

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

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No. O.A. 1354 OF 2014

Date of order: 31. 10. 2017

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Shri Prodyut Naskar,
Son of Late Prafulla Kumar Naskar,
(Ex-Record Keeper under the
Principal Director of Audit, Central
Calcutta, Indian Audit & Accounts Department,
By Occupation - Unemployed,
Residing at Village - Sahebpur, P.O. Champahati,
P.S. Sonarpur, District - 24 Parganas (South),
Pin - 743330.

2. Smt. Nanda Rani Naskar,
Wife of Late Prafulla Kumar Naskar,
Residing at Village - Sahebpur,
P.O. Champahati P.S. Sonarpur,
District - 24 Parganas (South),
Pin - 743330.

Applicants

Vs.

1. Union of India;
Service through Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi -1.

2. Director General of Audit,
Central, Kolkata, having its office at
G.I. Press Building, East Wing, 1st Floor,
8, Kiran Sankar Roy Road,
Kolkata - 700 001.

3. The Principal Director of Audit,
G.I. Press Building, East Wing, 1st Floor,
8, Kiran Sankar Roy Road,
Kolkata - 700 001.

4. The Sr. Audit Officer (Administration),
Indian Audit & Accounts Department,
G.I. Press Building, East Wing, 1st Floor,
8, Kiran Sankar Roy Road,
Kolkata - 700 001.

[Signature]
.. Respondents

For the Applicant : Mr. J.R. Das, Counsel
Mr. G. Patra, Counsel

For the Respondents : Mr. S.K. Bhattacharyya, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Ld. Counsel for both sides are present and heard.

2. This application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

- "(a) For an order/direction upon the respondents to cancel/withdraw/rescind the impugned orders dated 18.4.2012 and 17.3.2014 being Annexure A-13 and A/16 herein and to pass an appropriate order forthwith by providing an appointment to the applicant on compassionate ground.
- (b) For an order/direction upon the respondents concerned to provide an appointment immediately in favour of the applicant No. 1 in any suitable post of the concerned department on compassionate ground to mitigate the hardship and to save the family from starvation and distress in accordance with the law;
- (c) For an order/direction upon the concerned respondents not to give any effect or further effect to the impugned orders dated 18.4.2012 and 17.3.2014 in any manner whatsoever.
- (d) Leave may be granted to file this application under Section 4(5)(a) of the CAT Procedure Rules, 1987.
- (e) And granting the applicants all other consequential relief in connection therewith."

3. Ld. Counsel for the applicant submits that the applicant had earlier filed an O.A. No. 738 of 2009 which was disposed of on 11.11.2011 stating as follows:-

"9. In view of the foregoing discussions the order rejecting the request for compassionate appointment is bad in law as the case could not have been closed after 3 years and for not disclosing as to how this relevant fact has been considered. The impugned order is quashed and set aside. The respondents are directed to consider the case of the applicant along with the other similarly situated persons within 3 months of the receipt of the order. The DOPT O.M. of 9.10.98 provides that even if there is an earning member in the family a compassionate appointment can be provided in the facts and circumstances of a particular case. No opinion is expressed on the merits of the case."

4. On such direction for reconsideration of the matter, the respondents had passed a speaking order dated 18.4.2012, which is now sought to be

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assailed in the instant O.A.

5. Per contra, the Ld. Counsel for the respondents have argued in their reply and also orally that, during demise of the Government servant concerned, his family comprised his wife and two sons aged 39 years and 37 years respectively. That, the screening committee, while considering the prayer of the applicant for compassionate appointment have found that the applicant was 39 years of age during demise of his father. The screening committee further found that the younger son was engaged in West Bengal Police and was earning regular income. The screening committee further found that the terminal benefits received by the wife of the deceased government servant was higher than the parameters fixed by the headquarters Office at that time.

6. The applicant while submitting his application at Annexure A-3 has himself admitted that he was 32 years during the demise of his father. The applicant prayed for compassionate appointment on 31.3.2005; his prayer was rejected on November, 2008; the applicant got himself married on 10.8.2010; he filed the application initially on 23.12.2010 before the Tribunal.

7. Hence, it is noted that despite his pronouncement on abject poverty and his unemployed status, the applicant could sustain a family post marriage. Also, his application before the Tribunal was consequent to his marriage.

8. Ld. Counsel for the applicant has furnished that the decision rendered in **Govind Prakash Verma v. Life Insurance Corporation of India** reported in (2005) 10 SCC 259 in which it has been held that:

"..... scheme of compassionate appointment of respondent is over and above whatever is admissible to legal representatives of deceased employee as benefits of service which they get on death of the employee - Hence compassionate appointment cannot be refused on ground that any member of family had received such benefits....."

9. On the contrary, in **State of Gujarat v. Arvind Kumar T. Tiwari** 2012 (8) Scale 684 2012 (6) SCJ 853 the Hon'ble Supreme Court has held that "Compassionate appointment cannot be claimed as a matter of right." and in **Umesh Kumar Nagpal v. State of Haryana** 1994 (4) SCC 138 it has been held that " compassionate employment cannot be claimed if the crisis is over." It has been further held by the Hon'ble Apex Court that the consideration for such employment is not a vested right which cannot be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

10. In **State of J&K v. Sajad Ahmed Mir** reported in (2006) 5 SCC 766, the Court explained why delay may be a negative factor. Compassionate appointment, the Court said, is an exception to the general rule viz. An employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Art. 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and a substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Art. 14.

11. In the instant case, the applicant has not been able to prove as to

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how the crisis has persisted indefinitely reducing the family into destitution. The applicant got himself married and was able to bear the expenses of his wife and son. Secondly, he was 32 years of age by his own admission during time of demise of his father. Thirdly while the father of the applicant passed away in September, 2004, the instant application was filed in September, 2014 and any financial crisis for over a decade following the demise of the late employee of the respondent authorities, cannot be termed as "immediate".

12. Hence, we find no reason to interfere with the speaking order passed by the respondent authorities on 18.4.2012 (Annexure A-15) of the application and dismiss the O.A. on merit. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

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