

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.NO.446 OF 2016

Cuttack this the 9<sup>th</sup> day of November, 2017

CORAM:

HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Debashish Sahoo, S/o. late Ajay Kumar Sahoo, aged about 23 years, Plot No.367, Phase-I, Dumduma Housing Board Colony, PO-Dumduma, Bhubaneswar, Dist-Khurda-751 019

...Applicant

By the Advocate(s)-M/s.L.Sahoo  
P.K.Shoo

-VERSUS-

Union of India represented through:

1. The Surveyor General of India, Hathibarkala Estate, PO Box No.37, Dehradun-248 001(Uttarakhanda) INDIA
2. Director, Odisha Geo-Spatial Data Centre, Survey of India, Survey Bhawan, PO-R.R.Lab, Bhubaneswar-751 013

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant's father was working as Draughtsman, Gr.II under the Director, Geo-Spatial Data Centre, Survey of India, Bhubaneswar (Res.No.2) when he died in harness on 16.10.2013, leaving behind his widow, one unmarried daughter and the applicant. The applicant applied for a compassionate appointment on 24.4.2014 since his mother was already 52 years old and was incapable of doing any service due to ill health and advanced age. The Respondents, however, rejected the request for compassionate appointment of the applicant and communicated the same to him by a letter dated

11.6.2015(A/6). Aggrieved by this, the applicant has filed the present O.A. praying for the following reliefs:

- i) The Hon'ble Tribunal may be pleased to quash the impugned order at Annexure-6 so far as it relates to the applicant and direct respondent 1 to provide an employment to the applicant befitting his qualification on compassionate ground within a stipulated period.
- ii) Any other order/orders as deemed fit and proper in the interest of justice may be granted in favour of the applicant.

2. The applicant has based his prayer on the following grounds:

- i) The impugned order dated 11.6.2015 is a non-speaking order and does not inform on what ratio or ground the case of the applicant has been rejected when the family of the deceased Government employee has no source of income. The impugned order has been passed mechanically without proper application of mind and without taking into consideration the acute indigent condition and liabilities of the deceased family.
- ii) Providing compassionate appointment is a welfare scheme of the Government and is therefore to be implemented with a liberal interpretation. The Respondents on the other hand, made a narrow interpretation of the scheme to deviate the very objective for which the scheme has been formulated.
- iii) Due to the sudden demise of the applicant's father, the family was put to severe financial crisis with various liabilities such as: education of children, marriage of the applicant's sister and repayment of bank loans etc. Since the applicant's father had been kept at ICU at the Kalinga Hospital for 15 days before his death on 16.10.2013, more than Rs. 4 lakhs have been spent towards the cost of his treatment. Therefore, the family is

in indigent condition. Out of the terminal benefits received after the death of the applicant's father, bulk of the amount was spent on conducting the marriage of applicant's sister. The family has only a small house of about 600 Sq.Ft. area constructed out of the bank loan and it has no source of income. The applicant is a Commerce Graduate (1<sup>st</sup> Class with Distinction) and has completed the course of Post Graduate Diploma in Computer Application with Grade-A. Therefore, he should be given an appointment on compassionate ground.

3. The Respondents in their counter-reply filed on 16.1.2017 have submitted that the case of the applicant was considered by the Committee for Compassionate Appointment in the year 2015. There were 12 vacancies available under 5% quota under compassionate appointment. The points were awarded on the basis of the laid down parameters and 90 cases were considered for 12 posts under compassionate appointment. The applicant scored only 38 points and secured 87<sup>th</sup> position in the merit list. The 12 vacancies were filled up by those persons who secured 1<sup>st</sup> to 12<sup>th</sup> position in the merit list. The Respondents have argued that the Hon'ble Supreme Court in Civil Appeal No.2206 of 2006 (*Local Administration Department vs. M.Selvanayagam @ Kumaravelu*) has specifically laid down that any appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the

dependents of the deceased employee, would be directly in conflict with Articles 14 and 16 of the Constitution. The applicant was in 87<sup>th</sup> position in the list of 90 persons considered for 12 vacancies and was therefore, rejected by the Committee constituted for compassionate appointment.

