

CENTRAL ADMINISTRATIVE TRIBUNAL,

CHANDIGARH BENCH

O.A.NO.063/00788/2017 Orders pronounced on: 03.07.2018
(Orders reserved on: 09.05.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

Ravinder Sharma S/o

L. Sh. Swaroop Chand,

Vill. Patroli, Tehsil Khudiyar,

Distt. Kangra (H.P),

Group 'D'(34 years).

Applicant

By: Mr. Madan Mohan, Advocate.

Versus

1. Union of India through Secretary,
Ministry of Finance, Deptt. of Revenue,
New Delhi.
2. Chief Commissioner of Income Tax,
NWR, Aayakar Bhawan, Sector 17-E,
Chandigarh-160017.
3. Deputy Commissioner of Income Tax,
Room No. 502, 5th Floor, Sector 17, Aayakar Bhawan,
Chandigarh-160017.
4. Commissioner of Income Tax (Audit), Room No. 302, 3rd Floor,
Aayakar Bhawan, Himalayan Marg, Sector 17-E, Chandigarh-
160017.

By: Mr. K.K.Thakur, Advocate.

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Respondents

ORDER
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, for quashing the action of the respondents in deferring his appointment on compassionate grounds, without any reasons, and to direct them to act according to the seniority assigned to him and offer him appointment, as persons junior to him in seniority, have already been offered such appointments.
2. By and large the facts are not in dispute. The father of the applicant, while working as Senior Tax Assistant, died in harness on 1.12.2003, leaving behind his wife, son (applicant and another younger son. The applicant applied for appointment on compassionate grounds, which was duly registered in "Register of Appointments on Compassionate grounds" and he was informed that his claim would be considered in due course of time and certain information/documents were also asked from him, which he duly furnished. The applicant was called for interaction / interview from time to time. In reply to an RTI Application, he was informed that during the period 2011-12 to 2016-17, as many as 81 appointments on compassionate grounds have been made, vide letter dated 26.4.2017 (A-10). However, claim of the applicant has been left out, without any reason. Hence, the O.A.
3. The respondents have resisted the claim of the applicant by filing written statement. It is pleaded that applicant has no vested right to claim appointment on compassionate grounds and he can claim only consideration of his case. It is claimed that cases of all the claimants were considered and only most deserving candidates

were approved for appointment on compassionate grounds. The cases are considered on the basis of points awarded for various aspects which was introduced in 2007 as amended from time to time and case of the applicant could not be found meritorious enough to fall within the select list. Thus, they pray for dismissal of the O.A.

4. I have heard the learned counsel for the parties at quite some length and examined the material on the file minutely.

5. At the very outset, learned counsel for the applicant submitted that the death in this case took place in 2003 and the applicant submitted his application for appointment in 2004 and, therefore his case was to be considered under the compassionate Scheme of 1998. The point system, relied upon by the respondents to consider various cases, was introduced in 2007 as modified from time to time, and as such, it could not be used to the disadvantage of the applicant as his case was to be dealt with under 1998 Scheme. His plea, in short is, that his case is to be considered on the basis of parameters available at the time of death / submission of application in 2003-04.

6. In support of the above proposition, learned counsel for applicant places reliance on decision of the Hon'ble Apex Court in the case of **Canara Bank and another vs. M.Mahesh Kumar**, 2015(5) SLR 243, in which it was held that "the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in *Jaspal Kaur's* case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot

have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993". To the same effect is decision of Hon'ble Punjab and Haryana High Court (Full Bench) in the case of **Krishna Kumari Vs. State of Haryana & Others**, 2012 (2) RSJ, 473 that rules applicable on the date of death / incapacitation of an employee need to be followed. If application of a claimant is kept pending for considerable period and some other policy comes into operation, no fault can be found on the part of the employee and CWP No. 6173-CAT-2011 (O&M) titled **Bhupinder Batra Vs. Union of India & Others**, decided on 5.10.2011 in which it was categorically held and ordered that "case of the petitioner seeking compassionate appointment may be considered afresh in the light of the policy governing compassionate appointment dated 09.10.1998 without adverting to the subsequent letter dated 27.06.2007".

7. Faced with the aforesaid proposition of law, the learned counsel for the respondents was not in a position to cite any law to the contrary.

8. In view of the aforesaid factual scenario and legal position, the Court is left with no alternative except to hold that the case of the applicant was to be considered under the 1998 Scheme and not under the criteria laid down in 2007, in view of the ratio of law laid down in the cases of **M.Mahesh Kumar, Krishna Kumari and Bhupinder Batra (supra)**, and as a result thereof, the action of the respondents to that extent is invalidated. The respondents are accordingly directed to re-consider the case of the applicant for appointment on compassionate grounds under the instructions applicable at relevant point of time, within a period of two months from the date of receipt of a certified copy of this order.

9. M.A. No. 1604/2017 for production of record also stands disposed of accordingly.

10. The parties are, however, left to bear their own costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh
Dated: 03.07.2018

HC*

