

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

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No. OA 350/838/2014

Date of order : 17.05.2018.

Present : Hon'ble Ms. Manjula Das, Judicial Member

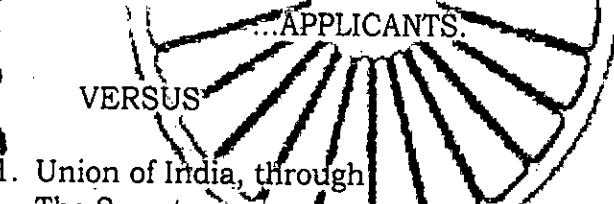
**FALGUNI SANYAL**

W/o Late Tapan Kumar Sanyal,  
Died in harness before retirement  
On 25.1.2011 while he was working  
To the post of Semi Skilled in the  
Department of HT under  
General Manager, Metal & Steel Factory,  
Ishapore, Dist. - 24 Pgs. (North)  
R/o Adarshpally, Barrackpore,  
PO - Nona Chandanpukur,  
Dist. - 24 Pgs. (North) near  
Hindu Milan Mandir,  
Kolkata - 700122.

**TANBIR SANYAL**

S/o Late Tapan Kumar Sanyal  
R/o Adarshpally, Barrackpore  
PO - Nona Chandanpukur  
Dist. - 24 Pgs. (North) near  
Hindu Milan Mandir,  
Kolkata - 700122.

CENTRAL



1. Union of India, through  
The Secretary,  
Ministry of Defence  
(Defence & Production),  
Government of India,  
South Block,  
New Delhi - 110011.
2. The DGOF cum Chairman  
Ordnance Factory Board (OFB),  
Government of India,  
Ministry of Defence,  
10A Shaheed Khudiram Bose Road,  
Kolkata - 700001.
3. The General Manager,  
Metal & Steel Factory,  
Ishapore, PO - Nawaganj,  
Dist - North 24 Parganas  
Pin - 743144.
4. The Secretary,  
Dept. of Personnel & Training,  
Government of India,  
North Block,  
New Delhi - 110001.

...RESPONDENTS.

JMD

For the applicant : Mr.P.C.Das, counsel

For the respondents: Mr.B.P.Manna, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved with the impugned order dated 28.10.2012 whereby the request for compassionate appointment was not acceded to by the respondent authorities, the applicant approached before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) Leave be granted to move one single application jointly under Rule 45(5)(a) of the Central Administrative Tribunal (Procedures) Rules, 1987, as the applicants have got a common grievances and both of them are similarly circumstanced persons;
- b) To quash and/or set aside the impugned office order dated 28.10.2012 issued by the office of the General Manager, Metal & Steel Factory, Ishapore whereby and whereunder the case of the applicants has been rejected on the ground of terminal benefit and pension which is clearly hit the decision of the Hon'ble Division Bench of the Hon'ble High Court at Calcutta in the case of Sujit Kumar Dutta vs. United Commercial Bank & Ors. and Rajendralal Biswas vs. State of West Bengal & Ors. And Angurbala Maity & Ors. vs. State of West Bengal & Ors. being Annexure A/8 of this original application;
- c) To pass an appropriate order directing upon the respondents authority to consider the claim of the present applicants regarding grant of compassionate appointment in favour of the applicant no.2 in any suitable vacancy to protect and save the miserable condition of the family of the deceased employee;
- d) To quash and/or set aside the DOPT's office memo No. 14014/6/94-Estt(D) dated 9.10.1998 along with Ministry of Defence's letters dated 22.1.2010 and 14.5.2010 and to declare that the aforesaid circulars issued by the DOP&T and on the basis of that the letters issued by the Ministry of Defence are ultra vires and bad in law and cannot be sustainable in the eye of law in the light of the orders of the three Hon'ble Division Benches of the Hon'ble High Court at Calcutta which is relied upon I this original application being Annexure A/11, A/12 and A/13.

