

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3722/2015

Reserved on 11.05.2017

Pronounced on 12.05.2017

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

Shri Manjeet,
S/o Late Sh.Ranveer Singh,
R/o VPO Bahu Akbarpur,
Distt. Rohtak, Haryana. ... Applicant

(By Advocate: Mr.Ajesh Luthra)

VERSUS

1. Govt. of NCT of Delhi,
Through the Chief Secretary,
5th Floor, Delhi Sachivalaya,
New Delhi.
2. Directorate of NCC
Through its Director
GNCT of Delhi
Old Secretariat Building,
Civil Lines, Delhi-110054.
3. The Director General,
National Cadet Corps,
NCC Headquarters, West Block-IV,
R.K.Puram, New Delhi-66. ... Respondents

(By Advocate: Mr. Rajpal Singh)

O R D E R

The father of the applicant expired while in regular service of the respondents on 9.05.2013. At that time the applicant made a representation for compassionate appointment along with submission of 'no objection certificate' of other family members. After completion of formalities, the authorities recommended and forwarded the case to Headquarters. Thereafter, the case of the applicant was approved for compassionate appointment for the post of Lower Division Clerk (LDC) in the Directorate of Civil Defence, Delhi. However, the respondents

issued order dated 12.11.2014 (Annexure A-1) stating that in the light of existing guidelines, which stipulates that the married son of a deceased employee cannot be appointed on compassionate grounds, the applicant cannot be considered as dependent on the deceased Government servant, namely, his father as he was married. Being aggrieved by this, the applicant has filed this OA seeking the following reliefs:

- "a) quash and set aside the impugned order placed at Annexure A/1;
- b) direct the respondents to further consider and appoint the applicant to the post of Lower Division Clerk on compassionate basis, with all consequential benefits;
- c) award costs of the proceedings; and
- d) pass any order / relief / direction(s) as this Hon'ble Tribunal may deem fit and proper in the interests of justice in favour of the applicants."

2. The learned counsel for the applicant argued that the governing factor in compassionate appointment is dependency and not marriage. In this regard, Office Memorandum dated 5.09.2016 was placed before the Tribunal which provide the following clarifications:

Sl. No.	Question	Answer
60.	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>

The learned counsel for the applicant further placed before me the Tribunal's order dated 2.01.2017 in OA No. 3728/2015. In this case,

the applicant's mother had applied for compassionate appointment of the applicant and the Screening Committee recommended his name for compassionate appointment on a Grade IV (DASS)/LDC post in 2013. However, the matter was kept pending till July 2015. The applicant was informed that his case for compassionate appointment is rejected. The ground for rejection was that applicant, namely, the son of the deceased government servant, was married. The Tribunal considered the explanation dated 25.02.2015 of DOPT that a married son is also eligible for compassionate appointment but that the cases of compassionate appointment already settled with respect to FAQs dated 30.05.2013 (married son not eligible) may not be reopened; the judgment of Hon'ble High Court of Madhya Pradesh in the case of **Nirmal Kumar Yadav Vs. Food Corporation of India** and order dated 04.10.2016 in OA 4048/2015. In Nirmal Kumar Yadav's case, the issue whether this cut-off date of 30.05.2013 is legally valid or not had come up before the Hon'ble High Court and the Hon'ble High Court held as follows:

"10. In the opinion of this Court, the petitioners are entitled to be considered for compassionate as per the main scheme. They being dependent sons have a right of consideration under the main scheme. The respondents cannot deprive the petitioners from such consideration by putting cut off date. This kind of cut off date will divide a homogeneous class and create a class within the class. This will be wholly unconstitutional and violation of Article 14 of the Constitution. Thus, in the fitness of things, the petitioners' cases are required to be considered as per the main policy dated 9th October, 1998. The impediment of cut off date, as per circular dated 25th February, 2015 will not come in the way of petitioners."

