

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 11th day of May, 2006.

ORIGINAL APPLICATION No 337/2005.

CORAM:

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

Vijay Kumar Khatik,
s/o Shri Chhote Lal Chhilwal,
aged about 27 years,
r/o village Rasgun,
Police Station Khairthal,
Tehsil Mundawar,
District Alwar.

..Applicant

(By Advocate: Shri P.K.Sharma)

Versus

1. Union of India through
the Chief Post Master General,
Rajasthan Circle,
Department of Posts India,
Jaipur.
2. Senior Superintendent, Post Offices,
R.M.S., Jaipur Division, Jaipur,
Department of Posts India,
Jaipur.
3. Inspector, Jaipur Division-III,
R.M.S.Bandikui,
Department of Post India,
Bandikui.

.. Respondents

(By Advocate: Shri S.R.Samota, proxy counsel to Shri
Tej Prakash Sharma)

ORDER

Per M.L.Chauhan.

The applicant has filed this OA thereby praying for the following reliefs:-

"In view of the facts and grounds mentioned in the Paras nos 5&6, the applicant prays to direct the respondents to reconsider the case of the applicant and to appoint the applicant on compassionate ground at the place of his late father Chhote Lal Chhilwal (S.A.) in the respondent department.

Any other order or direction which your Honour may deem fit and proper in the facts and circumstance of the case may also kindly be passed in favour of the applicant and against the respondents."

2. Briefly stated, facts of the case are that father of the applicant Shri Chhote Lal Chhilwal, while working as Sorting Assistant in Sub Record Office, R.M.S., Alwar expired on 28.4.1999. At the time of death of late Shri Chhote Lal, the family consist of only two persons i.e. Smt. Kamla, widow of the deceased and the applicant. After the death of late Shri Chhote Lal, Smt. Kamla requested vide application dated 28.6.99 for giving appointed to her son, Vijay Kumar, who was minor at that time and requested the authorities to keep one post for him. A copy of such representation has been placed on record as Ann.A5. It is further case of the applicant that mother of the applicant further moved an application dated 1.11.99 before the Inspector, JP-III, R.M.S., Bandikui (Jaipur) to released family pension, gratuity and other benefits of her late husband and also to provide

appointment to the applicant on compassionate grounds at his father's place as soon as the applicant becomes major. It is further pleaded that on 20.11.99, the Inspector, R.M.S.Bandikui informed mother of the applicant that the enquiry is required in this regard, therefore, she was requested to be present and subsequently vide letter dated 8.4.2000 (Ann.A9) mother of the applicant was suggested to make application to the Chief Post Master General, Rajasthan Circle, Jaipur. Accordingly, mother of the applicant submitted application dated 11.12.2003 for giving appointment to her son on compassionate grounds which application was placed before the Circle Relaxation Committee (in short CRC) in its meeting held on 1.2.2005 and 10.2.2005 alongwith other cases against one vacancy of Group-D. The CRC while considering the case of the applicant observed that the applicant as per his educational qualification was eligible for Group-D (TC) post. The deceased employee left behind widow and one unmarried son. The family is getting family pension of Rs. 2200 + D.R. per month and received terminal benefits of Rs. 1,13,945. The CRC after making comparative and objective assessment of financial condition of the family did not find the case as most indigent and the case was rejected. The decision of the CRC was communicated to the applicant vide impugned letter dated 18.2.2005 (Ann.A1).

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above, have not been disputed. The respondents alongwith reply have also annexed copy of comparative chart showing compassionate appointment against one post of Group-D in the year 2003 vis-à-vis applicant and Smt. Geeta Devi, who has been approved for compassionate appointment against one of the vacancy. The respondents have further stated that appointment on compassionate grounds can be made only if vacancy is available and compassionate appointment cannot be claimed as a matter of right against the guidelines prescribed by the Government. Since the case of the applicant was not deserving, as such it was rightly rejected.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

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

5.1 The learned counsel for the applicant argued that the case of the applicant for compassionate appointment has not been considered in right perspective. According to the learned counsel for the applicant, the retiral benefits could not have been taken into consideration while considering the case for compassionate appointment as the family is

receiving family pension of Rs. 2200/- per month which amount may decrease in the time to come. I have given due consideration to the submissions made by the learned counsel for the applicant.

5.2 I am of the view that the present OA deserved to be rejected for more than one reason. At the outset, it may be stated that at the time of death of late Shri Chhote Lal, the applicant was 15 years of age. It is not disputed that the case of the applicant was required to be considered in the light of Office Memorandum issued by the Department of Personnel and Training dated October, 1998. At this stage it will be useful to quote clause 8(b) of the scheme vide above OM, which reads as under:

“(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.”

