

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O A NO. 350/00295/2016

Dated : 13.07.2018

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

PRADIP KUMAR SHEE

son of Late Ram Narayan Shee,

residing at Village : Ganeshpur 1st Gheri

P.S. Kakdwip, District-South 24 Parganas,

Pin -743347.

... Applicant

-Versus-

- 1) **Union of India**, service through the
Secretary, Government of India, Ministry of
Communication and IT Department of
Telecommunications, Sanchar Bhavan, 20-
Ashoka Road, New Delhi-110 001.
2. **Assistant Director of Postal Service**
(Rectt.), Department of Post, India, West
Bengal Circle, Kolkata-700012.
3. **The Chief Post Master General, West**
Bengal Circle, Yoga Yog Bhawan, Kolkata-
700012.

4. The Sub-Postmaster, Post Office,
Sarsoona, Kolkata-700061.

5. Sr. Superintendent of Post Officer,
South, Kolkata Division, Kolkata-700029.

.....Respondents.

6. Smt. Sumitra Shee,

Widow of Late Ram Narayan Shee.

7. Sri Rabindra Nath Shee,

son of Late Ram Narayan Shee.

8. Sri Prabir Kumar Shee.

son of Late Ramnarayan Shee

All are residing at Village-Ganeshpur 1st
Gheri , P. S. Kakdwip, District- South 24
Parganas, Pin-743347.

..... Proforma Respondents

For the Applicants: Mr. U. K. Urmila, Counsel
Mr D K Maity, Counsel

For the Respondents: Mr. S Paul, Counsel
Mr S Mukherjee(Private Respondents)

ORDER

Ms. Bidisha Banerje, Judicial Member

1. Ld. Counsels were heard and materials on record were perused.
2. The issue that fell for determination was whether the respondents were justified in invoking provisions of a later circular, retrospectively, to reject the applicant's claim for employment assistance on compassionate ground.
3. The order impugned dated 16.12.15 reads as under :

"This is regarding compliance of Hon'ble CAT order dated 15.10.15 passed in OA No.350/00721 of 2014 filed by Sri Pradip Kr. Shee S/O Late Ram Narayan Shee, Ex Postman, under South Kolkata Division died in harness on 17.7.2003.

The case of the applicant was first placed before the CRC meeting held on 23.11.2007 and 26.11.2007 but could not be recommended by the CRC. Thereafter, the case of the applicant was placed before the CRC meeting held on 29.6.2012, 14.11.2013, 28.1.2014 and 16.6.2015 against the earmarked vacancies for the year 2010, 2011, 2012, 2013 and 2014 in Postman cadre but CRC could not recommend his case as the applicant scored 45 merit points which was less than that of the last recommended candidates in each occasion. However, the case of the applicant, will again be placed before the next CRC meeting to be held in Postman cadre against the 5% quota of recruitment earmarked for compassionate appointment for the year 2015-16.

This issue with the approval of the competent authority in compliance of the order of Hon'ble CAT, Calcutta Bench in OA No.350/00721 of 2014 dated 15.10.2015."

4. The earlier OA was disposed of with a direction upon the respondents to issue a reasoned and speaking order in accordance with law within two months from the date of communication of this order.
5. The applicant is aggrieved as his case, where death took place in 2013, (17.7.03) is being considered in terms of rules introduced in 2010, which is contrary to law.

In support he has cited the following directions:

Canara Bank and Ors vs M Mahesh Kumar and Ors. as reported in (2015) 7

SCC 412 where Hon'ble Apex Court held as under :

" In Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138, while emphasising that compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV Hon'ble Apex Court had observed that (SCC p. 140, para 2)

2.. The whole object of granting compassionate employment is thus to enable the family to tile over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and the manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

6. The respondents have averred as under:

(a) Sri Ram Narayan Shee, whose date of birth is 26-10-1945, died in harness on 17-07-2003 while in service as Sorting Postman, Sarsoona P. O.

after rendering 33 years 10 months 7 days service. At the time of death he left behind the following near relatives :-

Smt Sumitra Shree -Wife - 54 Years.

