

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/01214/2016

Dated Monday the 18th day of June Two Thousand Eighteen

PRESENT

HON'BLE SMT. B. BHAMATHI, Member (A)

G.Aishwarya,
No. 35, Kalaingar Nedunchalai,
Vth Cross Street, Srinivasa Nagar,
Perungalathur, Chennai 63.Applicant

By Advocate M/s. K.H.Ravikumar

Vs

1.The Director General,
Council of Scientific & Industrial Research,
Anusandhan Bhawan,
2, Rafi Marg, New Delhi 110001.
2.The Director,
Central Leather Research Institute,
Council of Scientific and Industrial Research,
Adyar, Chennai 20.Respondents

By Advocate Mr. T. Ravikumar

ORAL ORDER

(Pronounced by Hon'ble Smt. B. Bhamathi, Member(A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the records relating to the impugned order passed by the 2nd respondent in his proceedings No. 5(525)2014-E1 dated 13.04.2016 and quash the same and direct the respondents herein to appoint the applicant in any one of the suitable job in the 2nd respondent office as per her qualification and to pass such suitable orders or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.”

2. It is submitted that the applicant's mother was initially appointed as a Helper in the 1984 and subsequently promoted as Lab Assistant. She died on 18.10.2014 in harness. The applicant made an application for compassionate appointment which was rejected vide order dt. 06.02.2015. Against the rejection order, she preferred an appeal on 24.03.2015 and another on 28.12.2015. Since the appeals were pending for consideration, she filed **OA 227/2016** before this Tribunal which was disposed of on 12.02.2016 with a direction to dispose of the appeals within a period of two months from the date of receipt of copy of the order. Subsequently, the applicant's request was rejected vide order dated 13.04.2016 on the ground that she was married and working in Hewlett Packard Pvt. Ltd. Aggrieved, she has filed this OA.

2.1. It is submitted that the applicant's mother had put in nearly 30 years of service and her father on retiring on superannuation while

working in SIDCO which was a non-pensionable service. The applicant's mother had availed the housing loan as well as loan to perform the marriage of her two daughters ie., applicant and her sister and as such the family is in indigent circumstances.

2.2. It is alleged that the respondents considered the case of one Ms. Nagamma (for compassionate appointment) whose husband one Mr. Pakiraiah (Lab Assistant) died in harness. But they failed to consider her case for compassionate appointment. It is alleged that the respondents are giving appointment on compassionate grounds solely at their discretion without following any norms or procedures.

2.3. It is submitted that the applicant was employed as a trainee and that too, only for a short period of time. As per several judgments of the Hon'ble High Courts and Hon'ble Apex Court, a married daughter is entitled for compassionate appointment.

3. The respondents have filed their reply statement contesting the claim of the applicant. It is submitted that as per the family details submitted by the deceased employee to the office, her family consists of her husband Mr. D. Ganesh, a pensioner having annual income of Rs. 20,400/-, her daughters Mrs. G. Sailakshmi (married) and Mrs. G. Aishwarya (married) ie., applicant. Both daughters were employed and earning Rs. 1,44,000/- and Rs. 16,68,000/- per annum, respectively. Applicant's mother in law, Ms. D. Pankajam is a

pensioner earning Rs. 60,000/- per annum. Hence, the statement made by the applicant that the deceased employee was the only bread winner is incorrect.

3.1. It is stated that while submitting details for compassionate appointment, the applicant stated that she was married and was employed in Hewlett Packard Pvt. Ltd with a salary of Rs. 16,646/- per month. Therefore, the fact that she was unemployed and a dependent of the deceased employee was not correct. The deceased employee made an application for LTC for herself and her husband on 17.04.2012 which shows that at the time of death of the employee, the only dependent was her husband.

3.2. As per DoPT OM dated 30.05.2013, the applicant does not fall under the category of “wholly dependent” since she was married and employed at the time of death of her mother. As per the said DoPT OM, married daughters can be considered for compassionate appointment subject to the condition that she was wholly dependent on the Government servant at the time of his / her death in harness or retirement on medical grounds and she must support other dependent members of the family. As the applicant was married and employed she could not be considered as a dependent family member of the deceased employee for the purpose of compassionate appointment.

