

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00805/2017

Monday, this the 5th day of November, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Ms. Anjali S., D/o. (Late) Suma Devi,
 Aged 25, residing at Chittedathu Pranavam,
 T.C. 6/2489 (17), Elippode, Vattiyoorkkavu,
 Thiruvananthapuram – 695 013. **Applicant**

(By Advocate : Mr. S. Krishna Kumar)

V e r s u s

1. Senior Superintendent, Department of Posts, India,
 Office of the Senior Superintendent of Post Offices,
 Thiruvananthapuram North Division, Thiruvananthapuram-695 001.
2. Assistant Director, (Rectt), Department of Posts, India,
 Office of the Post Master General, Kerala Circle,
 Thiruvananthapuram, Thiruvananthapuram-
 695033. **Respondents**

[By Advocates : Mr. N. Anilkumar, SCGSC]

This application having been heard on 29.10.2018 the Tribunal on
 05.11.2018 delivered the following:

O R D E R

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “I. Quash Annexure A1 order dated 4.8.2016 bearing No. B/RLN/145 issued by First Respondent.
- II. Quash Annexure A2 order dated 21.11.2016 issued by the Second Respondent.
- III. Direct the respondents to reconsider/re-open the claim of applicant for compassionate appointment and appoint the applicant in terms of the Scheme for compassionate appointment.

IV. Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant in the interests of justice.”

2. The brief facts of the case are that the applicant's mother expired on 29.1.2014 due to cancer while in service. She is the younger daughter of the deceased. The father of the applicant is an aged man and he is perpetually on medications having no source of income. Due to expenses incurred for cancer treatment the family of the deceased was thrown into financial destitution. Hence, the applicant applied for an employment under the dying-in-harness scheme. The circle relaxation committee has not recommended the case of the applicant and her application for compassionate appointment was rejected vide Annexure A1. The father of the applicant is a pensioner who had retired from Khadi and Village Industries Board. He had borrowed lot of money amounting Rs. 8,00,000/- from Kerala Khadi Pracharasabha for treatment of his wife (applicant's mother) for cancer. The parents of the applicant had availed a housing loan of Rs. 16,71,040/-. Therefore, these situations resulted in the family into acute penury and the respective financial imbalance resulted in the family capsizing. The respondents have rejected the case of the applicant on the ground that there is no new ground to reopen the case of the applicant. Aggrieved the applicant has approached this Tribunal with the present OA.

3. Notices were issued to the respondents. They have entered appearance through Shri N. Anilkumar, SCGSC. It is contended by respondents that the object of the scheme is to grant appointment on

compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without any means of livelihood and to relieve the family of the Government servant concerned from financial destitution and help to get over the emergency. As per the rules, provision of appointment under the scheme is limited to 5% of vacancies falling under direct recruitment quota in any Group C or D post and as such while considering a compassionate appointment request, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities, presence of earning member, size of the family, age of the children and all other relevant factors of the case, especially in view of the fact that in number of occasions the Hon'ble apex court has pronounced that granting of appointment on compassionate grounds without assessing the financial position of the family is impermissible. The deceased official was survived by her husband and two daughters. The elder daughter got married and is living separately with her husband. The applicant herein is the second daughter of the deceased official and is unmarried. The terminal benefits allowed upon the death of the deceased official are i) immediate relief on death – Rs. 7,000/-, ii) gratuity – Rs. 10,00,000/-, iii) CGEGIS – Rs. 76,867/-, iv) leave salary – Rs. 1,64,591/-, v) GPF balance – Rs. 1,20,228/- and vi) monthly family pension – Rs. 10,330/- (excluding DR). In addition to the above benefits disbursed the family has a landed property worth Rs. 6,26,000/- and possesses a residential house valued at Rs. 16,34,000/-. The family was also found to have monthly income of Rs. 14,022/-. The applicant's case was not

recommended on the basis of want of relative indigency compared to the other cases placed before the circle relaxation committee. The last candidate had secured 48 relative merit points whereas the applicant herein had secured only 30 relative merit points. Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased/medically retired government service is legally impermissible. The decision of the competent authority in rejecting the request of the applicant seeking appointment on compassionate grounds was strictly in accordance with the rules and regulations issued by the competent authority.

4. Learned counsel for respondent BSNL put emphasis that compassionate appointment given by the BSNL under Scheme and

4. Heard Shri S. Krishna Kumar, learned counsel appearing for the applicant and leaned SCGSC, counsel appearing for the respondents Perused the record.

5. The Hon'ble apex court in ***Canara Bank & Anr. v. M. Mahesh Kumar*** – (2015) 7 SCC 412 held that grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The relevant part of the judgment reads:

“19. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit

is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.”

Further in ***Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.*** -

(2000) 6 SCC 493 the apex court held that family benefit scheme assuring monthly payment to family of deceased employee is not a substitute for compassionate appointment. The relevant part of the judgment reads :

“13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

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19. Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would

neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

6. The thrust is put on while considering the application terminal benefits has to be ignored, whereas in the present case while considering the application of the applicant this factor has been taken into account which is contrary to the judgment of the Hon'ble Apex Court referred to above. Hence, this Tribunal feels that this is a fit case for consideration of application for compassionate appointment due to penurious situation of the applicant's family. Accordingly, this Tribunal directs the respondents to consider afresh the application of the applicant for compassionate appointment keeping in view the law laid down by the Apex Court and pass a speaking order before the next meeting of the circle relaxation committee. The decision so arrived at should be communicated to the applicant in writing. In case the grievance of the applicant still subsists he can approach this Tribunal again, if so advised.

7. The O.A is disposed of as above. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

“SA”

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APPLICANT'S ANNEXURES

Annexure A1 - True copy of order No. B/RLN/145 dated 4.8.2016 issued by first respondent Senior Superintendent, Department of Posts, Thiruvananthapuram North Division.

Annexure A2 - Letter No. Rectt/7-14/Dept/2015 dated 21.11.2016 issued by Assistant Director, (Rectt), Department of Posts, India.

Annexure A3 - True copy of application dated 27.10.2015 submitted by applicant to the first respondent.

Annexure A4 - True copy of appeal petition dated 25.8.2016 submitted by applicant to the second respondent.

RESPONDENTS' ANNEXURES

Annexure R1 - True copy of the valuation certificate from approved valuer.

Annexure R2 - True copy of the income certificate issued by the Tahsildar.

Annexure R3 - True copy of the letter No.B/RLH/145 dated 24.11.2015.

Annexure R4 - True copy of the letter No.37-36/2003-SPB-I/e dated 20.1.2010.

Annexure R5 - True copy of the letter Rectt/7-14/Dept/2015 dated 27.7.2016.