

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 11th day of October, 2006

ORIGINAL APPLICATION No 366/2006.

CORAM:

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

Buddhi Prakash Gautam,
s/o Shri Radhey Shyam Sharma,
aged about 24 years,
r/o Village Deoli Kalan,
District Kota.

..Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Chief Postmaster General,
Rajasthan Circle,
Jaipur.
3. Senior Superintendent,
Post Offices, Kota Division,
Kota.

.. Respondents

(By Advocate: ..)

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ORDER (ORAL)

The applicant has filed this OA thereby praying for quashing order dated 19.6.2006 (Ann.A1) whereby case of the applicant for appointment on compassionate grounds was rejected on the ground that one of the son of the deceased namely Vishnu Kumar had applied for compassionate appointment and he was informed vide letter dated 21.3.2006, as such, there is no provision under the scheme to consider case for compassionate appointment of further dependent (second son).

2. Briefly stated, facts of the case are that father of the applicant while working in the Department of Posts at Deoli Kalan died on 20.6.1983, as can be seen from the death certificate at page 17. At the time of death of the deceased employees, the family consist of the following members:-

- i) Smt. Sushila Devi, Widow
- ii) Miss Chandrakala, daughter - unmarried
- iii) Miss Sheela Kumari, daughter - unmarried
- iv) Mr. Vishnu Kumar, son - unmarried
- v) Mr. Buddhi Prakash, son - unmarried

From the material placed on record and as can be seen from the impugned order Ann.A1 previously Shri Vishnu Kumar, brother of the applicant applied for compassionate

appointment. His case was considered and he was informed about the decision vide letter dated 21.3.2001. This order is not under challenge ^{before} in this Tribunal. However, subsequently, the applicant also applied for compassionate appointment. His case was processed by the office and submitted to the higher authorities for consideration. However, vide impugned order Ann.A1, the applicant was informed that there is no provision in the scheme to consider the applicant (second dependent) for appointment on compassionate grounds. It is this order, which is under challenge before this Tribunal. The grievance of the applicant is that the application of the applicant was kept pending by the respondents for a period of 5 years and the same was rejected without considering case of the applicant. As such, direction may be given to the respondents to consider his case for compassionate appointment. The applicant has placed reliance on the judgment rendered by the Single Bench of the Hon'ble Rajasthan High Court in the case of Parmeshwar Kumar Verma vs. State of Rajasthan, 2006 (2) SLR 213 whereby it was held that in the matter of compassionate appointment a minor is entitled to apply on attaining the age of majority as per provisions contained in Section 6 of the Limitation Act, 1963 and such application cannot be rejected on the ground of delay and latches.

3. I have given thoughtful consideration to the submissions made by the learned counsel for the applicant. I am of the view that the present application deserves to be rejected in limine for the reasons stated hereinunder. Admittedly, father of the applicant died on 20.6.1983. The present application has been filed after a lapse of about 23 years. The Apex Court in number of decisions has stated that the claim made by the dependents on attaining the age of majority after number of years cannot be entertained as there cannot be reservation of vacancies till such time the dependent becomes major. The Apex Court has further held that appointment on compassionate grounds is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. It is further held that the basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to tide over the sudden financial crisis. The Apex Court in number of decisions has held that claim of person concerned for appointment on compassionate appointment is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service.

Appointment on compassionate ground cannot be claimed as a matter of right. It was further held that High Courts and Administrative Tribunal cannot confer benediction impelled by sympathetic consideration to make appointments on compassionate grounds when the regulations frame in respect thereof do not cover and contemplate such appointment. This is what the Apex Court has held in the case of State of Haryana vs. Rani Devi, (1996) 5 SCC 308, Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC (L&S) 930, In the case of Sushma Gosain vs. Union of India, 1989 SCC (L&S) 662, The Apex Court observed that in all claims of appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati vs. Union of India, 1992 SCC (L&S) 135, Union of India vs. Bhagwan Singh, 1996 SCC (L&S) 33. In State of U.P. vs. Paras Nath, 1998 SCC (L&S) 570 it was held that the purpose of providing employment to the dependent of a government servant dying in harness in preference to

anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years. These aspects were highlighted in State of Manipur vs. Md. Rajaodin, 2003 SCC (L&S) 1070, State of Haryana vs. Ankur Gupta, 2003 SCC (PO&S) 1165, Haryana SEB v. Naresh Tanwar, 1996 SC (L&S) 816, Haryana SEV vs. Hakim Singh, 1998 SCC (L&S) 31 and Punjab National Bank vs. Ashwini Kumar Taneja, 2004 SCC (L&S) 938.

4. To the similar effect is the judgment rendered by the Hon'ble Apex Court in the case of Sanjay Kumar vs. State of Bihar and ors., AIR 2000 SC 2782 whereby the Apex Court in Para 3 has observed as under:-

"3. We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education vs. Pushpendra Kumar supra. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years. The very basis of compassionate appointment is to see that the family gets immediate relief."