4. The applicant filed a rejoinder on 29.3.2017 and has reiterated that the indigent condition of his family has not been taken into consideration by the Respondents. The fact that the family had spent about Rs.4 lakhs for the costly treatment of his father which was not reimbursed by the Respondents and that the terminal benefits of the deceased employee were spent on repaying bank loan and conducting marriage of the applicant's sister have not been considered by the Committee for Compassionate Appointment and therefore, he deserves to get the relief prayed for.

5. I have heard the learned counsels from both the sides and perused the documents submitted by them. The provision of a compassionate appointment is no doubt a welfare measure, but no one can claim it as a matter of right. The wards of the deceased employees have a right for due consideration but not for appointment under compassionate appointment quota. The Government have issued guidelines on compassionate appointment from time to time including the OM No.14014/6/94-Estt.(D) dated 09.10.1998 of DOP&T. The

following principles are followed while considering cases for compassionate appointment:

- i) The appointment on compassionate ground may be done when:
  - a) a Government servant dies in harness or is retired on medical grounds before attaining the age of 55 years (57 years for Group 'D' Government servants);
  - b) the family of deceased Government Servant is in indigent condition;
  - c) the person seeking compassionate appointment is a dependent family member of the deceased Government servant, that is to say that he/she is spouse; son; daughter; brother/sister(in the case of unmarried Govt. servant) of the deceased Government servant who was wholly dependent on him;
  - d) the claimant has attained the age of 18 years;
  - e) the claimant is eligible and suitable for the post on which his compassionate appointment is being considered.
- ii) Any request for compassionate appointment may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.
- iii) 5% of the vacancies are to be filled by appointment on compassionate grounds.
- iv) Compassionate appointments can be made in Group 'C' or 'D' post only.
- v) While considering an application for compassionate appointment, a balanced and objective assessment of financial condition must be made taking into account its assets and liabilities, presence of earning member, size of the family, ages of children, and essential needs of the family etc.

- vi) An application for compassionate appointment shall not be rejected merely on the ground that the family of Govt. Servant has received benefits under various welfare schemes.
- vii) Compassionate appointment shall have precedence over absorption of surplus employees and regularization of daily wagers.

By an Office Memorandum dated 5<sup>th</sup> May, 2003, following modifications were introduced in the compassionate appointment scheme-

- (a) If compassionate appointment to genuine and deserving persons cannot be offered in the first year due to non-availability of regular vacancy, his name must be continued for consideration for one more year.
- (b) The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years.

The DOPT OM No.14014/19/2002-Estt(D) dated 05.05.2003 has provided the following:

- "1. The undersigned is directed to refer to Department of Personnel and Training OM No.14014/6/94-Estt.(D) dated October, 9, 1998 and (O.M.) No.14014/23/99-Estt.(D) dated December, 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% direct recruitment quota.

2. It has therefore been decided that if compassionate appointment to genuine and deserving cases as per the guidelines contained in the above OMs is not possible in the first year due to non-availability or regular vacancy the prescribed committee may, review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular case warrants extension by one more year for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee a case is considered to be deserving, the name of such a person can be continued for consideration for one more year”.
  3. The maximum time a person’s name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again”.
6. The issue of compassionate appointment has been extensively dealt with in a catena of judicial pronouncements. In the case of **Mukesh Kumar vs. Union of India & vrs., (2007) 2 SCC (L&S) 926** the Hon’ble Supreme Court has remitted the applicant’s case back to the Central Administrative Tribunal for fresh consideration since no indication was available on how the the departmental authorities had arrived at the conclusion that the family was not in indigent condition. In **Syed Khadim Hussain vs. State of Bihar & Ors., (2006) 9 SCC 195**, the Hon’ble Apex Court had held that the rejection of

the applicant's application was not justified as at the time of rejection appellant had attained above 18 years of age, although at the time of filing the application his age was around 13 years.

