

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH



No. OA 350/01450/2014

Date of order : 19.2.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

UTTAM HARI

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.K.Manna, counsel

For the respondents : Ms.M.Bhattacharya, counsel

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. I have heard the ld. Counsels for the parties.

3. It would be evident from the records that the claim of the applicant for employment assistance on compassionate ground was rejected vide impugned order dt. 27.9.14 on the following grounds :

*"AND THEREFORE, after considering the matter in totality, it is regretted to inform that case of applicant herein is beyond the zone of available 05 (five) vacancies for offering appointment on compassionate ground against ceiling limit of 5% vacant posts meant for the purpose owing to securing less marks than those more deserving and destitute families compared to case of the applicant for appointment. Moreover, having been married, the applicant is also not considered dependent on a Govt. Servant in accordance with DOP&T vide its clarification No. 14014/02/2012-Estt (D) dated 30.5.2013. As such, it is regretted to initiate that case of the applicant herein, after due consideration as per direction of the Hon'ble CAT, Calcutta Bench, vide its order cited under reference (1) is not found fit for grant of compassionate appointment on merit."*

4. It would be noticed that in regard to merits or score points awarded to the applicant's case, number of dependants have been depicted as one whereas admittedly and inarguably the deceased left being the following legal heirs :

Name	Age	Relationship
Smt. Jitni Hari	(Died on 12.1.04)	Wife
Smt. Mala Hari	37 yrs (approx)	Widow daughter

Km. Draupadi Hari	33 Yrs. (approx)	Unmarried daughter
Km. Bandana Hari	28 Yrs. (approx)	Unmarried daughter
Shri Uttam Hari	24 Yrs. (approx)	Son

It would be further evident that the case has been rejected as it was awarded only 53 points as against the score of the last selected candidate which was 68 merit points, whereas if appropriate score was given it could have ~~been~~ earned at least 15 score points more, (5 points each for each number of dependant left behind by the deceased) and would have made it for an appointment.

5. In regard to marriage being a bar for consideration, in ***Usha Singh -vs- State of West Bengal [(2003) 2 LLN 554]***, Hon'ble Calcutta High Court observed as under :

*"No authority need to be cited for the proposition that right to marry is a necessary concomitant of right to life guaranteed under Art.21 of the Constitution 'Right to life includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition'. (See in this regard *Sr.X -vs- Hospital Z*, reported in (1998) 8 SCC 296)*

Later in para 10 the Hon'ble Court observed that :

*The rationale of the rules quoted hereinabove is that the son or the daughter who applies for an appointment in the died-in-harness category should have been dependent upon the income of the deceased so that his untimely death left him/her/them in extreme economic hardship. The Award object of the rules is to provide relief to the family which is in extreme financial hardship and for this purpose an unemployed son can apply whether married or unmarried."*

Moreover, we find that it has been held by Hon'ble Apex Court in ***Shreejith G. -vs- Director of Education [(2012) 7 SCC 248]*** that marriage by itself cannot disqualify a person concerned from seeking compassionate appointment.

6. Further in terms of DOPT OM No. 14014/02/2012-Estt(D) dated 25.2.2015 a married son is eligible for compassionate appointment if he otherwise fulfilled all the other requirements of the Scheme i.e. he was otherwise eligible and fulfilled the criteria laid down in this Department's O.M dated 16th January, 2013.

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Therefore 'marriage' as on the present date ought not to create a bar for consideration of a son to be a breadwinner for the family.

7. It would be further noticed that this is probably the third journey of the applicant to this Tribunal as every time the respondents would be fishing out new grounds to reject his application. In my considered opinion the death having occurred on 14.9.2000, the authorities ought to have considered the matter long back, on the basis of the number of dependants left behind as on the date of death, instead of waiting the widow to die and unmarried girls to get married of somehow.

8. During the course of hearing the Id. counsel would place reliance on a latest judgment of Hon'ble Apex Court in **Canara Bank & Anr. v. M. Mahesh Kumar [AIR 2015 SC 2411]**, where the Hon'ble Apex Court considered whether the compassionate appointment had to be granted in terms of the scheme that was in vogue at the time of death of the employee.

5. The Hon'ble Court in **Canara Bank** (supra) reminded us of the decision in **Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138]** propounding the following:

"20. ....while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) *Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.*

(ii) *An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.*

(iii) *An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.*

(iv) *Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."*

Further, referring to its earlier judgment in **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors. [(2000) 6 SCC 493]**, the Hon'ble Apex Court deprecated the practice of taking into consideration the terminal benefits for the purpose of consideration for compassionate appointment. In the following words it very eloquently and emphatically declared that "granting of terminal benefits is of no consequence" :

15. In so far as the contention of the appellant bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors. [(2000) 6 SCC 493], 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 appointments. The sudden jerk in the family by reason of the death of the bread earner 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 bread earner 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 bread earner; but that would undoubtedly bring some solace to the situation." Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

Finally the Hon'ble Court directed as follows:

19. ....the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee....."

(emphasis supplied)

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It would be evident that the Hon'ble Apex Court in no uncertain terms has directed consideration in the light of the scheme prevailing as on the date of death of the employee.

9. Furthermore, it is obvious, axiomatic and settled law that a decision of Hon'ble Apex Court is binding upon all Courts and Tribunals and there is no quarrel about it. Judgements of Apex Court are declaratory for the nation [(1980) 1 SCC 233] and in a judicial system governed by precedents the judgments delivered by the Hon'ble Apex Court must be respected and relied upon with meticulous care and sincerity.

10. In the aforesaid factual and legal backdrop I feel it proper to direct the authorities to consider the case afresh untrammelled by its earlier rejection, in accordance with the rules that were prevailing as on the date of death of the employee and pass appropriate orders within one month from the next meeting of the Board of Officers.

11. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)  
MEMBER (J)

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