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**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

No. O.A. 350/00105/2015

**Present: Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member**

- 1. Alpana Ghosh,
Wife of Late Samarendra Kumar Ghosh,**
- 2. Shreyashi Ghosh,
Daughter of Late Samarendra Kumar Ghosh,**

**Both residing at 60/3, West Putiary,
Panchanantala Road, Kolkata – 700 041.**

.. Applicants

- V E R S U S -

- 1. Union of India service through
The Secretary,
Ministry of Agriculture,
New Delhi – 110 001.**
- 2. The Director (P),
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi – 110 001.**
- 3. The Director,
Indian Council of Agricultural Research,
12, Regent Park,
Kolkata – 700 040.**

.. Respondents

For the Applicants : Mr. S. Mukherjee, Counsel

For the Respondents : Mr. B. Kumar, Counsel

Heard on : 23.8.2016 Order dated: 02.09.2016

(Signature)

ORDER

Per Mr. Justice Vishnu Chandra Gupta, Judicial Member:

In this third round of litigation the applicant is dissatisfied with the order of rejection of the claim for compassionate appointment by order dated 5.1.2015. He filed this O.A. seeking the following reliefs:-

- a. Non-consideration of the applicants prayer for compassionate appointment and not disposing of the applicants' application for compassionate appointment in the light of the scheme, and purported order dated 5.1.2015 issued by the respondent authority to show-cause as to why the order impugned should not be set aside.
- b. An order directing the respondents to give an appointment to the applicant No. 2 on the grounds of compassionate appointment for the post of Lower Division Clerk.
- c. An order directing the respondents to produce all relevant records in connection with the subject matter of the original application.
- d. Any other further order/orders as this Learned Tribunal may deem fit and proper.
- e. Leave may be granted to suit the application jointly under Rule 4(5)(a) of CAT (Procedure) 1987."

2. The order impugned passed on 5.1.2015 is also reproduced hereinbelow for ready reference:-

**NATIONAL INSTITUTE OF RESEARCH ON JUTE AND
ALLIED FIBRE TECHNOLOGY
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
12, REGENT PARK, KOLKATA – 700 040**

No. 6(27)/2011-Admn./7131

Dated the 5th January, 2015

To

1. Smt. Alpana Ghosh

(Signature)

2. Smt. Shreyashi Ghosh
 60/3, Panchanantola Road,
 P.O. Paschim Putiary, Thakurpukur,
 Kolkata – 700 041.

Madam,

In terms of the order dated 11.11.2014 passed by the Hon'ble Central Administrative Tribunal, Calcutta Bench in O.A. No. 689 of 2012 (Smt. Alpana Ghosh and others v. Union of India & ors.) ICAR the Director National Institute of Research of Jute & Allied Fibre Technology has considered the Application received on 08.08.2014 and given a personal hearing to the applicant on 20.12.2014.

1. The concerned official Samarendra Ghosh was appointed on 4.7.1987 and died on 14.2.2002. As per records, the petition No. 1, Mrs. Alpana Ghosh, wife of Late Samarendra Ghosh has crossed aged of 65 years.
 The petitioner No. 2 Mrs. Shreyashi Ghosh is the married daughter of Late Samarendra Ghosh and is the wife of a leading legal practitioner at the Hon'ble High Court, Calcutta.
2. In the earlier O.A. No. 408 of 2011, the petitioners have claimed relief of compassionate appointment which was dismissed by the Hon'ble CAT, Calcutta Bench on 9.6.2011. The petitioners have challenged the same before the Hon'ble High Court, Calcutta being WPCT No. 193 of 2011. After hearing the parties, the Hon'ble Division Bench of High Court, Calcutta has been pleased to dismiss the same.
3. The petitioners have filed fresh O.A. No. 689 of 2012 for the same relief of compassionate appointment.

The Hon'ble CAT has been pleased to direct the respondents to consider the Application received on 8.8.2014 and pass speaking order after personal hearing to Mrs. Shreyashi Ghosh was conducted on 20.12.2014.

