated 30.7.1987, referred to above is not that application for compassionate appointment should be rejected merely on the ground that the family of deceased Government servant has received the benefits under the various welfare schemes. While these benefits should be taken into account, the financial condition of the family has to be assessed taking into its liabilities and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc. so that a balanced and objective assessment is made on the financial

condition of the family while considering a request for appointment on compassionate ground.”

The clarification as issued vide OM dated 23.9.1992 has also been incorporated in para 16(c) of the scheme for compassionate appointment as circulated vide letter dated October 9, 1998 which is also in the following terms:-

“The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. 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 (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc.”

9. Thus, from the portion of the scheme as reproduced above, it is quite evident that while considering request for appointment on compassionate grounds benefits received under various welfare schemes including retiral benefits has to be taken into consideration alongwith other factors such as size of the family, presence of earning member, ages of children and essential needs of the family and also other relevant factors. Even the Apex Court in the case of Punjab National Bank and Ors. vs. Ashwini Kumar Taneja, 2005 (1) SCC 30 has held that retiral benefit is a valid consideration for compassionate appointment. It was further held that compassionate appointment has no relevancy after death of an employee. At this stage, it will be useful to quote para 8 of the judgment where the scheme for employment of dependents of the employees who died while in bank service on compassionate grounds has been reproduced which is almost para materia to the scheme applicable in the instant case and thus reads:-

“8. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what had been held recently in The General

Manager (D&PD) and Ors. vs. Kunti Tiwary and Anr., Civil Appeal 126 of 2004 disposed of on 5.1.2004. It was categorically held that the amounts have to be taken into consideration. In the instant case, there was a scheme called 'Scheme for Employment of the Dependants of the Employee who die while in the service of the Bank service on Compassionate Grounds (in short the 'scheme') operating in the appellant No.1 bank which categorically provides as follows:-

"Financial condition of the family

The dependents of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following:

- (a) Family Pension
- (b) Gratuity amount received;
- (c) Employee's/Employer's contribution to PF
- (d) Any compensation paid by the Bank or its Welfare Fund
- (e) Proceeds of LIC policy and other investments of the deceased employee
- (f) Income of family from other sources
- (g) Employment of other family members
- (h) Size of the family and liabilities, if any etc."

It is most respectfully submitted that the Board of Directors of the petitioner Bank had approved the above said scheme, which was based upon the guidelines circulated by Indian Bank Association to all the Public Sector Banks which in turn are based upon the law laid down by this Hon'ble Court in the case of Umesh Kumar Nagpal vs. State of Haryana and ors, reported as 1994 (4) SCC 138. The Scheme after approval was circulated vide PDCL 6/97 read with PDCL 11/99 dated 17.4.1999."

6.3 Thus, the reasoning given by this Tribunal in the case of Urmila Devi (supra) as reproduced above is squarely applicable in the facts and circumstances of the instant case, hence the applicant is not entitled to any relief.

6.4 That apart, the applicant is not entitled to any relief yet on another ground. From the material placed on record, it is clear that the CRC recommended one case against one vacancy which was found most indigent and rejected other cases including the case of the

applicant due to non-availability of vacancy under the ceiling of 5% prescribed by the Government for the purpose. Admittedly, the approved candidate for compassionate appointment has received terminal benefits and family pension much less as compared to the family of the applicant and was deserving candidate as compared to the applicant. Even on this aspect, no submission has been made by the learned counsel for the applicant and rightly so. The Apex Court in number of cases has consistently held that compassionate appointment can be made only if vacancy is available. Since there was no vacancy available and this Tribunal cannot give direction to create vacancy, the applicant is not entitled for any relief even on this ground also. That apart, it has come on record that the family is receiving family pension of Rs. 2400 + DR per month and applicant No.1 is also State Govt. employee who is drawing salary of Rs. 7565/- per month which amount in the course of time will be increased. Thus, even if for arguments sake, the terminal benefits received by the family to the tune of Rs. 1,92,243/- is to be ignored, even then monthly income of the family is more than 10,000/- per month. Under these circumstances, it cannot be said that condition of the family is such which requires immediate assistance, but for offering appointment on compassionate grounds, the family cannot survive. The family, at the most is having liability of old mother

of the deceased employee and one unmarried daughter. Two major sons can contribute to the income of the family. Thus, taking overall view of the matter, I am of the firm view that it is not a case where condition of the family can be said to be indigent requiring immediate assistance by way of compassionate appointment.

7. For the foregoing reasons, the present OA is bereft of merit and the same is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)
Member (Judicial)

R/