

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No.O.A.350/01646/2014

Date of order : 04.12.2015

Present : Hon'ble Justice Mr. G. Rajasuria, Judicial Member
Hon'ble Mrs. Jaya Das Gupta, Administrative Member

1. ARUNA DAS
2. PRODOSH DAS
VS.
UNION OF INDIA & ORS.

For the applicants : Mr. M.S. Banerjee, counsel
Mr. S.K. Dutta, counsel
Mr. T.K. Biswas, counsel
For the respondents : Mr. B.P. Manna, counsel

O R D E R

Per Justice G. Rajasuria, J.M.

This O.A. has been filed seeking the following reliefs:-

"a) An order granting leave to the applicants under Rule 4(5)(a) of the Central Administrative Tribunals(Procedure) Rules, 1987 to move this application jointly.

b) For an order quashing and/or setting aside D.O.P. & T's Clarification dated 30th May, 2013 made Annexure - "A-13" to this application so far as it relates to consideration of compassionate appointment to a married son.

c) For an order quashing and/or setting aside the impugned Memorandum dated 14th August, 2014 made Annexure "A-12" to this application and further directing the respondents not to refuse compassionate to Applicant No.2 on the ground that he is married.

d) For any other or further order or orders as to this Hon'ble Tribunal may deem fit and proper.

e) For costs of and incidentals to this application."

2. This case is having a chequered career of its own. One, Amaresh Chandra Das died in harness while functioning as DCIO in Subsidiary Intelligence Branch(MHA), Government of India, Guwahati leaving behind his widow and minor son, unmarried daughter and aged mother. The



widow applied for giving employment to her minor son on compassionate ground whereupon the department concerned informed that the minor son on attaining the age of 18 years could be considered for employment. Subsequently when the son applied for employment, they rejected it on the ground of administrative constraint whereupon the O.A. was filed in the C.A.T. as against such rejection of his candidature. The O.A. was dismissed as against which a Writ Petition was filed before the Hon'ble High Court, Calcutta, and the operative portion of the order passed by the Hon'ble High Court, Calcutta dated 18.06.2014, is extracted hereunder for ready reference:-

"The case of the Petitioners will be considered by the Respondents within eight weeks from today, if necessary by giving a personal hearing to them. The Respondents will not be influenced by the order passed by the Tribunal.

It is made clear that the direction to reconsider the case of the Petitioner No.2, for being employed on compassionate appointment, does not in any way reflect on the merits of the Petitioners' case.

The writ petition is disposed of.

There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities."

Thereafter, the department considered the case of the son of the deceased and informed vide communication dated 14.08.2014, the operative portion of it would run thus:-

"As Shri Prodosh Das is married, the Compassionate Appointment Committee did not recommend him for compassionate appointment in IB."

Challenging and impugning the said communication, this O.A. has been filed.



3. The Id. counsel for the applicants would submit that the law is well settled that simply because the son of the deceased is a married person, his prayer for compassionate appointment should not be rejected. The concept of compassionate appointment emerged purely for the purpose of helping a family of a deceased employee and not for helping one person like the married son. Here, the married son is bound to maintain the family of his deceased father which is now comprised of mother also. The Id. counsel for the applicant would rely upon the judgment of the Hon'ble High Court, Calcutta dated 19.03.2014 in WPCT.No.408 of 2010, an excerpt from it would run thus:-

"We are unable to appreciate this submission. The Circular under which the employment is sought on compassionate grounds gives a right to the son, daughter, spouse of an employee who dies-in-harness for being considered for employment on compassionate grounds. There is no distinction made in the Circular that it would apply only to unmarried children. Therefore, the submission that since the petitioner was married, he was not entitled to be considered for compassionate employment is without any substance. Moreover, we do not agree with the finding of the respondent No.2 that "in the present socio-economic scenario it cannot be believed that a man marries and maintains his family being solely dependant on father's income. Rather he has some other source of income that he spends for his family". Unfortunately, this is not so in the practical life. We must take judicial note of the fact that it is not unknown that children who are dependant on their parents do get married without having any independent source of income often because of financial or social pressures and compulsions";

accordingly he would pray for allowing this O.A.

4. Per contra, the Id. counsel for the respondents inviting the attention of this court to the communication dated 24.02.2010 (Annexure R-2), operative portion of which runs thus:-

"Please refer to your application dated 21.12.2009 regarding appointment of your son Sri Prodosh Das in IB on compassionate groud.

The aforesaid case was sent to IB Hqrs. , New Delhi and was examined at appropriate level. IB Hqrs. vide their Memo No.20/Estt./G-1/2004(7)-CG-2463 dated 10.03.2006 had conveyed

that your request for grant of employment in IB on compassionate grounds in respect of your son Shri Prodosh Das was considered in the light of the Govt. instructions, as in vogue. However, the same could not be acceded. Decision on this matter was conveyed to you vide our letter of even No. dated 21.07.2006, 04.01.2007 and 23.01.2007.

This is for your information";

would submit that past cases should not be reopened as per the said DOP&T's instructions. Over and above that, the applicant is not entitled for compassionate appointment because he did not satisfy the other ingredients pertaining to grant of compassionate appointment. The family of the deceased is not reeling under impecunious and penurious circumstances. Accordingly he would pray for the dismissal of the O.A.

5. The point for consideration is as to whether the respondents are justified in rejecting the prayer of the applicant only on the ground that the son of the deceased happened to be a married person.

The Annexure A-2 referred to supra, would clearly show that even the candidature of married son of the deceased could be considered for compassionate appointment if he is otherwise fulfilling the other requirements of the scheme and the criteria laid down in DOP&T's O.M. dated 16.01.2013. It is, therefore, clear that even married son could be considered for compassionate appointment provided he fulfills the other requirements of the scheme.

6. The Id. counsel for the respondents would very much rely upon the latter portion of Annexure R-2, the DOPT's answer to the question "Definition of a Dependent Family Member", which runs thus:-

S. No.	Question	Answer
60	Whether 'married son' can be considered for compassionate appointment?	Yes, if he otherwise fulfills all the other requirements of the Scheme i.e. he is otherwise eligible and fulfills the criteria laid

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		<p>down in this Department's O.M. dated 16th January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. the FAQs dated 30th May, 2013, may not be reopened.</p> <p>Sr. No.13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.</p>
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We would like to dispel the impression from the mind of the respondents by pointing out that this case cannot be taken as a settled case. Once a case was settled or finally disposed of, it need not be reopened as per DOP&T's circular.

7. The respondents would exemplify and demonstrate that this is not a settled case, as such, the respondent authorities are bound to reconsider the candidature of the applicant taking into consideration the various other factors as contemplated in the DOP&T's O.M. dated 16.01.2013 and accordingly dispose of the matter. On balance, this O.A. is disposed of with a direction to the respondents to place the matter in the ensuing screening committee meeting relating to grant of compassionate appointment.

8. No cost.

(Jaya Das Gupta)
Administrative Member

s.b

(G. Rajasuria)
Judicial Member