

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CIRCUIT SITTING AT SRINAGAR**

**OA No. 062/01324/2017
SWP No. 2795/2015**

Pronounced on : 31.07.2018
Reserved on : 17.07.2018

**CORAM: HON'BLE MR.SANJEEV KAUSHIK, MEMBER(J)
HON'BLE MRS. P. GOPINATH, MEMBER(A)**

Mohammad Yasin Kuchay, aged about.... Years, S/o Late
Mohammad Safdar Kuchay, R/o Kuchay Mohalla Budgam.

.....Applicant

BY ADVOCATE: **Sh. Iqbal Wani proxy counsel for Sh. F.A. Bhat**

VERSUS

1. Union of India through Secretary, Ministry of Law, New Delhi.
2. Chief Post Master General, J&K Circle, Jammu.
3. Assistant Director, Postal Services (Staff), J&K Circle, Jammu.
4. Post Master General, J&K, Srinagar.
5. Superintendent of Post Office, Baramulla Division, Baramulla, Kashmir, Srinagar.
6. Post Master Baramulla, Kashmir.

.....Respondents

BY ADVOCATE: **Sh. Nasir A. Bhat**

ORDER

BY MRS. PADMINI GOPINATH, MEMBER(A):-

1. The father of the applicant who was working in the respondent department as Mail Overseer, died on 10.11.1999. He left behind dependents consisting of wife, three daughters and two sons.
2. Applicant argues that his family was in destitute condition with no earning member. The elder son of the deceased employee preferred a claim for compassionate appointment. The case of the elder son, argues

applicant, was considered by the Circle Level Selection Committee (CLSC) for compassionate appointment and without appreciating and analyzing the merits of the case, respondents rejected the claim in the year 2001. The elder son became a victim of mental disorder and thereafter, the family after spending a lot of money on his treatment, preferred the claim of the second son before the respondents. The second son filed Writ Petition SWP No. 279/2007 challenging the inaction of the respondents in considering the case of the applicant for appointment on compassionate grounds. The High Court disposed of the Writ Petition vide judgement dated 05.04.2007 with the directions to the respondents to consider the case of the applicant under rules.

3. The applicant submitted a representation to the respondents on 07.05.2007. The respondents vide communication dated 06.02.2012 conveyed to the applicant that his case was in the stage of verification and will be considered under rules in due course. The applicant submits that his case had been under consideration for more than seven years and on 19.03.2016, it had been rejected on the ground that the case of the elder son was considered and rejected by the CLSC on 22.12.2000.

4. The prayer of the applicant is to set aside the order of rejection dated 19.03.2015 and to direct the respondents to consider the case of the applicant for compassionate appointment keeping in view the financial status of the family and to give the applicant a post commensurate with educational qualifications.

5. The main argument of the applicant is that his case has been rejected ignoring the financial condition of the family and without evaluating the property owned by the dependents which is reflected by the certificates issued by the Tehsildar. He further states that under the scheme of

compassionate appointment, a dependent of a Government servant dying in harness is to be given employment to help the family to get over the sudden loss and financial destitution, if any, visiting the family.

6. It is further averred that after the death of father of the applicant, the family received terminal benefits amounting to Rs. 2,19,645/- and monthly pension of Rs. 5000/- and allowances. The case of the elder son of the applicant was considered by the CLSC which concluded that the family was not in financial distress. The elder son was thus denied an appointment on compassionate grounds. The second son filed a writ petition for appointment on compassionate grounds and the High Court in its order, directed the applicant to represent his case before the respondents who would consider it under the rules holding the field.

7. The High Court in its order had directed that the applicant will be representing his case before the respondents under the rules holding the field. In view of the directions of the High Court, the case of the applicant should have been examined on merit under all the parameters for compassionate appointment and not rejected on the ground that one of the dependent members had been considered earlier and rejected.

8. The respondents' argument is that the CLSC took the view that case of one of the dependent family members was considered in the year 2000 and hence, the case of a second family member for compassionate appointment cannot be taken up as the indigent circumstances of the family on an earlier occasion were not such as to merit a compassionate appointment. The respondents

further argue that there is no provision for consideration of a second family member, if the case of one of the family members had been considered by the CLSC for compassionate appointment.

9. We have heard both parties and have carefully gone through the pleadings on record. We find that the applicant's case was not examined on merit, under all parameters for compassionate appointment and on the basis of current family circumstances. In pursuance of the High Court's order, respondents issued Annexure H and para 3 thereof is reproduced below:-

“The Hon'ble Court has directed the respondents to consider the representation of Sh. Mohd Yaseen Kuchay under the rules holding the field. As per rules holding the field on the subject for consideration of cases of compassionate appointment, there is no provision for consideration of the case of the applicant if the case of one of the family members has been considered and decided in CLSC meeting. The objective of the scheme for compassionate appointment is to grant appointment on compassionate grounds to a dependent family member of the Government servant who had died while in service, thereby leaving the family in penury and without any means of sustainable livelihood so as to provide relief to the family of the government servant concerned from financial destitution and to help it get over the emergency at that particular time. In the present case, the case of one of the dependent family members and brother of the applicant already stand considered and rejected in CLSC meeting held on 22.12.2000 and as per rules the case of other family member cannot be considered in CLSC again. Accordingly the CLSC did not recommend your case for appointment on compassionate grounds.”

Thus, we find that the only reason cited for rejecting the applicant's case was that the case of the brother of the applicant was considered and rejected in the year 2000.

10. The respondents had neither pleaded nor placed any material on record to show that the case of the applicant was

examined independently as directed by the High Court, both on merit as well as on the parameters of compassionate appointment. In Appeal (Civil) No. 1924 of 2008 titled **Uttaranchal & Anr Vs Sunil Kumar Singh Negi** on 12 March, 2008, it has been stated that right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. This aspect has not been addressed by the respondents.

11. In the light of the above, we reiterate the order of the High Court that the case of the applicant be considered on its individual merit as per circumstances existing today by awarding marks on the various parameters fixed for compassionate appointment and consider the case of the applicant under the rules holding the field and if found eligible, an offer of appointment be given to the applicant. This exercise must be completed within three months of receipt of a certified copy of this order by the respondents. Ordered accordingly. No order as to costs.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated:
ND*

