

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Orders reserved on 25.01.2018

Orders pronounced on : 15.02.2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

O. A. No.330/583/2012

*Anurag Awasthi,
S/o Roop Kishore Awasthi,
R/o 179E, Barra-4, Kanpur.*

..... *Applicant*

(By Advocate : Shri R.G. Prasad for Shri O.P. Kashyap)

Versus

1. *Union of India through Director Intelligence Bureau HQ, R.K. Puram, New Delhi.*
2. *Director Intelligence Bureau (Subsidiary)Ministry of Home Affairs, Government of India, New Delhi.*
3. *Joint Director Intelligence Bureau (M.H.A.) 35 S.P. Marg, New Delhi.*
4. *Joint Director Subsidiary Intelligence Bureau, Ministry of Home Affairs, Government of India, 110 Mall Road, Lucknow.*
5. *Assistant Director Intelligence Bureau, Ministry of Home Affairs, Government of India, New Delhi.*

..... *Respondents*

(By Advocate : Shri L.P. Tiwari)

ORDER

The Applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "(A) to issue a writ, order or direction in the nature of certiorari to quash the order and memorandum dated 29.04.2011 issued by Assistant Director Intelligence Bureau, Ministry of Home Affairs, (Respondent No.5).
- (B) to issue a writ, order or direction in the nature of mandamus directing the respondents to appoint the applicant on the post he deserves in the department of Intelligence Bureau, Ministry of Home Affairs, New Delhi under Dying in Harness Rules.
- (C) to issue any other writ or order which this Hon'ble Court may deem proper and fit under the facts and circumstances of the case.
- (D) to allow the application with cost."

2. The brief facts of the case are that the applicant's father late Shri Roop Kishore Awasti, who was working as ACIO, met with an accident on 7.10.2009 and sustained grievous injury and succumbed to death on the same day leaving behind his wife (Smt. Meena Awasthi) – aged about 57 years and three sons, namely, (1) Anurag Awasthi, a/a 38 years, (2) Abhishek Awasthi, a/a 29 years; and (3) Anoop Awasthi a/a 35 years. The widow of the deceased Govt. employee is living with her two sons, Mr. Anurag Awasthi and Mr. Abhishek Awasthi who are unemployed. Second son Mr. Anoop Awasthi live separately from the time of his father and doing service in some private company.

2.1 Applicant further stated that there is no source of income to the applicant while there is more liabilities on him as he is married having old mother and younger brother's

family and all are unemployed. Hence, they were totally depended on late Roop Kishore Awasthi.

2.2 After the death of his father, the applicant made an application dated 9.11.2009 for appointment on compassionate ground under dying in harness rules in the prescribed proforma before the Joint Director, Subsidiary Intelligence Bureau (Ministry of Home Affairs), Govt. of India 110 Mall Road, Lucknow. The mother of the applicant Smt. Meena Awasthi also made an application to Director, Intelligence Bureau, Head Quarter, New Delhi for the appointment of her son Anurag Awasthi (Applicant) on compassionate grounds.

2.3 Further brother of applicant, namely Anoop Awasthi and Mr. Anbishek Awasthi submitted their no objection and supported for the appointment of Anurag Awasthi on compassionate ground on 15.11.2009.

2.4 However, in response to application submitted by the mother of the applicant, respondent no.4 sent a letter dated 27.10.2010 to his mother stating therein that IB Hqrs is desired to know whether his mother is willing to apply for compassionate ground appointment as the applicant could not be considered as per rules. The respondents have also sent a Memorandum No.22/Estt/G-1/2010(03)-CG 6613 dated nil stating therein that as per Govt. Rules on compassionate appointment, married son/daughter is not bracketted under dependent family member of the deceased

Govt. official. Hence, the applicant, being married, could not be acceded to for employment in IB on compassionate ground.

2.5 On 29.1.2011, Assistant Director, Intelligence Bureau issued a Memorandum and sent a copy to the mother of the applicant that as per customary rules, applicant does not come within the definition of ambit of family, hence, appointment could not be made.

2.6 Thereafter mother of the applicant made an application dated 15.2.2011 under RTI Act to know under what rule or regulation, the applicant is not entitled to be appointed and how he does not come under the purview of family. In reply to the same, a letter dated 15.3.2011 was sent by K.C. Meena, CPIO-IB to Smt. Meena Awasthi saying that Intelligence Bureau has been exempted from providing any information on subject matter. Hence, information sought cannot be provided.

