

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, K O L K A T A

REGN. NO. OA/350/00892/2016



Reserved on – 29.01.2018

Date of Order - 6.2.18

C O R A M

HON'BLE MRS. BIDISHA BANERJEE, MEMBER (JUDL.)

HON'BLE MRS. JAYA DAS GUPTA, MEMBER (ADMN.)

.....
Smt. Sombati Thapa, wife of Late Prembir Thapa, aged about 45 years by occupation house wife, residing at 9/1, Fakir Ghosh Lane, PO-I.S.I, PS-Baranagar, Kolkata-700 108.

.....Applicant.By Advocate :- Mr. K.Chakraborty.

Vs.

1. Union of India through the Secretary, Ministry of Micro, Small and Medium Enterprises, Nirman Bhawan, 7th Floor, Moulana Azad Road, New Delhi-110 011.
2. Additional Development Commissioner, Office of the Development Commissioner, Ministry of Micro, Small, Medium Enterprises, Govt. of India, Nirman Bhawan, 7th Floor, Moulana Azad Road,, New Delhi-110 011.
3. Micro, Small and Medium Enterprises Development Institute through its Director, 111 & 112, B.T.Road, Kolkata-700 108.
4. The Director, Micro, Small and Medium Enterprises Development Institute, Govt. of India, 111 & 112, B.T.Road, Kolkata-700 108.
5. The Assistant Director (Admn.), Office of the Director, MSME-D1, Kolkata, Govt. of India, 111 & 112, B.T.Road, Kolkata-700 108.

.....Respondents.By Advocate :- Mr. B.P.Manna.O R D E R

Per Bidisha Banerjee, Member [Judl.] :- The applicant in this OA has assailed the order dated 10.12.2015 passed pursuant to the direction of this Tribunal in OA 1383 of 2014. The order is extracted verbatim herein below for clarity:-

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"2. Shri Prembir Thapa, while working as Daftry in MSME-D1, Kolkata died in harness on 22.07.2010. At the time of his death, the deceased Government servant has left over 9 years 11 months of service to attain the age of superannuation.

3. The family of deceased Government servant has been paid pensionary benefits such as DCRG Rs.4,83,000/- GPF balance Rs.20,026/-, CGEIS Rs.32,106 and encashment of leave Rs.5740/- total amounting to Rs.5,40,872/- beside this, the applicant is getting family pension around Rs.5655/- p.m. excluding Dearness Relief. The deceased Government servant has left behind as dependent family consisting of only wife, meaning thereby that no minor children and no unmarried daughters. Apart from this, the deceased Government servant has left one flat measuring 350 sq.ft. Ground Floor at 9/1 Fakir Ghosh Lane, Kolkata. Thus, the financial condition of the dependent family of the deceased Government servant is not bad to meet out the livelihood.

4. Smt. Thapa, the widow of the deceased Government servant made representation for compassionate appointment vide application dated 13.09.2010. The request of the applicant was considered by the competent authority along with other 122 candidates from various MSME-DIs on direction of Hon'ble CAT, Hyderabad Bench, Hyderabad in its order dated 29.04.2014 in OA No. 970/2013 & MA No. 173/2014, on all India basis in accordance with Department of Personnel & Training's consolidated instructions issued vide OM dated 16.01.2013 on the subject. The then competent authority i.e. Additional Secretary & Development Commissioner (Micro, Small and Medium Enterprises) has decided and ordered as under:-

"I have gone through the records of candidates, recommendation of Screening Committee, instructions and have the opinion that the compassionate appointment proposal is not convincing and justified as 54 cases are 20 years old

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and may have lost the spirit behind the compassionate appointment scheme.

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.

In view of above observation, considering the cases of dependent of deceased Government Servant after a gap of 20-30 years may not serve the very purpose of the compassionate appointment.

In addition, the proposal requires relaxation in respect of age and qualification for eight candidates identified by the Screening Committee and by Secretary (MSME) in two cases. In case of relaxation to some candidates other deserving candidates who fulfill the age and education criteria may be deprived from the benefit of the scheme. Thus, the purpose of law of natural justice shall be defeated. Therefore, the issue of compassionate appointment including the applicant cannot be acceded to."

5. In compliance of the order dated 08.10.2015 passed by the Tribunal, the case of Smt. Thapa for compassionate appointment was considered by the competent authority and same has not been acceded to."


2. Drawing our attention to para 4 of the order supra, the applicant's counsel would contend that it was not a case which was 20 to 30 years old or where there was a gap of 20 to 30 years so as not to serve the very purpose of compassionate appointment.

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Learned counsel for the applicant cited two decisions of the Hon'ble Apex Court in order to contend that terminal benefits should not stand in the way of any consideration for the purpose of employment assistance and family benefit scheme cannot in any way equated with compassionate appointment. We find that the said ruling of the Hon'ble Apex Court in Balbir Kaur's case has been given a re-look in **Canara Bank & Anr. vs. M.Mahesh Kumar (AIR 2015 SC 2411)** in the following manner:-

"In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors., (2000) 6 SCC 493 (AIR 2000 SC 1596), while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13.....But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointment. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."



3. Per contra, the learned counsel for the respondents would submit that the applicant being the sole widow with no liabilities of minor child or unmarried daughters, and since the widow was earning the family pension of Rs.15000/- and odds, she did not deserve any compassion, inasmuch as, there were deserving and hard cases which had to be accommodated against the limited number of vacancies available for grant of employment assistance on compassionate grounds.

4. We noted the rival contentions and perused the materials on record. We noted that in the earlier round this Tribunal had referred to Canara Bank vs. M.Mahesh Kumar (supra) and while disposing of that OA the Tribunal had directed the respondents to disclose the comparative assessment of the candidates considered with the applicant on the earlier occasion. Yet the speaking order under challenge does not disclose in what manner the applicant was found to be less deserving than others. Further, the speaking order discloses the reasons different from that of the reply filed by the respondents.

5. In such view of the matter, the speaking order is quashed and the respondents are directed to issue orders afresh indicating the specific reason why the applicant was not found suitable for employment assistance on compassionate grounds vis-à-vis other candidates who were recommended for appointment,

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within a period of three months from the date of receipt/production of a copy of this order.

6. OA, accordingly, stands disposed of. No costs.

(Jaya Das Gupta)
Member (Admn.)

(Bidisha Banerjee)
Member (Judl.)

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