All the points raised in the said application dated 8.8.2014 have been considered in terms of the directives by Hon'ble CAT.

- i) The petitioner No. 2 daughter of the concerned official has intentionally suppressed her marital status and total income of her husband who is practicing as a leading Advocate at the Hon'ble High Court, Calcutta.
- ii) The letter dated 30.7.2014 to Smt. Shreyashi Ghosh was issued with a view to updating the records of all the applicants seeking appointment at NIRJAFT, Kolkata under compassionate ground. This is a general administrative procedure which is periodically done to consider such appointment as per GOI rules & norms if opportunity ever arises. However, in the context retaining the name of applicants for future consideration, the principle laid by

Attn:

the Hon'ble Supreme Court in large number of cases has been detailed below for your information.

" The Hon'ble Supreme Court has been pleased to held repeatedly that the Compassionate Appointment cannot be claimed as a matter of right after such a long period of time and/or other sources of employment as decided in the case of Eastern Coalfields Ltd., v. Anil Badyakar & ors. (Reported in 2009) 13 SCC 112 and a large number of cases and also by the Division Bench of the Hon'ble High Court in the case of Sri Prasenjit Das v. Coal India Ltd. & ors. in APOT 582 of 2012, G.A. No. 391 of 2013.

Yours faithfully,

DIRECTOR"

3. The brief facts to decide this matter are that one Samarendra Kumar Ghosh working as T-1-3 with the respondent No. 3 died in harness on 14.2.2002. The deceased survived by his wife Alpana Ghosh and one daughter Smt. S. Ghosh, the applicant No. 1 and 2 respectively. By moving an application dated 11.4.2002 they applied for compassionate appointment to be given to applicant No.2, the daughter who was unmarried and her date of birth was 2.5.1985. When the application was not considered for a considerable long time, the applicants approached Hon'ble High Court, Calcutta by filing a Writ Petition having W.P. No. 2869 (W) of 2010 but the same was dismissed on 8.6.2010 on the ground of availability of alternative remedy before CAT.

4. Dissatisfied with the order by a Single Judge of the Hon'ble High Court an appeal was filed in the Division Bench which was also dismissed on 27.8.2010 with liberty to approach the CAT. Thereafter the applicants filed O.A. No. 1959 of 2010 before this Bench which was decided on 6.10.2010 with direction to the respondents to decide the application move by the applicants for compassionate appointment within a period of four months. Vide order dated 14/15-2-2011 the applicant No. 2 was not



considered and her case was rejected for non-availability of vacancy. The relevant order passed by the authorities which has been annexed with supplementary affidavit, is also reproduced hereinbelow:-

**NATIONAL INSTITUTE OF RESEARCH ON JUTE AND
ALLIED FIBRE TECHNOLOGY
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
12, REGENT PARK, KOLKATA – 700 040**

No. 6(27)/Admn.I/948

Dated the 14/15.2.2011

To

**Smt. Alpana Ghosh
Wife of L/Sr. Samarendra Ghosh,
60/3, West Putiary, Panchanantola Road,
Thakurpukur,
Kolkata – 700 041.**

Madam,

In terms of the order dated 6th October, 2010 passed by the Hon'ble Central Administrative Tribunal, Calcutta Bench in Q.A. No. 1959 of 2010 (Smt. Alpana Ghosh and anr. v. Union of India & ors.)(ICAR). The Director, National Institute of Research of Jute & Allied Fibre Technology has considered the representation of the applicant and all other relevant documents and passes the following speaking order:-

Smt. Shreyashi Ghosh, daughter of Late Samarendra Kumar Ghosh who died in harness on 14.2.2002 has made an application for grant of compassionate appointment for the post of Lower Division Clerk at National Institute of Research of Jute & Allied Fibre Technology.