2.7 On 2.4.2011, mother of the applicant again submitted letter dated 2.4.2011 to Joint Director (Intelligence Bureau) M.H.A., 35 S.P. Marg, New Delhi praying for appointment of her son (applicant).

2.8 On 29.4.2011, a memorandum was made through Assistant Director to the effect that as per Govt. rules on compassionate appointment of son/daughter of a deceased Government servant should be unmarried and since the

applicant is married, his case for grant of employment on compassionate ground may not be acceded to as per the rules on the subject.

2.9 Being aggrieved by the aforesaid impugned order dated 29.4.2011, the applicant has filed the instant OA for redressal of his grievances.

3. Notices were issued to the respondents, who in turn filed their counter affidavit in which they have stated that the applicant has sought relief in the OA for compassionate appointment as per object of the Scheme contained in DOP&T OM dated 9.10.1998 and DOP&T clarifications dated 18.5.2010, compassionate appointment is admissible to a dependent family member of the deceased Govt. servant. The son/daughter of the deceased Govt. servant should be unmarried at the time of his/her appointment. Since the applicant was married, he was not eligible for compassionate appointment as per rule. It is needless to mention that as per rules the married son is not entitled for family pension under CCS rules and he has not even entitled for LTC as family member of the Government servant. The mother of the applicant was informed accordingly vide Memorandum dated 29.4.2011 and the mother of the applicant was also requested to give her willingness for appointment on compassionate ground. However, she did not give her willingness for appointment on compassionate ground instead of

appointment of the applicant which is not permissible under the rules. Although the department protected the interest of the family by seeking nomination of another dependent family members but family remained adamant for appointment of ineligible candidate.

3.1 In support of their claim, the respondents placed reliance upon the judgment of the Hon'ble Supreme Court in the case of LIC of India vs. Mrs. Asha Ramchandra Amnbekar and others (J.T.) 1994 (2) (SC 183).

4. The applicant has filed his rejoinder affidavit reiterating the averments made in the OA.

5. The respondents have also filed their supplementary counter affidavit in which besides reiterating the averments made in the counter affidavit they have stated that at the time of filing counter affidavit, the clarification issued by the Under Secretary, Directorate, E.D. dated 18.5.2011 was filed. Thereafter a true copy of frequently asked questions on compassionate appointment dated 30.5.2013 and Memorandum dated 30.5.2013 has been received by the respondents which has to be brought upon the record for proper adjudication of the case, wherein in para no.13 of the FAQs clearly asked question, whether married son can be considered for compassionate appointment?, the answer given is that married son cannot be considered as dependent on a Government servant.

6. The applicant has also filed rejoinder affidavit to rebut the contentions raised by the respondents by their supplementary counter affidavit in which the applicant has also annexed a copy of Office Memorandum dated 5.9.2016 vide which the respondents have given FAQ to question whether married son can be considered for compassionate appointment?, the answer given is that Yes, if he otherwise fulfils all the other requirements of the Scheme, i.e., he is otherwise eligible and fulfils the criteria laid down in this Department's O.M. dated 16th January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. the FAQs dated 30th May, 2013, may not be reopened.

7. Heard learned counsel for the applicant and learned counsel for the respondents and perused the material placed on record.

8. Both the counsel reiterated the averments made by them in their respective pleadings.

9. This Court is unable to accept the contentions raised by the respondents as the only issue involved in the instant OA is whether on the basis of marital status, the claim of son of the deceased Govt. employee for grant of compassionate appointment is rightly rejected by the respondents or not. The Hon'ble Delhi High Court in Writ Petition NO.1491/2016

(*Vimnesh Kumar vs. Union of India and anr.*) had an occasion to consider the same issue as raised in the instant OA in which also the respondents therein have rejected the claim of the petitioner on the basis of marital status and the respondents had also relied upon the FAQs on the subject as relied upon by the respondents in this case. The Delhi High Court vide its Order dated 13.7.2017, disposed of the said Writ Petition with the following observations:-

“5. The respondents had rejected the claim of the petitioner for compassionate appointment on the basis of clarification issued by the Dept. of Personal Training on 30th May, 2013, which is to the following effect:-

“Whether ‘married son’ can be considered for compassionate appointment?
No. A married son is not considered dependent on a government servant.”