Shri Rabindranath Shee -Son - 42 Years.

Shri Probir Kr Shee - Son -36 Years

Shri Prodip Kr Shee - Son -31 Years

The family of the deceased, got terminal benefits as follows :

Family Pension - Rs.2357 + DR(P.M.)

D.C.R.G. - Rs.2,46,609/-

GPF - Rs. 33,052/-

CGEGIS - Rs. 48,226/-

Rs.3,27,887/-

(b) The widow sponsored the name of her youngest son, Pradip Kr Shee for employment on compassionate ground vide her application dated 24-11-2003 and again on reply to the queries made by the Circle Office she stated that she had sponsored the name of her youngest son as the first & 2nd son were living separately vide application dated 04-02-2005.

(c) The family lives in own house. Annual income from other sources was Rs.3600/- p.a. The Circle Relaxation Committee considered the case in the meeting held on 23-11-2007, 26-11-2007 but the case was not approved by the Circle Relaxation Committee with following observation.

1. The official died at the age of about 58 years.
2. The family received terminal benefits of Rs.3.27 lakh and the widow is drawing family pension of Rs.2357/- + DR P.M.

3. The official died leaving behind the widow and three sons.
4. All the sons are grown up and out of three, two sons are married.
5. The family lives in own house and has income from tuition and daily labour.
6. The family has no liability regarding marriage of daughter.
7. The family is not indigent.

Being aggrieved the application filed application before the Hon'ble CAT, Calcutta Bench bearing OA no. 148 of 2012 praying for compassionate appointment.

7. The question whether employment assistance can be rendered after long years since the death of the employee, has been authoritatively pronounced in the following decisions :

(i) In **Sushma Gosain and Ors v. Union of India and Ors v. Union of India and Ors. MANU/SC/0519/1989 : (1989) 4 SCC 468** Hon'ble Apex Court held as thus:

We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

(ii) The settled law which has been reiterated in various cases has been succinctly elucidated in (**MGB Gramin Bank v. Chakrawarti Singh MANU/SC/0792/2013 : (2014) 13 SCC 583,**) wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible Hon'ble Court held as under :

Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

(emphasis added)

(iii) The above consistent view has been reiterated in various judgments by Hon'ble Apex Court in **Umesh Kumar Nagpal v. State of Haryana and Ors.:(1994) 4 SCC 138**, **State of Manipur v. Md. Rajaodin (2003) 7 SCC (2008) 15 SCC 560** and **Sanjay Kumar v. State of Bihar and Ors. : (2000) 7 SCC 192**.

(iv) The same principle was reiterated in the case of **Bhawani Prasad Sonkar v. Union of India and Ors. (2011) 4 SCC 209**, wherein it was held as under :

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only it seeks to achieve.

(v) In **Umesh Kumar Nagpal v. State of Haryana** (1994) 4 SCC 138, while emphasising that compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV Hon'ble Apex Court had observed that (SCC p. 140, para 2)

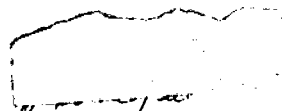
" 2.. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and the manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

8. In the aforesaid legal back drop it is observed that the bread winner had passed away in 2003 i.e. 15 years back. All the children are major, and the son who was then 31 years is now 46 years old. The matter was considered on four occasions. In November, 2007 it was taken up as per 1998 scheme when it was rejected as indigence was not established. In 2012 it was further considered as per against vacancies of 2009 as per directions in OA 148/12 and Dop letters and yet again on 28.1.2014, 28.1.14 against vacancies of 2011 and on 16.6.15 against vacancies of 2012, 2013 and 2014 but could not be recommended due to low merit points vis-a-vis last selected candidate.

9. The applicant had filed OA 148 of 2012, O A 721 of 2014 and the present one. Earlier at no point of time he ever sought for consideration against scheme prevalent as on the date of death as first consideration. That apart it was rejected on merit at the very first instance.

14. In view of above the applicant's claim for further consideration does not appear to be justified.

O A is, therefore, dismissed. No costs.


Bidisha Banerjee
Member(J)

AMIT