In **Govind Prakash Verma vs. Life Insurance Corporation of India & ors. (2005) 10 SCC 289**, the Hon'ble Apex Court had held that the scheme of compassionate appointment is over and above whatever is admissible to legal representatives of the deceased employee as benefits of service which they get on death of the employee. Hence compassionate appointment cannot be refused on the ground that any member of family had received such benefits. In **Balbir Kaur &Anr. Vs. Steel Authority of India Ltd. & Ors. (Civil Appeal No.11881/1996)** and **Smt.T.K.Meenakshi and Anr. Vs. Steel Authority of India Ltd. & Ors (Civil Appeal No.11882/1996)**, 2002 LAB I.C. 1900, the Hon'ble Supreme Court had held that benefit of compassionate appointment cannot be negative on ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee. In **Sudhir Sakharam Joshi vs. Bank of Maharashtra & Rnr. 2003(1) Mh.L.J.** the Nagpur Bench of Hon'ble High Court of Bombay had directed the respondents to give an appointment to the petitioner in clerical cadre since his application for compassionate appointment was rejected without assigning any valid reasons. The Hon'ble High Court had held the fact that retiral benefits given to the deceased cannot be a good ground

for such rejection and no material was produced to show that any detailed inquiry was made in order to determine the financial condition of the deceased family. Similarly in **Rajani (Smt.) Anr. Vs. Divisional Controller of M.S.R.T. Corporation, Bhandara & Ors. 2003-IV-LLJ (Suppl) NOC-474**, the Hon'ble High Court of Bombay had ordered grant of compassionate appointment even, if necessary, by creating supernumerary post to the wife of an employee compulsorily retired on medical ground since such compassionate appointment was denied for more than 10 years resulting in grave injustice to the family of the said employee. In **Arun Kumar vs. Union of India & ors. 2002 LABI.C. 3196**, the Hon'ble Himachal Pradesh High Court had held that grant of family pension or the fact that the family of the deceased employee was receiving benefit under various welfare schemes cannot be a ground to deny compassionate appointment. In **Smt.M.Reddamma vs. APSRTC & Ors., WP No.23759/1995 dated July 17, 1996**, the Hon'ble High Court of Andhra Pradesh had gone to the extent of issuing a writ of mandamus to appoint the petitioner in a suitable post within three weeks on the ground that the Apex Court and the High Court have held that the appointment on compassionate grounds should be provided to the dependents of the deceased employee immediately after the death of the bread-w9nner to enable the family to tide over the sudden crisis and denial of appointment

even after a lapse of six years of making representation amounts to disobedience of the mandate of the Apex Court without any satisfactory explanation for the delay. In **Mona (Smt. & Anr. Vs. Municipal Corporation of Delhi & Others (WP No.4952/1994 dated 11.07.1996)**, the Hon'ble High Court of Delhi had quashed the impugned order denying compassionate appointment on the ground that relevant record justifying denial of appointment was not produced. In **Swati Chatterjee vs. State of West Bengal & ors. (W.P.S.T. No.21/2010 decided on 02.02.2010)** the Hon'ble Calcutta High Court had held that wife of the deceased employee was entitled to compassionate appointment and family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment. In O.A.No.,2060/2008 this Tribunal in its order dated 22.1.2009 had considered the OA in the matter of compassionate appointment and held that the respondents cannot reject the application for compassionate appointment on the that the applicant did not apply within a period of five years. It was held by this Tribunal that the applicant was a minor at the time of the death of his father and deserved to be considered for compassionate appointment after attaining the age of a major. Similarly, in **OA No.1005/2005 in Akeel Ahmed Khan vs. General Manager, State Bank of India & Ors., 2003(4) MPHT 167**, the Hon'ble High Court of Madhya

