

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3704/2016

Tuesday, this the 1st day of May 2018

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

Sandeep Patil
s/o late Shri Krishna Patil
aged 29 years
r/o H.No.41/7A/3D,
Ganga Vihar Colony
Behind Jalma Ele Sub Station
Dhndhupura Road, Taj Ganj
Agra, UP – 281001

..Applicant

(Mr. Padma Kumar S, Advocate)

Versus

1. Indian Council of Medical Research
Through its Director General
V Ramalingaswami Bhawan
Ansari Road,
Post Box 4911, New Delhi
2. Director
National Jalma Institute for Leprosy
And Other Mycobacterial Diseases
Indian Council of Medical Research
Post Box 1101
Tajganj, Agra – 282001

..Respondents

(Mr. R N Singh, Mr. Vaibhav Pratap Singh and Mr. Amit Sinha, Advocates)

O R D E R (ORAL)

The applicant's father, late Mr. Krishna Patil, was employed as a Dresser under respondent No.2. He died in harness on 03.01.2009. It is stated that applicant's mother, Mrs. Sangeeta Patil, vide her application dated 05.02.2009, applied for compassionate appointment for the

applicant. Since the application was not considered, another application dated 04.05.2013 was submitted on 06.06.2013 by the applicant himself. The respondents, vide their impugned communication dated 22.09.2015 (Annexure A-1), have informed the applicant that his application has been rejected, as it was not found fit for consideration. This impugned communication has been challenged in this O.A.

2. Mr. Padma Kumar S, learned counsel for applicant drew my attention to Annexure A-8 communication dated 31.12.2014 of respondent No.2, which is in reply to an RTI query of one Mr. Ashok Tomaji Phuljale, wherein details of various cases, which have been considered for compassionate appointment, have been furnished. At Sl. No.3 of the table contained in this communication, *qua* the applicant, it is mentioned as “can be considered if vacancy available”.

3. The learned counsel also drew my attention to the following portion of the Annexure A-8 communication, *qua* the applicant (p.29):-

“Sl.No.3 (Sandeep Patil-application dated 5/2/2009): Unmarried son of late Shri Krishna Patil, Dresser) and Sl.No.7 (Haresh Kumar-application dated 23/3/11; Unmarried son of Late Shri Bhagwan Das, washerman) are in need of financial support in terms of compassionate appointment. However, as of now, there is no vacancy slot of 5% DR vacancies to consider either of them for compassionate appointment.”

He thus argued that the contents of impugned Annexure A-1 communication dated 22.09.2015 are completely in contrast with those of Annexure A-8. He accordingly prayed for quashment of the impugned communication and for grant of the relief claimed, i.e., for a direction to the

respondents to consider the case for compassionate appointment against the vacancies duly calculated and future vacancies.

4. *Per contra*, Mr. R N Singh, learned counsel for respondents argued that the Hon'ble Supreme Court in the following judgments has made it clear that the compassionate appointment can be considered only in case the family of the deceased is found to be in indigent condition and not otherwise:-

- (i) **Sanjay Kumar v. State of Bihar**, JT 2000 (10) SL 156,
- (ii) **Umesh Kumar Nagpal v. State of Haryana & others**, JT 1994 (3) SC 525
- (iii) **LIC of India v. Ms. Asha Ramchandra Ambedkar & others**, JT 1994 (2) SC 183; and
- (iv) **Haryana Electricity Board & another v. Hakim Singh**, 1999 (1) SLJ 114 SC

5. Elaborating further, Mr. Singh submitted that the father of the applicant died way back in the year 2009, whereas the application for compassionate appointment was made by the applicant admittedly in the year 2013 and this O.A. has been filed in the year 2016. He thus alluded that since the family has survived for 9 years without any financial assistance/compassionate appointment from the respondents, hence it cannot be called that the family is in indigent condition. The learned counsel also relied upon the judgment of Hon'ble High Court of Delhi in

Veer Mohd. v. Municipal Corporation of Delhi, 95 (2002) DLT 663 (DB).

6. I have considered the arguments of learned counsel for the parties and perused the pleadings.

7. From a bare reading of Annexures A-1 & A-8 communications of the respondents, I am quite convinced that the contents of Annexure A-1 communication do not gel well with those of Annexure A-8 communication. Annexure A-8 communication clearly indicates that the respondents, at the relevant point of time, had considered the case of the applicant for compassionate appointment and had noted that “his case can be considered if vacancy is available”. The argument of Mr. R N Singh that the case of the applicant cannot be considered at this late stage gets belied from the very fact that consideration to the case of the applicant for compassionate appointment was granted by the respondents in the year 2014, i.e., after 5 years of the death of his father.

8. Mr. Padma Kumar S, learned counsel for applicant has relied upon the judgment of Jaipur Bench of this Tribunal in **Smt. Pushpa Devi v. Union of India & others** (O.A. No.323/2012) decided on 19.02.2013, wherein, *inter alia*, it has been observed as under:-

“19. According to the condition laid down in Para No.4 of the DOPT OM dated 26.07.2012, the onus of examining the penurious condition of the dependent family well rest with the authority making compassionate appointment. In order to examine the penurious conditions of the dependent family and in order to ensure transparency in offering appointment on compassionate grounds, certain parameters are looked into by the authority making compassionate appointment such as size of the family of the deceased employee, number of minor children, number of unmarried

daughters, immoveable property including the house & agricultural land, income from other sources, retirement benefits & pension received by the family of the deceased etc. Taking into consideration the various parameters, the applicants desirous of having appointment on compassionate grounds are given marks and their comparative merit is prepared to examine the penurious condition of the dependent family. It appears that no such exercise has been done in this case."

He thus argued that the respondents have never undertaken any exercise to determine the penurious condition of the applicant's family, and hence it cannot be said that his case has been considered for compassionate appointment in the real sense.

9. From the records also, I find that there is no mention either in the impugned Annexure A-1 communication or in the reply of the respondents that the respondents had undertaken any exercise to determine the financial condition of the family. The O.M. of Department of Personnel & Training (DoPT) dated 26.07.2012 makes it clear that in cases where the candidature of a candidate, who is found to be eligible otherwise for compassionate appointment, is not considered for such appointment in a particular year due to non-availability of a vacancy under 5% quota, such candidate should be kept in the waitlist and can be considered whenever such vacancy is available. I am of the view that the applicant is required to be given the benefit of this O.M.

10. In view of the discussions in the foregoing paragraphs, this O.A. is disposed of with a direction to the respondents to keep the case of the applicant under the consideration list in terms of DoPT's O.M. dated 26.07.2012 and to consider him for compassionate appointment if a

vacancy is available and the applicant is found eligible in all respects. No order as to costs.

(K.N. Shrivastava)
Member (A)

May 1, 2018
/sunil/