3.3. As per the scheme of compassionate appointment, the definition

of dependent family member means the spouse or the son (including adopted son) or daughter (including adopted daughter) or brother or sister in the case of unmarried Government Servant who was wholly dependent on the Government Servant at the time of death in harness or retirement on medical grounds as the case may be. It is submitted that the applicant was not a dependent of the deceased employee at the time of her death since she was married and employed. As such the claim of the applicant is not tenable.

3.4. As regards the case of Ms. Nagamma, widow of late Mr. Pakiraiah, who was given compassionate appointment, the deceased employee was the sole bread winner of the family and had no properties except liabilities. She was uneducated and had the responsibility of conducting the marriage of her younger daughter and had to take care of her elder daughter having a girl child who was deserted by her husband. Whereas in the applicant's case, the members of the family are well educated and having own house, there was no financial distress on them, except the housing loan. The respondents have denied the allegations made by the applicant that compassionate appointments were made by the respondents arbitrarily without following any norms or procedure.

3.5. The respondents rely on the Hon'ble Apex Court judgment dated 04.05.1994 in the case of **Umesh Kumar Nagpal Vs. State of**

Haryana and others [JT 1994 (3) S.C. 525] which had laid down the following important principles in this regard:

- i. Only dependants of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.
 - ii. The posts in Groups 'C' and 'D' (formerly class III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds and no other post ie., in the Group A or Group B category is expected or required to be given for this purpose as it is legally impermissible.
 - iii. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitutions and to help it get over the emergency.
 - iv. Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.
4. The applicant has filed her rejoinder stating that she was employed in the private company but as a trainee for a project. As soon as the project was completed, she was discharged from services.

Further, her husband is unemployed and as such the onus of supporting the family has come upon her shoulders.

5. In the course of oral hearing, learned counsel for applicant relies on the orders of Ernakulam Bench of this Tribunal dated 21.07.2009 in **OA 10/2009** and Allahabad Bench dated 03.05.2016 in **OA 1132/2007** and order of Hon'ble Madras High Court dated 10.07.2013 in **WP 18660/2013**. She also produces a copy of service certificate of the applicant. During the course of oral hearing, it is submitted that the applicant's father is living separately and not with the applicant.

6. Learned counsel for the respondents submits that the para 5 of the order of the Hon'ble High Court in WP 18660/2013 states that the case of the daughter of the petitioner therein was rejected only on the grounds that she was married and the time of the death of the husband of the petitioner. However, in the instant case, the applicant was married as well as employed during the death of the employee.

7. Heard the learned counsels and perused the records.

8. The main criteria for grant of compassionate appointment to son or daughter (irrespective of gender) is dependency at the time of death of the employee. In this case, the applicant was admittedly married and also employed at the time of death of her mother. She was living in her marital home and was not dependent on her natal home. With

her income, she was taking care of her family i.e., her husband, child and mother in law.

9. The second criteria for grant of compassionate appointment is the bread winner role of person who has applied for compassionate appointment, irrespective of gender. At the time of applying for compassionate appointment she was the bread winner of the marital home and not her natal home. At the time of death of her mother, she was not a bread winner for any surviving dependent family member of the family of the deceased employee. Her surviving parent i.e., her father was having a job in SIDCO which was a pensionary establishment. Hence father was not dependent on the applicant at the time of death of his wife nor after the death of his wife. Even as of now, the applicant's father is living separately and is not dependent on his daughter. The applicant's sister was also not dependent on her mother, while the mother was alive as she was having her own income and was also married, since the applicant has made a reference that her mother had taken a loan for marriage of her two daughters i.e., the applicant and her sister. That situation regarding continuation in employment / earning of income even after the death of her mother continues in respect of the applicant's sister. Hence, she is not a dependent member of the employee's family then or now.

10. It is also on record that during the service of the deceased

employee the LTC claims were made by her for her husband and herself. This means that after marriage and employment of applicant and her sister, they ceased to be dependent on her mother which continued till date of submitting of application by applicant. Hence applicant cannot be the bread winner for either the surviving parent ie., her father or the surviving sister who alone constitute the members of the family of the deceased employee.

11. The applicant's father was part of the family as the spouse of the deceased employee. Rules do not prevent him from seeking compassionate appointment being a family member. But, since he was having a job, he was not an eligible dependent under rules to claim compassionate appointment. However, the father never sought compassionate appointment since he was an employee of SIDCO and was on a pensionable establishment. As per the records of the respondents, the applicant has wrongly contended that her father was in a non pensionable appointment. He is getting pension on superannuation after retirement and looking after himself by living separately.