Pradesh had held that if an appointment on compassionate ground is rejected on the grounds of gratuity and provident fund amount received by the family, it will frustrate the entire purpose of compassionate ground appointment. In **Aparna Narendra Zambre & Anr. Vs. Assistant Superintendent Engineer, Sangli & Ors. 2011(5) Mh.L.J., WP No.1284/2011 decided on 01.08.2011**, it was held by the Hon'ble Bombay High Court that the fact of receipt of family pension cannot be the basis to deny benefit of compassionate appointment. In the case of **Director General of Posts & ors. vs. K.Chandrasekhar Rao, Civil Appeal No.9049/2012 arising out of LSP ( C) No.19871/2009 decided on 13.12.2012** and similar Civil Appeals the Hon'ble Apex Court had laid down the principle that the 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely titled in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. In **Nirmala Saha & Anr. Vs. Union of India & Ors., 2010(124) FLR 88**, the Hon'ble Calcutta High Court had observed that by merely placing the application for compassionate appointment in three consecutive years from the date of filing the application irrespective of the fact that there were no vacancies will result in the applicant being

deprived of the benefit under the scheme. In the case of **National Institute of Technology vs. Niraj Kumar Singh (2007) 2 SCC 481**, the Hon'ble Apex Court had laid down the following principle with regard to compassionate appointment.

“All public appointment must be in consonance with Article 16 of the Constitution of India. Exception carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder”.

In **Haryana SEB vs. Naresh Tanswar (1996) 8 SCC 23**, **Santosh Kumar Dubey v. State of UP, (2009) 6 SCC 481**, **Haryana SEB vs. Krishna Devi (2002) 10 SCC 246**, **State of U.P. vs. Paras Nath 1998, (1998) 2 SCC 412** and **National Hydroelectric Power Corporation vs. Nanak Chand (2004) 12 SCC 487**, the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In **State Bank of India vs. Anju Jain (2008) 8 SCC 475**, the Hon'ble Supreme Court had pertinently observed the following.

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality

enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment”.

In the case of **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730**, the Hon’ble Supreme Court have observed the following in respect of principles relating to compassionate appointment.

“.....9. The principles relating to compassionate appointments may be summarized thus;

- (a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognized exception to the said general rule, carved out in the interest of justice to meet certain contingencies.
- (b) Two well recognized contingencies which are carved out as exceptions to the general rule are;
  - (i) Appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) Appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependent member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

8. While the applicant has a strong right for consideration of his case for compassionate appointment, there can be no absolute right for actual appointment to be given under compassionate appointment quota. The Government in its wisdom decided to earmark only 5% of the direct recruitment vacancies for appointment on compassionate ground. They have also prescribed elaborate guidelines to determine a structure for consideration of the large number of applications from the wards of the deceased Government employees. In the present O.A., the applicant has not challenged the points

awarded to him which comes to 38 out of 100. The Respondents have submitted the documents laying down the policy of compassionate appointment and the parameters which have been made uniformly applicable to all the applicants who requested for compassionate appointment. Such parameters have found place in the minutes of the meeting of the Committee which considered the case of the applicant. The parameters are as follows:

- i) Family Pension
- ii) Terminal Benefits
- iii) Leftover Service of the Deceased Govt. servant
- iv) Number of Unmarried Daughters
- iv) Number of Minor Children
- v) Other Dependents (excluding unmarried daughters and minor children)
- vi) Monthly Income excluding family pension
- vii) Movable/Immovable Property
- viii) Liabilities

The fact that the applicant has scored 38 out of 100 has not been challenged by the applicant. However, as per DOPT OM No.14014/19/2002-Estt(D) dated 05.05.2003 (cited supra), his application for compassionate appointment deserves to be considered two times more and not considering him two more times will be discriminatory and against the prevalent rules. As per rules, applicant is also to be considered in any Group-C/D posts under the 5% DR quota.

9. In view of the above, Respondents are directed to consider the case of the applicant two more times by the CRC for compassionate appointment as per rules and provisions

made by the Department in this regard. If the applicant is found more deserving than others in the subsequent two rounds of consideration by the CRC, then he is entitled for compassionate appointment.

10. With the observation and direction as made above, the O.A. is disposed off with no order as to costs.

(DR.MRUTYUNJAY SARANGI)  
MEMBER(A)

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