

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.060/00616/14
Chandigarh, this the 23rd Day of July, 2014**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A).**

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Rajvir Singh S/o late Avtar Singh (ex-constable No.3162/CP), R/o Village
Kalaur, Tehsil Bassi Pathana, Distt. Fatehgarh Sahib (Punjab).

...APPLICANT

VERSUS

1. U.T. Chandigarh through Home Secretary, Chandigarh.
2. SSP, U.T. Chandigarh.

...RESPONDENTS

Present: Sh. K.C. Singh, counsel for the applicants.

O R D E R (Oral)

BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. This O.A. is directed against order dated 1.3.2014 (Annexure P-9) by which the claim of the applicant for appointment on compassionate grounds has been rejected.
2. The facts need not to be spell out in detail here. Concededly, father of the applicant, while working as Constable in respondent department, died on 27.7.1996, leaving behind window, two children and the applicant, who was a minor at that time. It is the case of the applicant that after attaining the majority, he submitted an application for compassionate appointment in terms of instructions issued by the

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Govt. of India. When the same was not decided, the applicant served a legal notice dated 5.10.2012 and thereafter filed the OA before this Court. The OA was disposed of vide order dated 6.2.2014 with direction to respondents to consider the claim of the applicant for appointment on compassionate grounds. In pursuant thereof, order dated 1.3.2014 was passed which is under challenge. In support of his claim, learned counsel for the applicant submitted that the applicant was a minor at the time of death of his father and after attaining majority, he submitted application which has been rejected vide impugned order, therefore, he prayed that impugned order be quashed and set aside, and he may be granted appointment on compassionate grounds.

3. We have gone through the pleadings on record. We find no reason to interfere with the order vide which the competent authority has considered the case of the applicant in terms of the instructions and judgments passed by the Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana & Others (JT 1994(3) SC 525) and rejected the same.

It is also by now well settled that appointment on compassionate grounds is not a source of recruitment, instead it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employee, who die in harness, do not have any special claim or right to employment, except

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by way of the concession that may be extended by the employer under the Rule or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. The Hon'ble Apex Court in a number of cases has repeatedly held that the compassionate appointment is not a mode for appointment. Recently again in case of **MGB Gramin Bank Versus Chakrawarti Singh** 2013(6) SLR 227, the Lordships of the Hon'ble Supreme Court again reiterated their earlier view.

4. In case of **Jagdish Prasad Vs. State of Bihar**, (1996) 1 SCC 38, the Hon'ble Supreme Court had rejected the claim of a minor dependent to be appointed on compassionate ground after attaining age of majority by making the following observations:-

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

In view of the above, at this belated stage, no relief can be granted to the applicant.

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5. The Hon'ble Supreme Court in case of **Mumtaz Yunus Mulani Vs. State of Maharashtra & Ors.**, 2008 (2) S.C.T.,669, has held as under:-

"16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged 16 years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at this age."

In another case also the Hon'ble Apex Court has reiterated same view which is reported as **2006 Supreme Court Cases 766 and 2008 AIR SCW 3642.**

The Punjab and Haryana High Court has also considered the point of giving appointment after attaining majority in the case of **Subhash Vs. State of Haryana and others.**, 2005(2) SCT 478, and has held to the following effect:-

"We are of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and reasonable manner. Legally there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly house in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their breadwinner. The concept of compassionate appointment virtually


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obliterates an elaborate and transparent procedure of open recruitment but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment had become non-existent the deceased parent having died 4/5 years ago - an event which can hardly be said to be reasonable vis-a-vis persons waiting for regular appointment. We are, therefore, of the view that there cannot be continuity of cause of action in matters of compassionate appointment."

The same view was again been reiterated by the Hon'ble Supreme Court in Civil Appeal No. 3242 of 2009 titled as **State of Chhatisgarh & Ors. Vs. Dhirjo Kumar Sengar** reported as 2010 (1) RSJ 22.

In view of the above discussion, the case of the applicant does not merit consideration since a minor cannot ask for appointment, under the compassionate scheme, after attaining the age of majority. He had a right of consideration only which has since been done. Accordingly, the present O.A is dismissed being devoid of merit and barred by time. No costs. No costs.


(UDAY KUMAR VARMA)
MEMBER (J)


(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.

Dated: 23.7.2014.

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