

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.554 of 2016
Cuttack this the 10th day of August, 2018

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

Padma Charan Singh, aged about 38 years, S/o. Late Purna Chandra Singh,
At/PO-Gurujanga, District-Khurda

...Applicant
By the Advocate(s)-M/s.S.B.Jena
S.Behera
A.Mishra

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Labour and Employment, Shrama Shakti Bhawan, Rafiq Marg, New Delhi-110 001.
2. Chief Labour Commissioner (Central), Ministry of Labour and Employment, Govt. Of India, Shrama Shakti Bhawan, Rafiq Marg, New Delhi.
3. Regional Labour Commissioner(Central), Govt. Of India, Ministry of Labour and Employment, Kendriya Shrama Sadan, N-7/6 & 7, IRC Village, Behind Iskon Temple, Bhubaneswar-15.

...Respondents
By the Advocate(s)-Mr.P.K.Mohanty

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant is the son of one Purna Chandra Singh, who, while working as Daftary in the Office of the Regional Labour Commissioner(Central), Bhubaneswar passed away on 19.8.2005 leaving behind his wife and the applicant. After the death of the Government employee, the mother of the applicant had submitted an application for compassionate appointment for her son who was 29 years of age at that time and was a Graduate passing out from Utkal University in 1999. He had also passed Post Graduate Degree in Computer Application in 2004. His application was forwarded by the Regional Labour Commissioner(Central),

Bhubaneswar to the Chief Labour Commissioner, New Delhi. On 17.06.2016, the Chief Labour Commissioner passed an order that the case of the applicant was rejected in the Committee constituted to consider the compassionate appointments. The applicant was not found suitable due to limited number of vacancies and comparatively more deserving cases were recommended for compassionate appointments. The relevant Paragraphs of order dated 17.6.2017 are extracted herein below:

"WHEREAS an application was submitted by Shri Padma Charan Singh for considering his name for compassionate appointment in the O/o. CLC(C) consequent upon death of his father Shri Purna Chandra Singh, who was working as Daftary in the O/o. RLC(C), Bhubaneswar.

WHEREAS the request of Shri Padma Charan Singh was placed before duly constituted Committee consisting of Sh. N.K.Prasad, Dy.CLC(C) as Chairman and Shri P.P.Sarkar, Dy.CLC(C) and Sh.B.S.Kalsi, Dy.CLC(C) as members.

WHEREAS a meeting of the said committee was held on 04/06/2009 to consider the case of Sh.Padma Charan Singh along with other candidates.

WHEREAS the Committee expressed the view that 'due to limited number of vacancies for compassionate appointment only comparatively more deserving cases are recommended for compassionate appointment':

WHEREAS after considering the applicant's case, the Committee found that financial condition of the family is well, the Committee did not recommend the case of Shri Padma Charan Singh due to the reasons that he is married, has own house, sufficient amount of pension for survival of the family".

The applicant has challenged this order and prayed for the following reliefs:

"Under the circumstances, it is humbly prayed therefore that this Hon'ble Tribunal may graciously be pleased to quash the order dated 17.06.2016 under Annexure-A/11;

And further be pleased to direct the Respondents to consider the case of the applicant for appointment under compassionate

ground in any Group-C post as the applicant along with family members are in distress condition;

And further be pleased to reconsider the case of the applicant taking into account the rule/guidelines was in vogue at the time of death;

Or pass any other order/orders as this Hon'ble Tribunal may think fit and proper in the facts and circumstances of the case".

2. The applicant has based his prayer on the ground that he has the requisite qualification and due to the penurious condition of his family, he deserves to be considered for compassionate appointment. He claims that the impugned order is illegal, arbitrary and discriminatory.

3. In the Counter filed on 4.1.2018 the respondents have contested the claim of the applicant. It is their contention that the applicant's case was rejected by the Screening Committee since more deserving cases were recommended for compassionate appointment. The Committee had recommended 8 cases for compassionate appointments and rejected 7 cases including that of the applicant. There were only limited vacancies under compassionate appointment quota and the most deserving cases were recommended for appointment by the concerned Committee. Hence the applicant's case deserves no consideration.

4. I have heard the learned counsels from both the sides and perused the documents submitted by them. The Minutes of the Committee of Officers held on 23.10.2009 to consider and recommend the cases for compassionate appointments were filed by the respondents in pursuance of the direction of this Tribunal. The case of the applicant was rejected on the ground that he is married, has own house and sufficient amount of pension for survival of the family. Of the 8 cases recommended for compassionate appointments, the number of dependants ranges from 3 to 7 and therefore, it was concluded that

the pension is not sufficient for their subsistence. I find no fault on the decision of the Screening Committee.

5. 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

GovindPrakashVerma 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 **BalbirKaur&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 negatived on the ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee.

In SudhirSakharam 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 anydetailed 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 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 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.

6. 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.

7. 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 his claim is found to be stronger than others, he deserves to be considered for appointment. The Respondents are directed to reopen his case and consider it for two more times in the next Screening Committee meetings.

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

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)