3. The OA was allowed and respondents directed to grant compassionate appointment to the applicant in that case as Grade IV (DASS)/LDC. The finding of the Tribunal in Para 12 is quoted below:-

"12. The clarification dated 25.02.2015 has been dealt with by the Court in Nirmal Kumar Jatav's case and I have already cited

the findings of the Hon'ble High Court, i.e. creating a class within a class and creating a 'cut-off date' of 25.02.2015 is wholly unconstitutional and in violation of Article 14 of the Constitution. The orders dated 28.08.2015 in O.A. No.3189/2014 and dated 05.03.2015 in O.A. No.239/2014 8 OA 3728/2015 cited by the respondents pertain to the cases where the facts of the cases were totally different and cannot be applicable in the present case. In both the cases, there was considerable delay by the applicants themselves in filing the claim for compassionate appointment."

4. The learned counsel for the applicant also placed before the Tribunal order of the Hon'ble High Court of Madhya Pradesh in Writ Petition No. 1995/2015 and others (**Bhagwant Rao Shithole Vs. Food Corporation of India & Ors**), wherein the issue again was rejection of compassionate appointment on the ground of the applicant being married. Again the Hon'ble High Court directed the respondents to consider cases of the petitioners for compassionate appointment and held that their cases cannot be rejected on the ground that they are married. If otherwise they are eligible. It is pertinent to quote the relevant part of the judgment of the Hon'ble High Court which is as follows:-

"8. A plain reading of this decision dated 25th February, 2015 makes it clear that Department has realized that a married son is eligible for compassionate appointment under the scheme, if he is otherwise eligible and fulfils criteria laid down in the policy. FAQ dated 30th May, 2013 and FAQ dt. 25 February, 2015 are based on the main policy. The basic policy nowhere deprives the married son from consideration, if he is otherwise eligible. The basic purpose of grant of compassionate appointment is to provide immediate helping hand to the dependents of an employee. If dependent is otherwise eligible, there is no justification in depriving him from his right of consideration. No clarification or answer which takes away the basic object and purpose of the policy can sustain judicial scrutiny.

9. In (1997) 1 SCC 641 (Director General of Posts and Another Vs. B. Ravindran and Another) the Apex Court opined that clarificatory instructions cannot supersede or take away any right which was flowing from main provision. In (2008) 7 SCC 353 (Tamil Nadu Electricity Board and Anr. Vs. Status Spinning Mills Limited and Anr.) the Apex Court opined that if clarification is given, it could be given retrospective operation. High Court's order in this regard is upheld.

10. In the opinion of this Court, the petitioners are entitled to be 6 W.P. 1995/2015 considered for compassionate as per the main scheme. They being dependent sons have a right of consideration under the main scheme. The respondents cannot deprive the petitioners from such consideration by putting cut off date. This kind of cut off date will divide a homogeneous class and create a class within the class. This will be wholly unconstitutional and violation of Article 14 of the Constitution. This, in the fitness of things, the petitioners' cases are required to be considered as per the main policy dated 9th October, 1998. The impediment of cut off date, as per circular dated 25th February, 2015 will not come in the way of petitioners."

5. The respondents in their reply have basically stated that they have relied on the DOPT guidelines which does not permit compassionate appointment of a member of the deceased government servant family in case he is a married son at the time of death of his father i.e. the deceased employee.

6. Heard the learned counsel for the parties and perused the various instructions and judgments cited by both sides.

7. In view of the clear findings by the Tribunal and WP (C) by the Hon'ble High Court of Madhya Pradesh, the respondents cannot deny the applicant compassionate appointment on the ground that he was married. Since his case was already recommended for appointment as Lower Division Clerk, I allow the OA, quash and set aside impugned order dated 12.11.2014 (Annexure A-1) and direct the respondents to appoint the applicant to the post of Lower Division Clerk on compassionate basis within a period of 90 days from receipt of a certified copy of this order. No costs.

**(P.K.Basu)
Member (A)**

skØ