

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3579/2014
MA 3085/2014

Reserved on: 3.05.2017
Pronounced on: 5.05.2017

Hon'ble Mr. P.K. Basu, Member (A)

1. Smt. Mohini Jain, aged 57 yrs.
W/o Late Shri Sushil Kumar, Ex. Head Clerk
402, Kucha Bulaki Begum
Dariba Kalan, Delhi-110006
 2. Shri Ankit Jain, aged 21 yrs.
S/o Late Shri Sushil Kumar Jain
402, Kucha Bulaki Begum
Dariba Kalan, Delhi-110006
- ... Applicants

(Through Shri S.M. Arif, Advocate)

Versus

1. The Director General
E.S.I.C.
Panchdeep Bhawan,
CIG Road, New Delhi-110002
 2. The Director (Medical), Delhi
E.S.I. Dispensary Complex
Tilak Vihar, New Delhi-110018
 3. Union of India
Through its Secretary
Ministry of Labour & Employment
Shram Shakti Bhawan,
Rafi Marg, New Delhi
- ... Respondents

(Through Shri A.K. Verma, Advocate)

ORDER

Applicant no.1 is wife of deceased Shri Sushil Kumar
whereas Applicant no.2 is son of deceased Shri Sushil Kumar,

Head Clerk. They have filed this Application for appointment of applicant no.2 on compassionate grounds. The applicant has been able to obtain copy of the minutes of the meeting of the Committee on Compassionate Appointment held on 3.02.2014 and 5.02.2014 through an RTI application (Annexure A-4) and the reasons for rejection of his compassionate appointment case are stated to be as follows:

“The committee considered the case and found applicant is studying. Widow is getting adequate pension. Further financial condition of the family is not found indigent. Hence recommended for rejection.”

2. Learned counsel for the applicant stated that the reasons for rejection of the case of the applicant are the following:

- (i) The applicant is studying;
- (ii) Widow is getting adequate pension;
- (iii) Financial condition of the family is not found indigent.

3. It is urged on behalf of the applicant that in the same minutes, one Smt. Deepa Singh wife of Dr. Rajdeo Verma has been recommended for appointment as Upper Division Clerk (UDC) on compassionate grounds. It is his argument that it is discrimination on the part of the respondents to consider the applicants financial position as not indigent though late husband of applicant no.1 was an UDC and late Dr. Rajdeo Verma was a doctor and, therefore, his wife was also recipient of family pension and other retiral benefits and also their financial position

is expected to be much better than the family of a deceased UDC.

4. It was further pointed out on behalf of the applicant that the ground that the son is still studying is not valid because he has cleared his secondary examination and was thus entitled to the job of MTS. In fact, it is stated that at present he is a graduate.

5. Learned counsel for the respondents relied on the following judgments:

- (i) **Umesh Kumar Nagpal Vs. State of Haryana and others**, (1994) 4 SCC 138 - In this case, the Hon'ble Supreme Court held as follows:

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts

above Classes III and IV, is legally impermissible.”

- (ii) **State Bank of India and others Vs. Jaspal Kaur**, (2007) 9 SCC 571, where the Hon’ble Supreme Court held as follows:

“The High Court also failed to appreciate that Clause (1) of the scheme provides that in order to determine the financial condition of the family, the amounts paid towards terminal benefits, investments, income from other sources and size of the family, etc. are required to be taken into account. However, in the present case while holding that the condition of the family is not sufficient for the bare maintenance of the family, the High Court has failed to appreciate that the monthly income of Rs.2055 p.m. and the terminal benefits of Rs.4,57,607 have been paid to the family of the deceased. The Court cannot order appointment on compassionate ground, de hors the provisions of the statutory regulations and instructions. Hardship of the candidate does not entitle him to compassionate appointment de hors the statutory provisions.”

- (iii) **Union Bank of India and others Vs. M.T. Latheesh**, (2006) 7 SCC 350 – In this case, the Hon’ble Supreme Court observed as follows:

“A dependent of a deceased employee of the Bank making an application under, held, does not automatically become entitled to get compassionate employment – Nor does the possession of relevant qualification create any vested right in his favour to get appointed to a post specified by the Scheme – His right is limited to get preferential treatment against the general principle of appointment, subject to the discretion of the Bank – In the present case, the actual amount received by the widow out of the amounts of different benefits sanctioned by the Bank on the death of the employee and deposited by her in fixed deposit

fetching a recurring monthly income of interest which coupled with the family pension exceeding the net salary of the deceased.”

- (iv) **Punjab National Bank and others Vs. Ashwini Kumar Taneja**, (2004) 7 SCC 265, in which case the Hon’ble Apex Court held as follows:

“Appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. 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 get over sudden financial crisis.

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The High Court’s view that the retiral benefits were not to be taken into consideration while dealing with request for compassionate appointment is contrary to the decision in **G.M. (D&PB) Vs. Kunti Tiwary**, (2004) 7 SCC 271.”

- (v) **State Bank of India and another Vs. Somvir Singh**, (2007) 4 SCC 778 – In this case, the Hon’ble Supreme Court held as follows :

“Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees who died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. The claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions,

rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

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The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of the deceased employee had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

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The High Court itself could not have undertake any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself to is whether the decision-making process rejecting the claim of the respondent for compassionate appointment is vitiated? Whether the order is not in conformity with the scheme framed by the appellant Bank? It is not even urged that the order passed by the competent authority is not in accordance with the scheme. The hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank."

(vi) **Himachal Road Transport Corporation Vs. Dinesh Kumar**, AIR 1996 SC 2226, where the Hon'ble Supreme Court held that the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such post etc.

6. It is stated by the learned counsel for the respondents that from the perusal of the above judgments, it would be clear that there is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of some scheme or the instructions, as the case may be. Further, terminal benefits and investments and monthly family income including family pension has to be taken into consideration for the purpose of deciding whether the family is indigent.

7. In this case, the applicant has only taken the ground of discrimination vis-à-vis one Dr. Rajdeo Verma. The argument of the learned counsel for the applicant is that since in the applicants case, the Government servant was a UDC and late Sh. Rajdeo Verma was a Doctor, necessarily the applicants family would be more indigent than the doctor's family. This is a

conjecture only. The applicant has not been able to establish this to make a claim that he has been discriminated vis-à-vis Smt. Deepa Singh w/o late Dr. Rajdeo Verma. In the absence of that, there is no ground for questioning the decision of the Committee on compassionate appointment.

8 In fact, from the various judgments cited above, it is clear that the only question the Tribunal can look into is whether the decision making process rejecting the claim of the person concerned for compassionate appointment is vitiated or whether the order is not in conformity with the Scheme framed. It is not urged that the order passed by the competent authority is not in accordance with the Scheme. The only ground taken is that the applicants family is in more indigent condition than the Doctor's family. But, as stated earlier, there is no evidence produced before the Tribunal to substantiate this.

9. In view of the above discussion, the OA lacks merits and is dismissed. No costs.

(P.K. Basu)
Member (A)

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