2. Mr.P.C.Das, Id. Counsel appearing on behalf of the applicant submitted that the husband of the applicant No.1, Late Tapan Kumar Sanyal died in harness before his retirement on 25.1.2011 while he was working in the post of Semi Skilled Labour as Helper in the Department of HT in the Metal & Steel Factory, Ishapore. After demise of the husband of the applicant No.1, the widow immediately made an application dated 23.5.2011 with request to



provide employment assistance in favour of her son Tanbir Sanyal i.e. applicant No.2 on compassionate ground. It was submitted by the ld. Counsel that in pursuance of the letter dated 22.6.2011 issued by the respondent authorities the applicant provided all the required information along with the certificates of educational qualification of her son. After completion of the formalities, the General Manager, Metal & Steel Factory, Ishapore, respondent No.3 rejected the claim of the applicants for compassionate appointment vide impugned letter dated 28.10.2012. According to the ld. Counsel the said rejection order is bad in law and against the decision of the Hon'ble High Court, Calcutta in the case of Sujit Kumar Dutta -vs- United Commercial Bank & Ors., Rajendralal Biswas & Ors. and Angurbala Maity & Ors. -vs- State of West Bengal. Ld. Counsel further submitted that the rejection order was made on the basis of office memorandum of DPT dated 9.10.1998 as well as Ministry of Defence's letters dated 14.5.2010 and according to the ld. Counsel the department did wrong by applying the said circular which is not applicable after the decision of the Hon'ble High Court at Calcutta. As such the rejection order is to be set aside.

It was further submitted by the ld. Counsel that in the case of Angurbala Maity & Ors. -vs- State of West Bengal & Ors. Hon'ble High Court held that possession of a piece of agricultural land cannot disentitle the applicant No.1 for appointment on compassionate ground.

3. On the other hand ld. Counsel for the respondents, by filing their written statement, submitted that on receipt of the application dated 23.5.2011 whereby the applicant requested for appointment of applicant No.2 on compassionate ground, the authority scrutinized and verified the financial condition of the family and on receipt of the verification report dated 2.8.2011, the case of the applicants was placed before the duly constitution Board of Officers meeting on the first occasion in the recruitment year 2011-12 for assessment of relative merit points based on various attributes (Family Pension, Death cum Retirement Gratuity, GPF balance, Life Insurance Policies, Movable & Immovable properties and annual income earned there from by the

family, CGE Insurance amount, Encashment of leave, any other assets, brief particulars of liabilities, if any, members of the family etc.) as set out by the DOPT as per paragraph 16(c) as well as para 17 of OM dated 9.10.1998 for recommendation/decision regarding compassionate appointment of applicant No.2 and the Board of Officers taking into consideration the aforesaid parameters had awarded 50 points only based on a prescribed 100 point scale.

It is further submitted by Mr. Manna, ld. Counsel for the respondents that in the year 2011-12 compassionate appointment was made in favour of the most deserving and destitute five individuals who secured marks between 90 to 64 marks. As such employment assistance could not be provided to applicant No.2 in the year 2011-12. The said development was duly intimated to the applicant No.1 vide communication dated 28.10.2012.

Mr. Manna further submitted by referring his written statement in para 6(i)(e) that the case of the applicant No.2 was again placed before the Board of Officers on the second occasion during the period from April to October 2012 and on November and December 2012 for consideration of employment assistance on compassionate ground afresh along with fresh individuals in the light of revised OM dated 26.7.2012 vide which DOPT had withdrawn its earlier OM dated 5.5.2003 regarding time limit of 3 years for considering cases of compassionate appointment. However, after assessing merit of applicant No.2, case for the aforementioned period, the Board of Officers had awarded 50 points based on a prescribed 100 points scale and the compassionate appointment were made to most deserved and destitute seven individuals who secured marks between 77 to 61 marks. As such employment assistance to applicant No.2 could not be provided in 2012 which has been duly communicated to the applicants vide communication dated 18.3.2013.

Mr. Manna further referring to para 6(1)(f) of the written statement submitted that the applicants' case was further placed before the Board of Officers in the year 2013 on third occasion for consideration of compassionate appointment and the applicant secured 50 points on a prescribed 100 points scale, where the six individuals who scored 60, 59, 59, 62, 58 & 57 had been

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appointed on compassionate ground. It was further submitted by the ld. Counsel that in the month of January, June, July & September, 2013 there were no vacancies arose for compassionate appointment within the ceiling limit of 5% of DR quota.