As per Office Memorandum No. 14014/6/94-Estt.(D) dtd. 9.10.1998 Ministry of Personnel, Public Grievance and Pension (DOPT) paragraphs 7(a), (b) & (c) of the Scheme of Compassionate appointment under the Central Government – Revised Consolidated instructions, it is inter alia stipulated as follows:-

- (a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.
- (b) Compassionate appointments can be made upto a maximum of 5%

(Signature)

of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds should be adjusted in the recruitment roaster against the appropriate category viz. SC/ST/OBC/General depending upon the category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant or casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointment.

Although the case of the applicant is being considered sympathetically but presently there is only one vacancy for Lower Division Clerk in the institute for which the recruitment process has already started and advertisement was published in December 2009 and written and typing examination has already been conducted.

Under the circumstances, the applicant cannot be considered for appointment to the post of LDC on compassionate ground due to non-availability of post.

Moreover, there are also other pending applications for appointment on compassionate ground which could not be considered since 2002 for non-availability of post and all applications including that of the instant applicant shall be duly considered if and when vacancy arises, in future subject to her eligibility.

Yours faithfully,

DIRECTOR"

5. Aggrieved by this order another O.A. No. 408 of 2011 was filed but the same was also dismissed on 9.6.2011 with the observation that, " We take note of assurance that her case will be considered along with cases of other eligible persons."

6. Against this order of CAT the applicant filed WPCT No. 193 of 2011 which was also dismissed on 30.11.2011. Review Petition filed against the



order of 30.11.2011 was also dismissed on 13.3.2012. Thereafter a fresh O.A. No. 689 of 2012 was filed by the applicants. During pendency of that application a letter has been issued by the respondents to the applicants for furnishing certain information with regard to consideration of her application for compassionate appointment. The applicant by moving a fresh application on 8.8.2014 in view of the aforesaid letter furnished the requisite information. Considering these happening during the pendency of the petition this Tribunal decided the O.A. by an order dated 11.11.2014 with a direction to the respondents to consider the application of the applicant No.

2. In compliance of the order passed by the Tribunal in the aforesaid O.A. the authorities rejected the claim vide order dated 5.1.2015 mentioned hereinabove. It has been pleaded that under RTI Act the applicant sought information and found that a vacancy existed for compassionate appointment and, therefore, the earlier application was wrongly rejected and requested for reconsideration of the application against the existing vacancy.

7. Reply has been filed wherein it has been alleged that the applicant No. 2 concealed the material fact and have not wilfully disclosed his marital status. On enquiry it was found that applicant NO. 2 is a married lady and her husband is a leading practitioner in the Hon'ble High Court at Calcutta and, as such, she is not entitled to compassionate appointment.

8. It was also stated that the Hon'ble Supreme Court repeatedly held that compassionate appointment cannot be claimed as a matter of right after such a long period of time as an other source of employment as decided in the case of **Eastern Coalfields Limited & ors. v. Anil Badyakar & ors.** reported in 2009(13) SCC 112.

9. It was further contended by the respondents that his claim has

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already been refuted on earlier occasions against which Writ Petitions were filed by the applicant but she could not get success and accordingly the application is not sustainable and is liable to be dismissed.

10. We have considered the submission of the Ld. Counsel for the applicant as well as the respondents and also gone through the records.

11. The order dated 14/15-2-2011 reveals that the application of the applicant No. 2 for compassionate appointment has not been rejected on merits but was not allowed for want of any vacancy. The order dated 5.1.2015 is the impugned one. The application was dismissed on merit mainly on the ground that the applicant who claims compassionate appointment is not dependent upon the deceased and she is a married lady and is now dependent upon her husband. It was also stated that applicant No. 1 has completed the age of 62 years so compassionate appointment cannot be given to her. In the last 13 years the situation has changed and after taking notice of changed situation the application has been dismissed.

12. The Ld. Counsel for the applicant contended that on the basis of information received under RTI Act it has been informed that at present three vacancies of the post of LDC are available in the office out of which two posts have already been advertised. The applicant is empanelled in the list of candidates applied for compassionate appointment and one vacancy arose since 2002 to 30.6.2015 under compassionate appointment quota. The applications received for compassionate appointment are under screening stage.

