

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of January, 2006

ORIGINAL APPLICATION No 593/2005.

CORAM:

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

1. Smt. Urmila Devi,
w/o late Shri Pooran Chand Sharma,
aged about 48 years,
r/o village Akhey Gargh via
Kherli,
Distt. Bharatpur.
2. Hemant Sharma
s/o late Shri Pooran Chand Sharma,
aged about 19 years,
r/o Village Akhey Gargh
via Kherli,
Distt. Bharatpur.

..Applicants

(By Advocate: Mr. R.N.Mathur)

Versus

1. Union of India through
Secretary,
Department of Post and Communications,
Govt. of India,
New Delhi.
2. Chief Postmaster General,
Rajasthan Circle,
Jaipur.
3. Senior Superintendent Posts,
Alwar Division,
Rajasthan.

.. Respondents

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ORDER (ORAL)

Applicant No.1 is widow whereas applicant No.2 is son of late Shri Pooran Chand Sharma, who died on 30.10.1997 while working on the post of Postman, Alwar Division. By way of this OA, the applicants have challenged the order dated 11.2.2003 communicated by the Senior Superintendent of Post Offices, Alwar Division, Alwar through letter dated 18.2.2003 (Ann.A1) with further direction to the respondents to give appointment to applicant No.2 on compassionate grounds.

2. Facts of the case are that late Shri Pooran Chand Sharma while working on the post of Postman, Alwar Division, Alwar died on 30.10.1997. At the time of death of late Shri Pooran Chand Sharma, his family consist the following members:-

1. Smt. Urmila Devi (wife)
2. Ms. Chanchal Sharma,
3. Hemant Sharma
4. Amit Sharma
5. Nitin Sharma

After death of Shri Pooran Chand Sharma, applicant No.1 made application for grant of appointment on compassionate grounds which application appears to have been considered by the Circle Selection Committee in its meeting held on 28/29.1.2002 which made the following observations:-

"1. The ex-official expired on 30.10.1997

2. As per synopsis, the ex-employee had left wife, one unmarried daughter and three unmarried sons.

3. As per educational qualification, the applicant was eligible for appointment on compassionate grounds on the post of Group-D (NTC).

4. The family is getting family pension amounting to Rs. 1787 + DR per month

5. The family had received terminal benefits to the tune of Rs. 78,884/-.

6. In assets, the family has own house to live in.

7. The family has landed property 10 bighas and Rs. 6000/- income p.a.

The committee considered the case in the light of instruction issued by DOP&T OM dated 9.10.1998 followed by clarification issued vide OM dated 3.12.1999, 20.12.1999, 28.12.1999 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 was rejected."

The above observation of the Committee was conveyed to the applicant No.1 vide letter dated 18.2.2003 (Ann.A1). After receipt of communication dated 18.2.2003, applicant No.1 represented to the SSPO, Alwar Division vide letter of the same date dated 18.2.2003 (Ann.A3) to give appointment on compassionate appointment to his son (applicant No.2). The applicants have also placed on record copy of another representation dated 11.8.2005 (Ann.A2) addressed to the Chief Postmaster General whereby applicant No.1 has intimated that his son (applicant No.2) whose date of birth is 8th June, 1986 has become

major and as such appointment may be given to him. The applicants have also placed on record letter dated 18.8.2004 whereby the Member of Parliament has recommended the case of the applicant for grant of compassionate appointment. Since nothing was heard from the respondents, the applicants have filed this OA thereby praying that direction may be issued to the respondents to give appointment to applicant No.2 on compassionate grounds.

3. I have heard the learned counsel for the applicant at admission stage. I am of the view that the present application cannot be entertained for more than one reason.

4. From the facts as stated above, it is clear that late Shri Pooran Chand Sharma died on 30.10.1997 and immediately thereafter applicant No.1 took up the matter with the respondents for grant of appointment on compassionate grounds. The matter was placed before the Circle Selection Committee and after taking into consideration the financial condition of the family as well as size of the family and other assets and liabilities of the family, the Committee after objective assessment of the financial condition of the family, did not find the family in indigent condition, hence the case was rejected. The said decision was communicated to applicant No.1 on 18.2.2003.

Admittedly, applicant No.1 did not challenge the said decision, rather on the same date applicant No.1 represented before the SSPO, Alwar that in her place her son (applicant No.2) may be given appointment. The present OA has been presented on 22.12.2005 i.e. after a lapse of about two years 10 months. In para 3 of the OA, the applicant has made the following averments:-

“That applicant further declare that this application is within limitation prescribed in Section 21 of the Administrative Tribunal Act, 1985.”

Thus, the present OA is hopelessly time barred in view of the provisions contained under Section 21 of the Administrative Tribunals Act, 1985 as the same ought to have been filed within a period of one year. The applicant has also not filed any application for condonation of delay. As such, the impugned communication dated 18.2.2003 (Ann.A1) whereby the committee has specifically observed that after objective assessment of the financial condition of the family, the committee did not find the family in indigent condition, hence the case was rejected, cannot be interfered and the OA cannot be entertained in view of the law laid down by the Apex Court in the case of Ramesh Chand Sharma vs. Udhamp Singh Kamal, 2000(1) ATJ 178 whereby the Apex Court has held that where an application has been filed beyond the period prescribed under Section 21 of the Administrative Tribunals Act and the same is not accompanied by

application for condonation of delay, the OA can neither be admitted nor entertained.

5. Now let me examine the case of applicant No.2 whether he is entitled to any relief. Admittedly, applicant No.2 was of 10 years age at the time of death of late Shri Pooran Chand Sharma, who died on 30.10.1997. The case of applicant No.1 was considered in the light of OM issued by the DOPT dated October 9, 1998. At this stage, it will be useful to reproduce clause 8(b) of the scheme 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.”

As already stated above, father of applicant No.2 expired on 30.10.1997. At that time applicant No.2 was minor. Thus, in view of the provisions contained in clause 8(b) of the scheme, request of applicant No.2 for compassionate appointment could not be considered as the applicant was minor in 997. A minor has no right of employment. He could be appointed upon death of his father provided he was eligible therefor^{if}. If he did not have eligibility, question of considering his case for compassionate appointment did not arise.

6. Even on merits, the applicants have no case. The object of compassionate appointment is to enable the

to family
 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 quota 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 Dependents 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

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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."

10. At this stage, it will be useful to quota decision of the Delhi high Court in the case of Veer Mohd. Vs. Municiple 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

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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 in 1997 was minor, thus not eligible for appointment and application for appointment on compassionate ground was also made after 6 years.

11. Thus viewing the matter from any angle, I am of the view that the applicants have not made out any case for interference of this Tribunal. Accordingly, the OA is dismissed at admission stage.



(M.L.CHAUHAN)

Judicial Member

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