5. In the case of State of J&K and others vs. Sajad Ahmed Mir, JT 2006 (6) SC 387 it was held that a period of 15 years has passed when delay was considered by the High Court and that fairly showed that the family survived in spite of death of the employee. The order passed in the year 1996 not having been challenged by the applicant immediately, it was not open to him challenge in the year 1999 when there was inter departmental communication. In this case the learned Single Bench has rejected the case of the petitioner for compassionate appointment. However, the Division Bench set-aside the judgment of the Single Bench. The matter was carried to the Apex Court. In this case also, the applicant was minor when he applied for appointment on compassionate grounds in September, 1991 whereas father of the applicant died in harness in March, 1987. At this stage, it will be useful to quota para 11 of the judgment, which thus reads:-

"11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion' the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earned and livelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution."

Thus, viewing the matter from the law laid down by the Apex Court, the claim of the applicant for

appointment on compassionate grounds after a lapse of about 23 years cannot be entertained. Besides it, the application of the applicant could not have been entertained on the face of the application earlier moved by the brother of the applicant and he was informed vide order dated 21.3.2001, as there was no provision in the scheme for entertaining the second application on behalf of the second dependent.

6. So far as the judgment rendered by the learned Single Judge in the case of Parmeshwar Kumar Verma (supra) is concerned, suffice it to say that the said judgment cannot be said to be a good law in view of the decisions rendered by the Apex Court as noticed above. The finding recorded by the learned Single Judge that in view of the Section 6 of the Limitation Act, the petitioner was entitled to move application for appointment on compassionate grounds on attaining the age of majority cannot be said to be a good law, inasmuch as, the appointment on compassionate grounds cannot be claimed as a matter of right. The claim of person concerned for appointment on compassionate grounds is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 and 16 of the Constitution. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in

service. As such, in all claims of appointment on compassionate grounds, the delay in making appointment constitutes a major factor. Thus, the provisions of Section 6 of Limitation Act, 1963 has been wrongly made applicable in such cases. That apart, the judgment rendered by the learned Single Judge has been made in ignorance of the law laid down by the Division Bench of the Rajasthan High Court at Jodhpur in the case of Union of India vs. Central Administrative Tribunal and others, 2003 (3) SLR 310 whereby the Jodhpur Bench of the High Court has quashed the instructions issued by the Railway board whereby provision was made for granting appointment on compassionate ground even after 20 years of the death of the employee. Relying upon the Supreme Court judgment, it was held by the Bench that circular of the Railway Board unduly interferes with the rights of other persons who are eligible for appointment which is arbitrary and discriminatory to the extent it empowers the authorities to give appointment even after 20 years of the death of the employee. At this stage, it will be useful to quote para 7, 8 and 9 of the judgment which thus reads:-

"7. In Umesh Kumar Nagpal vs. State of Haryana and others reported in 1994 (4) SCC 138: [1994 (2) SLR 677 (SC)] the Apex Court has held that the public services on compassionate ground has been carved out as an exception in the interest of justice to the general rule that appointment in the public services should be made out of humanitarian consideration with a view to provide livelihood to the family of the deceased so that they are able to make both ends meet. The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis.

8. Thus, the Railway Board's circular, referred to above, which empowers the authority to give appointment even after 20 years of the

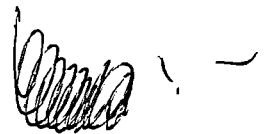
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death of employee is contrary to the general provision providing appointment, to the extent it travels beyond providing appointment to a member of the family of the deceased to tide over the sudden crisis, such appointment interferes with the right of other persons who are eligible for appointment to seek employment against the post which may be made available to them. The Apex Court in Director of Education (Secondary) and Another vs. Pushpendra Kumar and others reported in 1998 (5) SCC 192: [1998 (4) SLR 348 (SC) dealing with such a situation observed:

“On such a construction, the said provision in the Regulations would be open to challenge on the ground of being violative of the right to equality in the matter of employment inasmuch as other persons who are eligible for appointment and who may be more meritorious than the dependents of deceased employees would be deprived of their right of being considered for such appointment under the rules.”

9. Thus, the circular relief upon by the second respondent unduly interferes with the right of other persons who are eligible for appointment, is arbitrary and discriminatory to the extent indicated above. Thus, we are of the view that the Central Administrative Tribunal, Jodhpur has committed serious illegality in adopting a very generous, general and casual approach and thereby issuing directions to the appellant to consider the case of the respondent for appointment on compassionate ground.”

7. In view of what has been stated above, I am of the view that the present application is bereft of merit and is accordingly dismissed in limine.



(M.L. CHAUHAN)
Judicial Member

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