

**Central Administrative Tribunal
Principal Bench**

OA No.3489/2014

Orders Reserved on: 17.03.2017

Pronounced on:06.04.2017.

Hon'ble Mr. K.N. Shrivastava, Member (A)

Nisha Kumari (aged about 28 years),
D/o late Sh. Surender Kumar Singh,
(Vice-Principal),
R/o Jamori, Vikram Ganj,
Rohtas, Bihar-802227.

-Applicant

(By Advocate Shri Varun Hans)

-Versus-

Union of India & Os. Through:

1. Head of Department,
Navodaya Vidyalay Samiti,
Ministry of HRD,
A-28, Kailash Colony,
New Delhi.
2. Head of Department,
Navodaya Vidyalay Samiti,
Ministry of HRD,
B-15, Sector-62 Institutional Area,
Noida-201309 (UP).
3. Principal (School No.08131)
Jawahar Navodaya Vidyalaya
Masaria, Gumla-835208 (Jharkhand)
Ministry of Human Resource Development,
Deptt. of Education, Govt. of India,
New Delhi.

-Respondents

(By Advocate Shri s. Rajappa)

ORDER

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following main relief:

“To direct the respondents to appoint the applicant at an eligible post in place of her deceased father as compassionate appointment.”

2. The brief facts of this case are as under:

2.1 The applicant's father Shri Surender Kumar Singh was working as a Vice Principal in Jawahar Navodaya Vidyalaya (JNV), Gumla, Jharkhand. He died in harness on 26.04.2013, leaving behind his widow Sushila Devi, son Mr. Vikas Kumar and daughter Ms. Nisha Kumari (applicant). Mr. Vikas Kumar is working at Delhi whereas the applicant, who is married, is unemployed. The applicant has applied for compassionate appointment. Her mother Mrs. Sushila Devi and brother Mr. Vikas Kumar have given no objection to it. The application of the applicant for the compassionate appointment was duly forwarded by respondent No.3 to the Deputy Commissioner, Navodaya Vidyalaya Samiti (NVS), Regional Officer, Patna, vide letter dated 19.06.2013, who in turn sent it to the NVS, Headquarters, vide letter dated 11.09.2013 for approval. The respondents have rejected the request of the applicant for the compassionate appointment vide Annexure 'A' letter dated 31.03.2014 (p.33) on the ground that since one was

married during the life time of her father and thus was not dependent on her father and hence her request cannot be considered. Annexure 'A' is a communication from the Assistant Commissioner, to the Deputy Commissioner, Regional Office, Patna. Aggrieved by the Annexure-A order the applicant has filed the present OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. Thereafter the applicant filed her rejoinder. With the completion of the pleadings the case was taken up for hearing the arguments of the parties on 17.03.2017. Arguments of Shri Varun Hans, learned counsel for the applicant and Shri S. Rajappa with Dr. Puran Chand, learned counsel for the respondents were heard.

4. Shri Varun Hans, learned counsel for the applicant submitted that the applicant's case cannot be rejected solely on the ground that she is a married daughter of the deceased employee. In this regard, the learned counsel placed reliance on the following judgments of the various High Courts:

i) Judgment of the Madras High Court in **Jayalakshmi v. Tamil Nadu Generation and Distribution Corporation Ltd.**, [Writ Petition No.22171 of 2013, delivered on 13.08.2013], where the Hon'ble High Court has held as under:

“...if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of a daughter also. At this juncture, it is relevant to take note of the statute, namely the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, which places equal duty on both the son and daughter to take care of the parents at the old age. Therefore, in the case of death of the parents, there cannot be any unequal treatment among the children based on sex.”

(ii) Judgment of the Hon’ble Calcutta High Court in **Purnima Das v. The State of Bengal & Ors.**, [W.P. 33967 (W) of 2013, delivered on 19.03.2014], where the Hon’ble High Court has held as under:

“There cannot be any manner of doubt that an applicant cannot claim appointment in a particular group/class of post as a matter of right. Appointment on compassionate ground too, cannot be claimed as a matter of right. There can be no quarrel with the settled legal proposition that a claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. 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 a rule, public appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment, but merely an exception to the aforesaid requirement, upon taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis and not to confer a status on the family (see Union of India & Anr. Vs. Shashank Goswami & Anr., reported in AIR 2012 SC 2294)....”