13. Information was given to the applicant on 27.7.2015 by Central Public Information Officer, ICAR NIRJAFT, Kolkata which has been annexed as annexure R-1 and on the basis of this the applicant claims that the earlier rejection cannot be said to be correct.



14. During the course of argument the Ld. Counsel for the respondents brought on record the instructions received on 6.8.2016 that the committee considered compassionate appointment in its meeting dated 2.6.2016 recommended the name of one Shri Pintoo Kumar, son of Ram Milan Prasad who died on 7.7.2009 out of 12 applicants in the list. An offer of appointment has been issued to Pintoo Kumar after approval of the competent authority. The letter dated 6.8.2016 placed on record is extracted below:-

“ ICAR-NATIONAL INSTITUTE OF RESEARCH ON JUTE AND
ALLIED FIBRE TECHNOLOGY
INDIAN COUNCIL OF AGRICULTURAL RESEARCH
12, REGENT PARK, KOLKATA – 700 040

No. 6(28)/Admn.II

Dated the 6.8.2016

To

Mr. Bijoy Kumar,
Advocate,
New Secretariat Building,
3rd Floor,
Kolkata – 700 001.

Sub: O.A. No. 105 of 2015 filed by Smt. Alpana Ghosh, wife of
Late Samar Kr. Ghosh.

Sir,

I am to refer to the Supplementary Affidavit on behalf of the Respondent filed on 28.4.2016 before the CAT, Kolkata Bench in respect of the above mentioned case.

In this connection I am to state that in para 3 of the said Affidavit we have stated that the members of the committee met on 29.2.2016 for consideration but no final decision has been taken about any candidate. But again the Committee met on 2.6.2016 and recommends the name of Shri Pintoo Kumar, son of Late Ram Milan Prasad who died on 7.7.2009 out of 12 applicants in the List. The Offer of Appointment has been issued in favour of Shri Pintoo Kumar after



approval of the Competent Authority. However, the joining of Shri Pintoo Kumar will be accepted only after receipt of satisfactory Character and Antecedents report from the concerned Authority.

This information may be placed at the time of hearing fixed on 23.8.2016 either orally or by submitting Supplementary Affidavit as you deemed fit.

Yours faithfully,

Director"

15. The Hon'ble Supreme Court repeatedly held that compassionate appointment cannot be claimed as a matter of right. It is also stated that the same is not an alternative mode of employment. The purpose of granting compassionate appointment is to provide immediate financial help to the family of the deceased employee. Compassionate appointment cannot be granted solely on the ground that the applicant is one of the dependent of the deceased. The financial status and penurious condition of the dependent family should be considered along with other attending circumstances. In a recent judgment the Hon'ble Supreme Court in Civil Appeal No. 2206 of 2006 Local Administration Department v. M. Selvanayagam @ Kumaravelu decided on 5.4.2011 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 dependants as a result of his death, simply because the claimant happened to be one of the dependants 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." The government also issued a Office Memorandum No. 14014/3/2011-Estt.(D) dated 26.7.2012 giving effect to the verdict of

(HMC)

aforesaid case.

16. In this case the claim of the applicant was not considered for the first instance due to non-availability of vacancy at the relevant time. The Scheme provides that only 5% of the total vacancies would be available for recruitment on compassionate ground which falls within the quota of direct recruits. In such a situation, the number of vacancies are limited and if more than one person claiming appointment on compassionate ground, the department has to take a decision considering the financial status and other circumstances required in the light of the Scheme to decide who is the most suitable person to whom compassionate appointment may be granted. In this case the claim has been refuted on the ground that applicant No. 2 has not disclosed his marital status. On enquiry it is found that she is a married lady and her husband is a legal practitioner in Calcutta High Court. The marital status of applicant, that she is married is not specifically denied anywhere. Only a cursory remark has been made in the rejoinder affidavit that allegations contained in this regard are misleading but no explanatory pleading have been made with regard to alleged misleading of facts. Hence it cannot be said that applicant has denied that she was not married. The record reveals that she moved an application to the authorities giving details with regard to income and properties of his own and family. The letter which has been given in pursuance of letter dated 30.7.2014 is reproduced hereinbelow:-

"To

**The Administration Incharge,
NIRJAFT,
12, Regent Park,
Kolkata - 40**

Ref.: Your letter No. 5(53)/Admn.I/2014/5338 dt. 30.7.14.

