

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.271 of 2017

Cuttack this the 10th day of August, 2018

CORAM:

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

Smt.Janaki Majhi, aged about 48 years, W/o. Late Jogendra Majhi, permanent resident of Suelpur, PO-Motiganj, Town/Dist-Balasore

...Applicant

By the Advocate(s)-M/s.S.K.Ojaha
S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to Government of India, Ministry of Defence, Sena Bhawan, New Delhi-110 011.
2. The Director General & Scientific Adviser to Rakhya Mantri, Research & Development Organization, Ministry of Defence, Sena Bhawan, New Delhi-110 011.
3. The Director, Integrated Test Range, DRDO, At/PO-Chandipur, Dist-Balasore-756 025.

...Respondents

By the Advocate(s)-Mr.G.R.Verma

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the wife of one Jogendra Majhi who was working as Driver in the office of Director, Integrated Test Range, DRDO, Chandipur Orissa died while in service on 7.7.2010 after suffering from cancer for a period of more than six years. The applicant applied for a compassionate appointment. However, she was provided with 10 days' of work in a month as daily wager by Respondent No.3 since 2013. Her claim for regular appointment has been rejected vide Office Order No.ITR/ADM/5002/COMP/JM dated 20.3.2015. The relevant part of the order is extracted as herein below:

- "2. Whereas Smt.Janaki Majhi, w/o. Late Sh.Jogendra Majhi, E-Civilian Driver 'D' had requested for employment for herself

on compassionate grounds after the demise of her husband Sh.Jogendra Majhi. The case for compassionate appointment was placed before the Compassionate Appointment Committee (herein after called CAC) constituted for the purpose. CAC in the light of the existing instructions of the Govt. Issued from time to time on the subject considered and re-considered with all other cases received on the subject based on the parameters laid down by the Govt. For assessing such cases viz., Family Pension, Terminal Benefits, Monthly Income, Property, Number of dependents, Number of unmarried daughters, Number of minor children and Left over service.

3. Whereas after due examination and consideration of the case along with all other cases, it could not be recommended by the committee on inter-se-merit vis-a-vis number of vacancies available.
4. Therefore, it is not found administratively feasible for offering an appointment to Smt.Janaki Majhi on compassionate grounds".

Aggrieved by this, the applicant has filed the present O.A. praying for the following reliefs:

- i) To admit the Original Application;
- ii) To quash the office letter dated 20.03.2016(Annex.A/5) and direct the Respondents more particularly the Resp. No. 2 & 3 to reconsider the case of the applicant extending benefit of compassionate appointment within a stipulated period to save the distress family.
- iii) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice.

2. The applicant has based her prayer mainly on the ground that she is facing extreme financial hardship after the death of her husband. The Res.No. 3 being convinced of her precarious financial condition offered her 10 days' work in a month as daily wager since 2013. She deserves to get a compassionate appointment.

3. The applicant had also filed M.A.No.220/17 for condonation of delay in filing the O.A. She claims that she belongs to Scheduled Caste community and due to acute financial distress, she could not approach this Tribunal in time. Moreover the authorities had also given assurance from time to time that her case will be considered. But she was given a rejection letter on 20.3.2015 and she filed this O.A. on 24.4.2017 after a delay of about two years. She has prayed for condonation of delay by one year due to her extreme adverse financial condition, she being a scheduled caste lady.

4. The Respondents filed their objection to M.A.No.220/17 in June, 2017 in which they have stated that the applicant has delayed in filing the O.A. and as per the judgment of the Hon'ble Supreme Court in Umesh Kumar Nagpal vs. State of Haryana & ors. [JT 1994 (3) SC 525] compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

5. I have considered the rival submissions. I am of the view that the fact of the applicant's working for 10 days in a month as daily wager since 2013 must have given her a reasonable assurance of being considered favourably for compassionate appointment, she being a lady of scheduled caste community. She has also acute financial distress. When she has to take care of a bed-ridden father-in law and old ailing mother-in-law with two college going children contributes it sufficient ground for condonation of delay. Therefore, the delay is condoned and the O.A. is taken up for consideration on merit. M.A.220/17 is thus disposed of.