“In today's world, this is not only a chauvinistic and archaic approach towards the issue, it is also indicative of a gender insensitive and inflexibly myopic mindset of the draftsmen of the two notifications dated 6th June, 2005 and 2nd April, 2008. There is simply no rationale or logic for applying such dual standards. It is as if it has been taken for granted that only a son, irrespective of his marital status, can look after his parental family. That a married daughter can contribute in equal measure, if not more, to support her parental family, has simply been ignored or forgotten.....”

“The writ petition is, therefore, disposed of with a direction upon the Chief Secretary, Government of West Bengal, to revisit the matter, in the light of the observations made hereinabove and issue an appropriate notification, which shall enure to the benefit of married daughters of deceased employees of the State - such as the writ petitioner - so that they can also be considered eligible to apply as dependant of a deceased employee, provided, of course, they fulfil all other eligibility criteria, as laid down.”

iii) Judgment of the Bombay High Court in **Sou. Swara Sachin Kulkarna v. The Superintending Engineer, Pune Irrigation Project Circle and Anr.**, [Writ Petition No.11987 of 2012, delivered on 06.12.2013], wherein the Hon'ble High Court has held as under:

“3.....In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crises by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is dis-entitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged to bear in mind the constitutional mandate and also directive principles of the State Policy. The point raised in this case is covered by the Judgment of a Division Bench in Writ Petition No.1284 of 2011 decided on 1.8.2011 and a Judgment of a learned Single Judge in W.P. No.6056 of 2010 decided on 26th October, 2010, all of this Court.

In such circumstances, the communication dated 27th February, 2009, copy of which is annexed at page 30 of the paper book cannot be sustained. The writ petition is allowed. This communication is quashed and set aside and equally the further communications in pursuance thereof. The petitioner's name shall stand restored to the wait list maintained by respondent nos.1 and 2 for appointment on compassionate basis. However, we clarify that we have not issued any direction to appoint the petitioner. Let her case be considered in terms of the applicable policy of Compassionate Appointment or Employment together with others. Her name should not be deleted or omitted only because she is married and that is why we have restored her

name in the wait list. Beyond that we have not issued any direction.”

5. Per contra, Shri S. Rajappa, the learned counsel for the respondents submitted that the object of the Scheme for Compassionate Appointment notified by the DoP&T OM dated 09.10.1998 is to grant appointment on compassionate grounds to a dependent family member of the Government servant died in harness, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency. The Scheme defines the dependent members of the family as spouse or son (including adopted son) or daughter (including adopted daughter) or brother or sister in the case of unmarried Government servant - who was wholly dependent on the Government servant at the time of his death in harness as the case may be. In the present case, the applicant who is daughter of the deceased Government servant Shri Surender Kumar Singh, was married at the time of demise of her father and as such she was not dependent on him. Accordingly, her case for the compassionate appointment was rightly not considered.

5.1 It was further submitted that widow of the deceased has already been paid an amount of Rs.18,03,405/- towards Provident Fund and another claim of about Rs.1,20,000/-towards GSLIC is

also under process and will be released soon. Hence, the widow is also not in penury.

5.2 Shri Rajappa submitted that the Scheme for Compassionate Appointment is meant for family in indigent condition deserving immediate relief from financial destitution and that in the instant case the family is not in indigent condition.

5.3 On the issue of eligibility of married daughter for compassionate appointment, the learned counsel relied on the following judgments:

i) Judgment of the Hon'ble High Court of Madhya Pradesh in **Smt. Shilpi Mishra v. State of M.P.**, [W.P. No.1642/2014, decided on 06.02.2014], where the Hon'ble High Court of Madhya Pradesh has held as under:

“....A married daughter whose husband is alive cannot be treated to be dependent on her father merely because her husband is unemployed. In that case it is the son-in-law who would be dependent on his father-in-law rather than the daughter dependent on her father.”

ii) Judgment of the Hon'ble High court of Madhya Pradesh in **Mamtesh Chaturvedi v. State of M.P. and others**, [W.P. No.3388/1997, decided on 22.08.2013], wherein the Hon'ble High Court of Madhya Pradesh held as follows:

“8. In the instant case from the facts stated in the petition as well as in the return, it is clear that the family of the deceased was not facing any financial crises and that the son of the deceased employee who had been directed to be given compassionate appointment, refused to accept the same. It is also clear that the petitioner is a married daughter of the

deceased employee residing else where but is seeking compassionate appointment in the establishment of the respondents which apparently frustrates the very concept and object of compassionate appointment.”

