

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Dated: This the 31st day of January 2018.

HON'BLE DR. MURTAZA ALI, MEMBER – J

**Original Application No. 330/00768 of 2017.
(U/s 19, Administrative Tribunals Act, 1985)**

Ranjeet Kumar aged about 30 years, son of Pyare Lal, R/o H. No.6/8 Amar Nath Jha Marg, George Town, Allahabad.

.....Applicant

By Adv: Shri Ashish Srivastava.

V E R S U S

1. Union of India through its Secretary, Ministry of Health and Family Welfare CGHS-II, New Delhi.
2. Additional Director, Central Government Health Scheme II Floor Sangam Place, Civil Lines, Allahabad.

..... Respondents

By Adv: Shri V.K Pandey

ORDER

The applicant has filed this O.A. seeking to quash impugned orders dated 31.3.2017 and 17.4.2017 by which the claim of applicant for compassionate appointment has been rejected mainly on the ground that had attained the age of 25 years at the time of death of his father.

2. The brief facts as stated in the O.A are that the father of applicant late Pyare Lal had died on 18.2.2016 while working as M.T.S. in the office of respondents. The mother of applicant submitted an application on 28.10.2016 (Annexure A-7) for consideration of candidature of his son (applicant) for compassionate appointment. The committee recommended the case of applicant but the claim of applicant has been rejected by the respondent No. 2 relying on the order dated 31.3.2017 (Annexure A-1) issued by the Ministry of Health and Welfare, C.G.H.S. -II Section Government of India. It has also been stated that the applicant belongs to Scheduled Caste community and for the said community, the age limit for recruitment is 30 years and at the time of death of his father he was below 30 years. It is further stated that under the scheme of compassionate appointment, the Competent Authority has also been given power to relax the upper age limit. It is further submitted that as per DOPT guidelines, the suitability of candidate is to be judged with reference to the weitage points. It has been alleged that the impugned orders dated 31.3.2017 and 17.4.2017 are against the guidelines issued by the DOPT and are liable to be quashed.

3. In the counter reply, it has been stated that a decision has been taken for not considering the candidature of those children

of deceased employee, whose age was more than 25 years at the time of death of Government servant. As the applicant was more than 25 years of age at the time of death of his father, his case was not considered for compassionate appointment. It is further stated that the committee has taken a decision as per family declaration and relying upon the DOPT guidelines. It is also stated that the scheme for compassionate appointment is applicable only to dependent family member and the applicant being more than 25 years of age, cannot be treated as dependent on his father at the time of his death. It is further stated that as per DOPT guidelines, the upper age limit can only be relaxed by the competent authority for those family member who was dependent on the deceased government servant.

4. In the rejoinder, the applicant reiterated the averments made in the O.A. and further stated that as per recruitment rules, the age limit for scheduled caste candidate is 30 years and he was below 30 years at the time of death of his father and therefore he should be considered for compassionate appointment even after issuance of order dated 31.3.2017 (Annexure A-1). It is further stated that the respondent No.2 has again forwarded the application of applicant to respondent No. 1 vide letter dated 16.10.2017 (Annexure RR-1) , which has not yet been disposed of.

5. Heard Shri Ashish Srivastava counsel for the applicant and Shri V.K. Pandey counsel for the respondents and perused the record.

6. Learned counsel for the applicant would contend that the applicant belongs to scheduled caste category and he was within upper age limit (below 30 years) at the time of death of his father and, therefore, he was entitled to be considered even after issuance of order dated 31.3.2017 (Annexure A-1). It is also contended that the impugned orders are against the spirit of DOPT scheme for compassionate appointment and thus liable to be quashed.

7. Learned counsel for the respondents argued that the department has rightly fixed the upper age limit for the candidates for the consideration of compassionate appointment.

8. From the perusal of impugned orders, it appears that the claim of applicant along with 10 other candidates, for consideration of compassionate appointment, have been rejected mainly on the ground that the age of applicants at the time of death of Government employees were more than 25 years of age. It also appears that the respondents have relied upon the

definition of dependent meant for issuance of C.G.H.S Card facilities, which provides that a son upto the age of 25 years or till his marriage, may be considered as dependent on his father. The department has adopted the same age of dependency for consideration of compassionate appointment. The cut off date for 25 years appears to be against the provisions of DOPT scheme dated 9.10.1998 for compassionate appointment. In the DOPT scheme dated 9.10.1998, as amended from time to time, 'dependent family members' has been defined as below –

"Dependent Family Members

- 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*
- e) member of the Armed Forces, as defined in S. No.3, 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".*

9. There is no upper age limit prescribed in the said scheme and it has only been provided that upper age limit could be relaxed wherever found to be necessary and it shall be determined with reference to the date of application and not on the date of death of employee or date of appointment.

10. I have also gone through Frequently Asked questions (FAQs) on compassionate appointment issued by the DOPT dated 30.5.2013 and 12.6.2013 (Annexure A-7), in which at question NO. 5 it has been clarified that the age limit for appointment on compassionate ground would be based on the recruitment rules of the post to which the compassionate appointment is proposed to be made. It has further been clarified at question No. 6 that upper age limit can be relaxed whenever found to be necessary. It has further been clarified at question No. 12 that a married daughter can also be considered for compassionate appointment subject to the condition that she was wholly dependent on the Govt. servant at the time of his/her death in harness and she must support other family member of family. It has further been clarified by the DOPT in FAQs issued on 5.9.2016 at SI. No. 60 that a married son can also be considered for compassionate appointment subject to fulfilment of certain conditions.

11. In view of DOPT scheme dated 9.10.1998 as amended from time to time and FAQs issued by the D.O.P.T, the upper age limit of 25 years for a son cannot be fixed for consideration of compassionate appointment as it clearly violates the expressed provisions of DOPT scheme. Even if the age limit for consideration of compassionate appointment is to be based on recruitment rules of the post, in view of FAQ No. 5 (Annexure A-

9), the applicant comes within the age limit as he belongs to Scheduled Caste category and the age of applicant at the time of death of his father was below 30 years and he was within the permissible upper limit as per recruitment rules.

12. In view of the above, I am of the considered view that the impugned orders are against the spirit of scheme of compassionate appointment circulated by the DOPT vide OM dated 9.10.1998 and therefore, these orders are liable to be quashed.

13. Accordingly, O.A is allowed and the impugned orders dated 31.3.2017 (Annexure A-1) and 17.4.2017 (Annexure A-2) in respect of applicant are set aside and quashed. The respondents are directed to reconsider the candidature of applicant in the light of observations made herein above within a period of 3 months from the date of receipt of this order. No order as to costs.

Member (J)

Manish/-

APPENDIX

Applicant's Annexures in O.A

Sl. No.	Particulars	Dates	Annex.
1.	Copy of order passed by respondent No.1	31.3.2017	A-1
2.	Copy of order passed by respondent No.2	17.4.2017	A-2
3.	Copy of medical report.	15.4.2006	A-3
4.	Copy of death certificate issued by the Nagar Nigam Allahabad.	5.3.2016	A-4
6.	Copy of medical receipt including the treatment of his father.		A-5
7.	Copy of the letter.	21.10.2016	A-6
8.	Copy of the proforma-A along with the application of the mother.	28.10.2016	A-7
9.	Copy of proforma Part-B along with all the relevant documents		A-8
10.	Copy of clarification issued by the DOPT	30.5.2013 & 12.6.2013	A-9

Applicant's Annexures in Rejoinder

Sl. No.	Particulars	Dates	Annex.
1.	Copy of forwarding letter issued by the respondent No.2 to respondent No.1.	16.10.2017	RR-1