6. In the counter filed by the respondent they have argued that the case of the applicant was considered in November, 2014 by the Compassionate

Appointment Committee, but candidates more deserving than her were recommended for compassionate appointments.

7. In the rejoinder filed by the applicant on 5.3.2018 the applicant has reiterated her claim for compassionate appointment. She has challenged the rejection order on the ground that her application was rejected on the basis of a non-speaking order. However, the respondents have given various reasons before this Tribunal. Thus following the law laid down by the Hon'ble Apex Court in *M.S.Gill vs. Chief Election Commissioner of India* [AIR 1978 SC 851] in which it has been held that when an order is passed based on certain grounds its validity must be judged from the reasons so mentioned therein and no fresh reasons in the shape of affidavits or otherwise can be given at the time of adjudication, fresh reasons adduced in the counter should not be taken into account.

8. I have heard the learned counsels from both the sides and perused the documents submitted by them. The learned counsel for the respondents had been directed to file the Minutes of the Meeting of the Compassionate Appointment Committee held on 10/13.11.2014. In the said meeting 71 cases were considered including that of the applicant. 11 cases were approved for compassionate appointments. 35 cases were rejected and 25 cases were deferred for consideration in the next meeting. It is found from the record that the applicant's name appears at Sl.No.33 and it is mentioned that she gets a monthly pension of Rs.9245. She has received terminal benefits to the tune of Rs.14,70,327/- and having a property worth of Rs.12,57,999/-. Records show that the persons recommended for compassionate appointments were considered to be more deserving than the applicant. I find no fault with the decision of the Compassionate Appointment Committee. However, I am of the

view that the case of the applicant should not have been closed after one round of consideration.

9. In a catena of judgments, the Hon'ble Supreme Court has firmly held that compassionate appointment is not a matter of right and cannot be a substitute for regular appointment. **V.Sivamurthy Vs. State of A.P., (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481.** In **Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138,** the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on merit.

However, in another set of judgments, the Hon'ble Apex Court has held that wherever candidates eligible for compassionate appointment file applications for the same it should be considered as per law and the mere fact of the deceased person's wife receiving terminal benefits will not stand in the way of consideration for compassionate appointment. 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 negated on the 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 & Anr. 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. 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 **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. 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 tilted 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 **Haryana SEB vs. Naresh Tanwar (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.

10. Keeping this in mind, the government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The

government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application against certain laid down criteria. Such criteria include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most deserving will be offered appointment on compassionate ground.

In 2012, the Government issued the DOPT OM No. F. No. 14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. The OM dated 26.07.2012 and the subsequent clarification dated 04.10.2012 read as follows:

"The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs. M. Selvanayagam @ Kumaravelu has observed that "an 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 & 16 of the Constitution and

hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind".

2. This Department's O.M. No. 14014/6/ 1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. Subsequently vide this Department's O.M. No. 14014/19/2002-Estt. (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the O.M. dated 05.05.2003."

Clarification dated 04.10.2012:

Sub: Clarification for clarification to consideration of compassionate appointment cases reg.

Sir,

In continuation of Board's letter of even number dated 03.08.2012 on the above mentioned subject and to say that with reference to the DOP&T instruction contained in their OM No. 14014/3/2011-Estt.(D) dated 26.07.2012 a reference was made them to clarify whether the cases of compassionate appointment already decided and closed after expiry of 3 years in terms of their OM dated 5.5.2003 are required to be re-opened/examined or not.

2. The DOPT has now clarified that "with issue of instructions dated 26.07.2012, there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case".

3. The above decision may please be brought to the notice of all concerned for information, guidance and compliance."

Inasmuch as the intent of the Government is to consider the cases for compassionate appointment without any time limit, the obvious implication is that it can be considered multiple times.

11. Having considered the facts of the case and points of law involved and the law laid down by the Hon'ble Apex Court, I am of the opinion that the case of the applicant deserves to be considered for two more times vis-à-vis the claim of the other applicants and if her claim is found to be stronger than others, she deserves to be considered for appointment. The Respondents are directed to reopen her case and consider it for two more times in the next meeting of Compassionate Appointment Committee.

12. With the aforesaid observation and direction, this O.A. is disposed of with no order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)