

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 350/00452/2014

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

NIVARANI SADHUKHAN & ANR.

VS

UNION OF INDIA & ORS. (BSNL)

For the applicants : Mr.P.K.Arora, counsel

For the respondents : Mr.S.K.Ghosh, counsel
Mr.D.Mukherjee, counsel

Order on : 21.1.15

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. This application has been filed assailing an order dated 7.2.14 issued by DGM (HR & Admn.), Office of Chief General Manager, West Bengal Telecom Circle whereby and whereunder the prayer of the applicant seeking compassionate appointment in favour of her son Debasis Sadhukhan was rejected on the ground that the High Power Committee which met on 29.1.14 to reconsider the case in compliance of the directions of the Hon'ble High Court in WPCT 269/12 in Nivarani Sadhukhan & Anr. -vs- UOI & Ors., considered the matter in accordance with DOPT OM dated 9.10.98, carefully reviewed all the aspects of the compassionate appointment claimed and came to a conclusion that the "status of the family was not indigent". Accordingly the High Power Committee rejected the claim of the applicant Nivarani Sadhukhan made vide application dated 9.3.07.

3. The respondents have contested the claim on the ground that it was hopelessly time barred as the employee died in 2007 and the applicant was preferred in 2014. However, since it was noted that since the speaking order

was issued on 7.2.14 the application could not be dismissed at the threshold on the ground of limitation.

4. It was noticed from the pleadings of the parties that the High Power Committee took into consideration the number of family members left behind by the deceased as 3, family pension being received as Rs.3890/-, terminal benefits as received being Rs.7,06,260/-, gratuity of Rs.3.5 lakhs, GPF balance being Rs.1,60,330, leave encashment amount being Rs.1,31,330, CGEIS being Rs.14,600/- and Rs.50,000/- out of insurance policy and also the fact that the family resided in their own house.

It was further noted that the DOPT scheme of 9.10.98 which would govern the present case amply specify the eligibility conditions as follows :

- "(a) the family is indigent and deserves immediate assistance for relief from financial destitution; and
- (b) applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

5. The applicants have specifically pleaded that High Power Committee ought not to have rejected the case on the ground that the family received benefits under various Welfare schemes. The applicant has alleged that the Committee failed to consider that the applicant No.1 was suffering from various ailments and that for her treatment an amount of Rs.1000-1500 was being spent every month. That apart, applicant No.2 was an unmarried youth and the widow had to maintain a marriageable daughter and "pass sleepless nights for her marriage".

6. The terminal benefits that the family received was admittedly Rs. 14,16,410/- . The applicants have failed to cite any case demonstrating that the respondents have granted compassionate appointment to a family less deserving than the present one. The DOPT scheme of 1998, which would govern the claim for compassionate appointment, is explicit that the benefits under various Welfare schemes have to be taken into consideration to ascertain whether the family was left with sufficient means of livelihood or in penury. A balance objective assessment of the financial condition of the family had to be made taking into consideration its assets and liabilities including benefits

received under various welfare schemes and other determining factors, such as presence of earning members, size of family, ages of children, existence of marriageable daughter, essential needs of the family and accordingly the claim had to be admitted or denied. In view of the fact that the applicant received about Rs.14,16,410/- as settlement dues it could not be said that they were left in chill penury.

7. I have considered the matter and noted the following decisions rendered by the Hon'ble Apex Court from time to time :

(i) In ***State of J&K -vs- Sajjad Ahmed Mir*** [2006 (5) SCC 766]

Hon'ble Apex Court observed that,

".....such an appointment is an exception to the general rule. Normally, an employment in the 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 Article 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 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 Article 14 of the Constitution."

(ii) Hon'ble Apex Court in the case of ***Umesh Kr. Nagpal -vs- State of Haryana & Ors.*** [1994 SCC (L&S) 930] observed as follows :

"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 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 Hon'ble Court held

"Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

The Hon'ble Court also held,

"Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can 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 the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

(iii) Hon'ble Apex Court in the case of **State Bank of India & Anr. -**

vs- Somvir Singh [2007] 2 SCC (L&S) 92] has held -

Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependents of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

Thus the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme.

The Authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the bank into consideration for the purposes of deciding as to whether the family of the deceased employee had been left in penury or without any means of livelihood. The scheme framed by the appellant-Bank in fact mandates the Authority to take those factors into consideration. The Authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

(iv) The Hon'ble Apex Court in the case of **Eastern Coalfields Ltd. -**

vs- Anil Badyakar [2009 (3) SLJ 205] has held that compassionate appointment is not a vested right which can be exercised at any time in future.

(v) In the case of **State of Manipur -vs- Md. Rajaodin [2004 (1) SLJ 247]** the Hon'ble Apex Court has held that compassionate appointment cannot be claimed or offered after a lapse of time when the crisis is over.

(vi) In a recent judgment of the Hon'ble Apex Court in **Canara Bank - vs. M.Mahesh Kumar [AIR 2015 SC 2411]** the guidelines that were prevailing or holding the field at the time of the death of the employee were directed to be applied to a compassionate appointment case. The Hon'ble Apex Court having duly considered the decisions rendered in the following matters –

- i) **Sushma Gossain & Ors. -vs- UOI & Ors. [(1989) 4 SCC 468]**
- ii) **M.G.B.Gramin Bank -vs- Chakrawarti Singh [(2013) 13 SCC 583]**
- iii) **Umesh Kr. Nagpal -vs- State of Haryana [(1994) 4 SCC 138]**
- iv) **State of Manipur -vs- Md. Rajaodin [(2003) 7 SCC 511]**
- v) **SAIL -vs- Madhusudan Das & Ors. [(2008) 15 SCC 560]**
- vi) **Sanjay Kumar -vs- State of Bihar [(2000) 7 SCC 192]**

observed as follows :

“Considering the scope of the Scheme ‘Dying in Harness Scheme 1993’ then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.”

8. Considering the factual matrix in the aforesaid legal backdrop I fail to concur with the view expressed by the ld. Counsel for the applicant that the family, which received Rs.14 lakhs and odds as terminal benefits, was left in dire distress or was virtually reeling under penurious conditions.

9. Therefore I dispose of the OA with liberty to the applicant to prefer appropriate representation within one month from the date of receipt of a copy of this order to the competent authority in case they feel that they have been discriminated in the matter of grant of compassionate appointment or that the terminal benefits could not be taken into account for consideration of the matter.

10. If such an application is made the appropriate authority shall dispose it of in accordance with law within three months thereafter. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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