ADWBS

Sub.: Prayer for employment on compassionate ground.

Sir,

With reference to your above mentioned letter I attached the documents as per your requirements.

1. Details educational qualification of the appointee under compassionate ground : Graduation B.Sc. from Calcutta University 2007, H.S. passed – 2nd Divn., from WBCOHSE 2003. Madhyamik passed 1st Divn. WBBSE in the year 2001, Computer passed from Electronics Research & Development Centre of India, Calcutta in the year 2003 (Annexure-I).
2. Experience – 5 months experience as a Receptionist from Geetanjali Pvt. Co., from May, 10, 2013 to Nov. 2013 (Annexure-II).
3. Date of birth – 2nd May, 1985 (Annexure-III).
4. Annual income of the candidates family (certificate should be submitted from Chairman Municipality, Dist. Magistrate/BDO) – Original income certificate from Chairman of Municipal Corp. (Annexure-IV).
5. No. of family members – two, members. (Annexure V).
6. No. of earning family members/dependent in applicant's family. My mother is a earning family member and I am a dependent in the family.
7. Whether applicant residing at his/her own house/rented house, if own, house detailed of property may be submitted.
I have no any own house. I am residing at my mother's home at 60/3, Panchanantala Road, Haridevpur, Kolkata – 700 041. (Annexure-VI).
8. Present amount of family pension received – Rs. 7,300/- per month. (Annexure VII)
9. Details of immovable proper (whether any earning received from immovable property) – None.
10. Other income if any none.

Yours faithfully,

(Ms. Shreyashi Ghosh)"

17. The perusal of aforesaid application reveals that in column No. 6 it has been categorically mentioned by applicant No. 2, "my mother is a earning family member and I am a dependent in the family."

(Signature)

18. In para 7 she stated that she does not own any house and is residing in the mother's house. Income of the mother has not been disclosed anywhere. The authorities after making enquiries arrived upon a conclusion that the statement given by the applicant is not correct. The applicant is a married lady and she is not dependent upon her mother as her husband is a leading practitioner in Calcutta High Court with who she is living.

19. It is also evident from records that 12 applicants apart from one Pintoo Kumar were in the panel to be considered for compassionate appointment as disclosed in reply filed by the respondents, names have been given at page 29 of reply. They are as under:-

1. **Mrs. Sharmila Dey**
2. **Sh. Rajat Chatterjee**
3. **Smt. Shikha Rani Debnath**
4. **Mr. Jashmonta Nayak**
5. **Sh. Laxmidhar Behuria**
6. **Sh. Dip Karmakar**
7. **Smt. Urmila Rajbar**
8. **Smt. Kalindi Devi**
9. **Sh. Prosenjit Das**
10. **Miss. Urmila Chatterjee**
11. **Ms. Shreyashi Ghosh (Applicant)**
12. **Smt. Reba Datta**

One Pintoo Kumar, who was also in the list, was given appointment as stated by the respondents. As such, there is no vacancy against which



compassionate appointment could be made.

20. It is also important to mention here that on the information given under the RTI Act it reveals that there were three vacancies in LDC cadre out of which two have been advertised and one has been reserved for compassionate appointment. This one vacancy occurred during 2002 to 2015 and against which Mr. Pintoo Kumar was appointed considering the comparative need in respect of other applicants.

21. In view of the above, we are of the firm view that no interference is warranted in the order passed by the respondents declining to grant compassionate appointment vide order dated 5.1.2015 to the applicant.

22. The application lacks merit and is accordingly dismissed. There shall be no order as to costs.

20/6
(Jaya Das Gupta)
MEMBER(A)

(Vishnu Chandra Gupta)
MEMBER(J)

SP