On the 4<sup>th</sup> occasion, for consideration for compassionate appointment for the period from November 2013 to March 2014, the Board of Officers, after considering the parameters in the light of various govt. instructions issued from time to time including DOPT OM dated 9.9.1998 and as per revised instruction issued by the Ministry of Defence dated 22.1.2010 and 14.5.2010, had allotted 45 points based on a prescribed 100 points scale. There are 5 individuals who scored more points than the applicant - 76, 67, 65, 65 & 64. Hence the employment assistance could not be made in her son's case and it was intimated to the applicant No.1, vide communication dated 12.11.2014.

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Ld. Counsel for the respondents relied on the following judgments of Hon'ble Supreme Court to establish his case - General Manager (D&PB) & Ors. -vs- Kanti Tiwary & Anr. [(2004) 7 SCC 271], Punjab national Bank, & Ors. -vs- Ashwani Kumar Taneja [(2004) 7 SCC 265], Union Bank of India & Ors. -vs- M.T.Latheesh [2006 SCC (L&S) 1646], State Bank of India & Anr. -vs- Somvir Singh [(2007) 2 SCC (L&S) 92].

4. Heard both the ld. Counsels and perused the pleadings and materials placed before me.

5. The applicant No.1 in the instant case is the widow of Late Tapan Kumar Sanyal who was an employee under the respondent authorities died in harness before his retirement on 25.1.2011. On demise of her husband the applicant No.1 did make an application before the authority claiming for compassionate appointment for her son vide application dated 23.5.2011. The respondent authorities as per the scheme of compassionate appointment considered the case of the applicant on four occasions. In the three occasions 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> as per the relative merit points and revised scheme for selection for compassionate appointment, the applicant No.2 scored 50 points and on the 4<sup>th</sup> occasion scored 45 points. The contention of the respondent authorities is that the case



of the applicant has been considered on four occasions, however, as he scored lesser points than the candidates who got the appointment under ceiling of 5% of DR quota. From the record available it is noted that for the vacancy of 2011-12 Board of Officers meeting considered 59 persons altogether for compassionate appointment. Five persons were recommended for appointment on compassionate ground who scored 90, 67, 65, 64 & 64 points respectively and the other six candidates although their cases were recommended, obtained 62, 63, 62, 61, 61 & 61 respectively but due to non-availability of vacancy their cases also could not be considered. In the said Board of Officers meeting the applicant No.2 did not find his place. In the list of 30 candidates the name of the applicant No.2 i.e. Tanbir Sanyal, son of the deceased Tapan Kumar Sanyal scored only 50 points. Accordingly scoring lowest points he could not get appointment on compassionate ground.

Five candidates who got the highest score i.e. 90, 67, 65, 64 and 64 got the appointment under the ceiling of 5% DR quota. Others could not be appointed due to non-availability of vacancy. The applicant No.2 scoring 50 points got his name at Sl. No. 29. In the list of candidates for compassionate appointment for the year 2012 (April 2012 to October 2012) the Board of Officers recommended altogether 56 persons, where five candidates scoring 77, 63, 62, 62 & 61 points respectively, were recommended for appointment on compassionate ground. Others were regretted. There the applicant No.2 found his name against Sl. No. 25 scoring 50 points. Again in the month of November 2012 Board of Officers considered the case of the applicant No.2 for appointment on compassionate ground where altogether cases of 58 candidates were considered and only one candidate was recommended for appointment on compassionate ground. Others were regretted for non-availability of vacancies. In this list the applicant No.2 found his place against Sl. No. 23 scoring 50 points, whereas the candidate who was selected scored 69 points.

For the month of December, the Board of Officers in its meeting recommended only one candidate who scored 61 but could not be given appointment due to want of vacancy. In this list the applicant No.2 found his

place against Sl. No. 22 as he scored 50 points. Thus from the above it is crystal clear that the applicant No.2 could not get his appointment on compassionate ground due to non-availability of vacancy as well as scoring of lesser points than the appointed candidates.