12. Hence, if the father is not dependent on the applicant nor the sister dependent on the applicant she cannot claim to don the mantle of bread winner for the surviving family members of the deceased employee. If at all she is a bread winner, she is the bread winner for

her marital home which cannot be seen to constitute dependent family members of the deceased employee as per Rules and hence is rendered outside the purview of the scheme of compassionate appointment.

13. The applicant claims that she is in penury now because she has lost her job she had held at the time of death of the employee and also her husband is unemployed. As per settled law, the policy of compassionate appointment provides for grant of compassionate appointment only with reference to the penury that was purportedly existing as on the date of death of the employee. As on the date of death of the employee, the applicant was employed and not dependent on her mother. Her subsequent loss of job cannot be factored in for grant of compassionate appointment at any later stage. Also even if for arguments sake, the penury factor is factored in, this will result in a situation that if the job based on compassionate appointment is granted to her, she will be the bread winner for dependents of her family formed after her marriage (since her father and sister are independent), which is not the objective of the scheme. Otherwise, this will reduce the scheme to be implemented on dynastic principle, which is not also the objective of the scheme. None other than economic dependency of her father and sister can be a ground to make out a case for applicant as bread winner and will be relevant for considering applicant's case for grant of compassionate appointment.

But that is not so, as already discussed.

14. A similar case was considered by this Tribunal in OA 1580/2016. The principle ie., dependency and bread winner role involved in both the cases were exactly the same. The OA was dismissed vide order dated 20.04.2018. The operative portion of the order is reproduced below:

“.....

10. The applicant's contention is that she needs a job to play the role of a breadwinner to bring up her two children, help in paying the EMIs on housing loan availed by herself and her husband and also to take care of her husband's sisters, residing with them. This is not tenable since the above "need" do not come within the purview of definition of "family" for whom she could be "bread winner" for dependents of the family of ex employee. Hence, she is not even entitled to be considered for compassionate appointment on this ground. If she had other surviving siblings in the family she could have been considered for compassionate appointment in order to take care of those dependent members of the deceased breadwinner's family. She cannot seek compassionate appointment, if by getting the job, she is not going to be bread winner of her fathers family, in as much as she is the only surviving legal heir, and she cannot claim compassionate appointment for being a bread winner of her husband's family, which include her children, since they are not considered part of the ex employee's family, as per Rules. Since, she is the lone surviving legal heir member in the ex-employee's family', there is no responsibility or liability left by her father , to act on his behalf, after his death, to take care of members of his family, as defined under Rules. As per the definition of family for the purpose of compassionate appointment, no other member of the family is left behind for the applicant to take care of. Her children or her sisters in law are her dependents, by marriage, but cannot not be held as members of the ex-employee's family, as per Rules. They are excluded from the definition of Family, and hence , although she may want the job to become a bread winner for her family, which is not the ex employees family, after her marriage, their dependency on applicant cannot be a criteria to consider applicant's case for compassionate appointment.

11. Both parameters of dependency and bread winner role is not satisfied in the applicant's case on the basis of which respondents rightly rejected her case for compassionate appointment. Firstly, her dependency on her parents ceased when she got married prior to the death of both her parents and her dependency was on the marital

home and not on the natal home. In a situation where, if there were other siblings born to her parents, who required to be looked after, after the death of ex-employee and if the applicant had then sought compassionate appointment to take care of those siblings, then a case of both dependency on applicant of the ex employees family members and also the need for applicant to play the bread winner role of those dependent siblings could be made out as per the circular for grant of compassionate appointment. In a situation where no other siblings were ever born to her parents, she is not eligible for compassionate appointment for the purpose of looking after the dependents of 'her' family that is her children and her sisters-in-law etc. The definition of family revolves around and is with reference to the ex-employee and not to the applicant's dependents, being married daughter of ex-employee. So neither the factor of dependency nor the factor of bread winner in applicants case is satisfied, to merit favourable consideration of her request for compassionate appointment .

11. In view of the above, the applicant has failed to make out any case for compassionate appointment in the light of the criteria laid down in the circular of 2014. The respondents have established that she is clearly outside the purview of the criteria laid down in the 2014 circular for grant of compassionate appointment .

12. OA dismissed. No costs.”

15. In view of the above discussion, the impugned order is not liable to be interfered with.

16. Accordingly, OA is dismissed. No costs.

(B. Bhamathi)
Member(A)
18.06.2018

SKSI