5.4 On the issue of grant of compassionate appointment, the learned counsel has placed reliance on the judgment of the Hon’ble Supreme Court in the case of **Union of India and Ors. V. Sima Banerjee**, [Civil Appeal No.251/2017, (Arising out of SLP (C) No.1683 of 2013), decided on 14.01.2015], wherein the Hon’ble Supreme Court has held as under:

“Thus, direction to give compassionate appointment several years after death was not justified. We are in agreement with the above submission. The death of the husband of the respondent took place on 26.11.2000 and there is nothing to show that any vacancy was available within the period of three years from the said date. In the circumstances, the view taken in the impugned order cannot be sustained.”

5.5 Concluding his arguments, the learned counsel for the respondents submitted that the family of the deceased Shri Surender Kumar Singh is not in indigent condition and that the applicant is not eligible for grant of compassionate appointment on the ground that she was not dependent upon the deceased, as she was married during the life time of her father.

6. I have considered the arguments of the learned counsel for the parties and have also considered the documents and pleadings annexed thereto. The contention of the applicant that her brother is residing at Delhi and is employed over there and that she is looking after her mother (widow of the deceased Government servant) locally at Gumla, Jharkhand is not controverted by the respondents. An

amount of Rs.18,03,405/- towards the settlement of the Provident Fund dues has been paid by the respondents to Mrs. Sushila Devi, widow of the deceased. Likewise, another amount of Rs.1,20,000/- towards GSLIC is being processed by the respondents and is likely to be released to the widow. There are legitimate dues accrued to the deceased. As such, the respondents have not given any kind of financial assistance to the widow or her family from their side in consideration of the Government servant having died in harness. Undoubtedly, the object of the Scheme for Compassionate Appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant died in harness if the family is found to be in indigent condition requiring immediate assistance for relieving it from financial destitution. The dependent family members, who can be considered for compassionate appointment, have also been defined in the Scheme. In the matter of compassionate appointment, the first priority is to be given to the spouse, followed by son and then the daughter. In the instant case, the widow and her son have given no objection to the consideration of the applicant for the compassionate appointment by the respondents under the Scheme. The Scheme does not make any distinction between a married or unmarried daughter. The law on this issue is fairly settled that a married daughter can also be considered for compassionate appointment. The main ground on which the respondents have been harping

upon in denying the compassionate appointment to the applicant is that the applicant was married during the life time of her father and as such she was not dependent upon her father. This argument is to be taken with a pinch of salt. There are numerous cases in the country where a daughter even after her marriage continues to remain dependent upon the parents. Therefore, the contention of the respondents that the applicant was not dependent upon her father, as she was married during the lift time of her father, is bizarre, to say the least.

7. There is no doubt that grant of compassionate appointment to a family member can be considered under the Scheme only after ascertaining and confirming that the family is indeed in indigent condition requiring immediate assistance for relieving the family from financial destitution. The respondents' stand that they have released an amount of Rs.18,03,405/- towards Provident Fund and another claim of about Rs.1,20,000/-towards GSLIC is also under process and will be released soon to the widow would indicate that the family is not in indigent condition, is *prima facie* presumptuous. The financial state of the family can only be ascertained by the respondents after making a thorough enquiry and not otherwise.

8. The prayer of the applicant is very simple and reasonable. She wants her consideration for the compassionate appointment under the Scheme. Obviously, after the enquiry and verification if the

respondents come to the conclusion that the applicant is not eligible for compassionate appointment under the Scheme, they would be fully justified to pass an order to that effect. But precluding the applicant from the consideration for the compassionate appointment itself is not at all reasonable and justified. I iterate that a married daughter can also be considered for the compassionate appointment if the economic condition of the family so justifies.

9. In the conspectus of the discussions in the foregoing paras, the impugned communication dated 31.03.2014 (Annexure-A, p.33) is quashed and set aside. The respondents are directed to consider the case of the applicant for compassionate appointment in accordance with the Scheme. This shall be done within a period of three months from the date of receipt of a certified copy of this order. However, I would like to clarify that I have not given any direction to the respondents to necessarily appoint the applicant on the compassionate grounds. I have only directed for considering the applicant for such appointment in accordance with the Scheme for Compassionate Appointment. The OA stands disposed of accordingly.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

‘ San.’