5.3 As already stated above, father of the applicant expired on 28.4.99. At that time, the applicant was minor. Thus, in view of provisions contained in clause 8(b), request of the applicant for compassionate appointment could not be considered as the applicant was minor in the year 1999. He could be appointed upon death of his father provided he is eligible therefore. If he did not have eligibility, question of considering his case for compassionate appointment did not arise.

6. At this stage, it will be useful to quota decision of the Delhi high Court in the case of Veer Mohd. Vs. Municipile Coropration of Delhi, 2002 (2) AISLJ 467 which is squarely applicable to the facts and circumstances of the instant case. In that case, father of the appellant therein expired in 1983. The appellant was minor at that time. The appellant prayed for appointment on compassionate grounds in 1991 i.e. after 8 years after the death of his father. The Hon'ble High Court held that a minor has no right of employment. He may be appointed upon the death of his father provided he was eligible therefor. If he did not have eligibility, question of considering his case for compassionate appointment did not arise. Thus having regard to the facts of that case it was held that the appellant was minor at the time of death of his father. Further, he applied after 8 years of death of his father. Thus, the judgment of the learned Single Judge whereby appointment on compassionate ground was denied was upheld. The Hon'ble High Court further observed that compassionate appointment is exception to Article 16(2) of the Constitution and the same should be strictly construed. The constitutional provisions cannot be negated by applying the doctrine of social justice. In the instance case also the applicant was minor in 1999, thus not eligible for appointment and application for appointment on

compassionate grounds made by the mother of the application on behalf of the applicant, which has been entertained by the respondents, does not make him eligible for compassionate appointment in terms of the policy decision as quoted above. Thus, the case of the applicant is required to be rejected on this score alone. It was not open for the CRC to consider case of the applicant who was not eligible for compassionate appointment in terms of the scheme in vogue.

7. That apart, even if this aspect is to be ignored, I am of the view that the applicant has not made out any case for interference of impugned order Ann.A1. The contention raised by the learned counsel for the applicant that retiral benefits could not be taken into consideration while assessing assets, liabilities and financial condition of the family, is wholly misconceived. As per the scheme formulated by the DOPT for the purpose of granting compassionate appointment as circulated vide DOPT OM dated 30.6.87 (para 9(d) of the scheme) which was further clarified vide OM dated 23.9.92 and also as per the scheme dated October 9, 1998 which is in vogue and on the basis of which the case of the applicant was considered, para 16(c) of 1998 scheme made it clear that while considering request for appointment on compassionate grounds, a balanced and objective assessment has to be made

taking into account its assets and liabilities (including benefits received under various welfare schemes) and all other relevant factors such as presence of an earning member, size of the family, ages of the children and the essential needs of the family etc. The case of the applicant has not been rejected solely on the basis of retiral benefits. The respondents have also taken into consideration, size of the family as well as assets and liabilities of the family and only thereafter the Committee came to the conclusion that condition of the family is not so indigent in comparison to Smt. Geeta Devi. Thus, no fault can be found in the impugned order whereby the case of the applicant for compassionate appointment has been rejected.

8. Further, the Apex Court in the case of Punjab National Bank and Ors. vs. Ashwini Kumar Taneja, 2005

(1) SCC 30 has held that retiral benefits is a valid consideration for compassionate appointment. It was further held that compassionate appointment has no relevancy after a long period after death of an employee. Further from the material placed on record, it is clear that at the relevant time there was only one vacancy available in Group-D category against which Smt. Geeta Devi was approved by the Committee for appointment on compassionate grounds. From the material placed on record it is also clear that Smt.

Geeta Devi was entitled to family pension of Rs.1450/- per month as against the applicant where the family pension is Rs. 2200/- per month. Besides it, the amount of terminal benefits received by Smt. Geeta Devi was to the tune of Rs. 6750/- as against Rs. 1,13,945 in the case of the applicant. Further, family of Smt. Geeta Devi consist of herself, two minor sons and one daughter, as such the family not only have liability of 4 members as compared to only two members in the case of the applicant but also there were two minor sons and one daughter. As such, if the Committee has approved name of Smt. Geeta Devi as against the applicant against one vacancy, no infirmity can be found in the impugned order whereby case of the applicant for compassionate appointment was rejected.

9. The law on this appoint is fairly settled by the Apex court. 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.

10. 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-earner, 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.

11. Thus viewing the matter from any angle, I am of the view that the applicant has not made out any case for interference of this Tribunal. Accordingly, the OA is dismissed with no order as to costs.



(M.L.CHAUHAN)

Judicial Member

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