6. The aforesaid clarification was examined by the Punjab and Haryana High Court in WP(C) 16510/2014 titled Union of India vs. Central Administrative Tribunal & Anr. decided on 12th August, 2014 wherein reference was made to the scheme of compassionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) vide memo dated 9th October, 1998. Note - 1 of the scheme defines the expression “Dependent Family Members” which reads as under:

“Note 1 ‘Dependent Family Member’ means

- (a) spouse; or
- (b) son(including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

Who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

Reference was also made to the clarification issued by DOPT No.14014/02/2012-Estt. (D) dated 25th February, 2015 which is to the following effect:-

S.No.	Question	Answer
	Whether "married son" can be considered for compassionate appointment?	<p>Yes, if he otherwise fulfils all the other requirements of the Scheme i.e. He is otherwise eligible and fulfils the criteria laid down in this Department's O.M. dated 16th January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. The FAQs dated 30th May, 2013, may not be reopened.</p> <p>Sr.No.13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.</p>

7. It is clear from the clarification issued on 25th February, 2015 that earlier clarification dated 30th May, 2013 has been withdrawn. Punjab and Haryana High Court elucidating on the expression 'Dependent Family Member' as defined in Note-1 quoted above held that the said definition would have precedence and should be applied to determine and decide whether the candidate seeking compassionate appointment is a dependent family member or not. Marriage by itself could not be the determining criteria. The said decision is consonance with the clarification which has been issued by DOPT dated 25th February, 2015 withdrawing the earlier clarification dated 30th May, 2013.

8. We also notice in the facts narrated that sometime was taken for consideration of the application for compassionate appointment and formalities etc. The petitioner was admittedly unmarried on the date when his father had died and when he had submitted his application for consideration. He had got married in March, 2013. The petitioner claims that the reason why he got married was because his mother was not keeping well and he was the only son. The respondents have not rejected the petitioner application for any other reason except marriage.

9. In view of the aforesaid discussion, we set aside the impugned order dated 1st November, 2014 by which the petitioner's candidature seeking compassionate appointment was rejected on the ground of his marital status. The respondents would consider the case of the petitioner for appointment in accordance with law and the scheme without being influenced by his married status.

10. Learned counsel for the respondent had submitted that this Court should not entertain the present writ petition on the ground of forum convenience. We do not think it will be appropriate to dismiss the present petition on this ground as the present writ petition has been pending since February, 2016 when notice was issued. The issue and question involved is limited. It may not be appropriate in the facts of the present case to relegate the petitioner to another Court on the aforesaid principle. The petitioner as noted above is seeking compassionate appointment and it is obvious that he does not have financial resources.

11. The case of the petitioner would be examined within six weeks from the date the copy of this order is received.

12. We clarify that we have not expressed any opinion on the merits of the case as to whether the petitioner is otherwise eligible for compassionate appointment.

The writ petition is disposed of, without any order as to costs."

10. This Court is of the view that the present case is squarely covered by the aforesaid decision of the Delhi High Court.

11. In view of the above, for the foregoing reasons, this Court set aside the order dated 29.4.2011 by which the applicant's candidature seeking compassionate appointment was rejected on the ground of his marital status. The respondents are directed to consider the case of the applicant

for appointment in accordance with law and the scheme without being influenced by his married status. The case of the applicant would be examined within a period of two months from the date of receipt of certified copy of this Order.

12. We clarify that this Court has not expressed any opinion on the merits of the case as to whether the applicant is otherwise eligible for compassionate appointment.

13. The present OA is disposed of in above terms. There shall be no order as to costs.

**(Justice Dinesh Gupta)
Member (J)**

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APPENDIX

APPLICANT'S ANNEXURES

Sl. No.	Annexure	Particulars
1.	Annexure A-1	<i>Copy of Application/performa dated 9.11.2009.</i>
2.	Annexure A-2	<i>Copy of application submitted by mother of the applicant dated nil</i>
3.	Annexure A-3 & A-4	<i>Copies of no objections submitted by the brothers of the applicant dated 15.11.2009</i>
4.	Annexure A-5	<i>Copy of letter dated 27.10.2010</i>
5.	Annexure A-6	<i>Copy of Memorandum No.22/Estt/G-1/2010(03)-CG 6613 dated nil</i>
6.	Annexure A-7	<i>Copy of Memorandum dated 29.1.2011</i>
7.	Annexure A-8	<i>Copy of RTI Application dated 15.2.2011</i>
8.	Annexure A-9	<i>Copy of letter dated 15.3.2011</i>
9	Annexure A-10	<i>Copy of letter dated 2.4.2011</i>
10.	Annexure A-11	<i>Copy of letter dated 29.4.2011</i>