6. The grievance of the applicants is that the case of the applicant No.2 should have been considered in view of the decision of Hon'ble High Court, Calcutta in the case of Sujit Kumar Dutta, Rajendralal Biswas and Angurbala Maity (supra). The applicant also prayed for setting aside the impugned rejection order dated 28.10.2012 as well as OM dated 9.10.1998 along with Ministry of Defence's letters dated 22.1.2010 and 14.5.2010. The Department of Personnel & Training under the Ministry of Personnel, Public Grievances and Pension is a nodal department for Govt. of India's scheme for compassionate appointment scheme. While considering requests for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the families of the applicants has to be made taking into account the assets and liabilities and other relevant factors. The main object of the scheme is to alleviate the family of the deceased Government servant and help it to get over the emergency. Accordingly, vide Ministry of Defence order dated 2.11.1993, Ministry of Defence has developed 100 point weightage system containing various parameters/attributes to decide the most deserving cases amongst the large number of Defence ID dated 9.3.2001. Consequent upon implementation of the 6<sup>th</sup> CPC report, parameters of all these attributes were further revised in 2010 vide MOD note dated 22.1.2010 and 14.5.2010. Presently the attributes on 100 points scale are - quantum of family pension (20 points), terminal benefits (10 points), monthly income of family from other sources (05 points), movable/immovable property held by the family (10 points), number of dependents (15 points), number of unmarried daughters (15 points), number of minor children (15 points) and left over service (10 points). As per the practice, compassionate appointment is given to the highest score earner.

7. In the present case the applicant prays for setting aside the said scheme dated 22.1.2010 by which 100 points scale are introduced so as to give the compassionate appointment to the most deserving candidate by taking into account the other aspects as mentioned above. In the case of Sujit Kumar Dutta (supra) as relied upon by the ld. Counsel for the applicant related to the case prior to the revised scheme of compassionate appointment, 2010 where relative assessment of points has been introduced. Hence this case is not applicable in the present case in as much as the applicant's case was considered for appointment on compassionate ground since 2011 after introduction of the revised compassionate appointment scheme by assessing the relative points.

In the case of Rajendralal Biswas (supra), Hon'ble High Court of Calcutta held that compassionate appointment cannot be ignored on the ground of delay.

In the case of Angurabala Maity (supra) the issue decided is that possession of a piece of agricultural land cannot disentitle the applicant to pursue the application on compassionate ground.

In the present case we noted that when the case of the applicant was considered the Board of Officers did not take into consideration any other aspect, LIC and other insurance as well as possession of agricultural land. Thus this case is also not applicable in the present case.

8. We have further noted that the respondent authorities repeatedly considered the case of the applicant No.2 for appointment on compassionate ground even while the impugned communication dated 28.10.2012 was issued, it was intimated that his case was considered for many years as the DOPT vide OM dated 26.7.2012 withdrew its earlier OM dated 5.5.2003 regarding time limit of three years for consider the case of compassionate appointment.

9. In the case of Chief Engineer Naval Works & Anr. -vs- A.P.Asha (supra) the Hon'ble Apex Court has held in the case of compassionate appointment that as per policy of the Government, compassionate appointment has to be given to the most deserving candidates. The Apex Court also held that Tribunal



was not right in giving the direction to the appellants to consider the case of the respondent again and again, especially when the case of the respondent had been duly considered and had been rejected, in view of the fact that more deserving candidates were available at the relevant time. The Apex Court therefore held that High Court has committed by upholding the order of the Tribunal.

10. the applicants hereunder who claim for setting aside the impugned order dated 28.10.2012 whereby the case of compassionate appointment for applicant No2 was not acceded to but keeping his case alive for next year/years, we are of the view that compassionate appointment be made to the most deserving candidate by adhering the policy decision of the Govt. of India existing in force. At the same time we are not ignoring the OM dated 26.7.2012 which supersedes the limitation of three years. As such justice will be met if we direct the respondent authorities for further consideration of the case of the applicant No.2.

We order accordingly.

Needless to mention that as the provisions for compassionate appointment was amended from time to time thereafter since 1998 by modification issued by the nodal department i.e. the DOPT where the guiding factor which was highlighted after 2010 and adopted by other Ministries, we are not inclined to set aside the scheme, later scheme of 2010 issued by the MOD and consequently not inclined to set aside the order dated 28.10.2012 where the department intimated that the case of the applicant will be considered in his year/years.

11. With the above observation and direction the OA stands disposed of accordingly. No order as to costs.

(MANJULA DAS)  
JUDICIAL MEMBER

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