

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No. 332/00123/2018

Order reserved on: 26.10.2018

Pronounced on: 19.11.2018

The Hon'ble Mr. Devendra Chaudhry, Member (Administrative)

Nitin Verma, aged about 34 years, S/o Late Krishna Kumar, R/o E-3009, Rajaji Puram, Lucknow.

.....Applicant

By Advocate : Sri R.C. Saxena.

Vs.

1. Union of India through Secretary to the Govt. of India, Ministry of Health and family welfare, New Delhi.
2. Under Secretary to the Govt. of India, Directorate General of CGHS, Ministry of Health and family welfare, Nirman Bhawan, New Delhi.
3. Additional Director, Central Government Health Scheme, Lucknow.

....Respondents.

By Advocate: Sri Shatruhan Lal holding brief for Sri Pawan Kumar Mishra.

Order

Delivered by: Hon'ble Mr. Devendra Chaudhry, Member (A)

The present Original Application (OA) has impugned the order dated 05/06.03.2018 passed by Respondent No. 3-Additional Director, Central Government Health Scheme (CGHS), Lucknow rejecting the case of the Applicant for compassionate appointment.

2. The case of the Applicant in brief is that his father, late Sri Krishna Kumar was employed and posted as Chief Pharmacist in CGHS, Lucknow and died while in service on 11.05.2011. That, soon after the Applicant applied for compassionate appointment and supplied the necessary documents with regard to the same including details of movable and immovable properties etc. That, the Respondent No. 3 recommended the case of the Applicant vide his letter dated 26.09.2013 to the higher authorities. However, the case of the Applicant was rejected on the ground that he being married son therefore cannot be considered dependent on a government servant hence not qualified for compassionate appointment in

view of DOP&T circular No. 14014/02/2012-Estt. (D) dated 30.05.2013. Aggrieved the Applicant filed an OA challenging the rejection order dated 01.08.2014. The OA was allowed vide Learned Tribunal's order dated 16.08.2016 wherein the Respondents were directed to re-consider the case of the Applicant on merit for compassionate appointment irrespective of the fact that Applicant is married son to the deceased employee. Thereupon the Respondent No. 3 passed the impugned order communicating the decision of the Respondent No. 2, Director General, CGHS, Ministry of Health and Family Welfare, New Delhi rejecting his claim for compassionate appointment. That this impugned order is unjustifiable and hence the present O.A. Learned Counsel for the Applicant has cited various rulings of the Hon'ble Apex Court and Hon'ble High Court and also quoted them in his O.A. to support his submission.

3. Counter reply has been filed on behalf of the Respondents in which it has been submitted that the case of the Applicant was considered carefully by concerned authority and has not been found suitable in the light of eligibility criteria contained in DOP&T OM No. 140/4/02/2012-Estt (D) dated 16.01.2013. That, Para -5 of the above circular lays down that for consideration of compassionate appointment; the family should be indigent and deserve immediate assistance for relief from financial destitution and the Applicant to be considered for compassionate appointment should be eligible for the post as per recruitment rules. That, since the Applicant has good financial condition on account of received terminal benefits of around 14.95 Lakhs and that the family has immovable property of about Rs. 30 Lakhs even while getting the family pension of Rs. 27655 per month+DA; all these are quite sufficient for three family members as there are no liabilities left for marriage of unmarried sisters etc. Therefore the Applicant is not entitled for immediate assistance or relief by way of compassionate appointment. That, for this reason the competent committee did not find the Applicant suitable amongst the list of 46 applicants. Accordingly, therefore, case of the Applicant has been rejected and therefore the OA is liable to be dismissed and should be dismissed by the Learned Tribunal.

4. I have heard both the parties at length and examined the pleadings filed carefully.

5. The key circular which is important for consideration of the case of the Applicant is an OM No. 14014/02/2012-Estt. (D) dated 16.01.2013 of

the DOP&T (Annexure No. 8). Examination of the same reveals that vide para-18 (c) a balanced and objective assessment of the financial condition of the family including assets and liabilities and also benefits received under various welfare schemes, presence of earning member, size of the family, ages of the children and essential needs of the family etc. needs to be taken. For clarity para-18 (c) is re-produced herein below:

“...18. General.....

.....

(c) The Scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.....”

The O.M. also takes into account of various rulings of the Hon'ble Apex Court and Hon'ble High Courts in Para-19. Some of these also been averred to by the Applicant's Counsel as well as Respondents' Counsel.

Hon'ble Apex Court in various rulings has upheld that the retiral benefits should not be taken as criteria for testing indigency w.r.t. compassionate appointment because they are rightful earnings of the deceased employee and not a measure for considering indigency of the family after the death of the concerned employee.

6. Examination of the impugned order reveals that inter alia one of the reason of the rejection of the Applicant's case is the existence of immovable property amounting to Rs. 32 Lakhs. During the course of arguments and also in the CA filed by the Respondents, the Respondents have failed to point out any evidence to substantiate this fact or valuation of the house. This inter alia is a crucial fact for deciding the matter of indigency for compassionate appointment. The Applicant on the other hand has filed Annexure-10 affirming that the family does not own land or property including agriculture land at their native place but are owning a house at E-3009, Rajajipuram, Lucknow which is stated to be small and 2 ½ story have built upon an area of 950 Sq. feet. This is as per of O.M. No. 3293/2012-CGHS/LKO/3936-37, dated 02.07.2012 of the official respondents side, Dr. Avnindra Kumar Singh vide report dated 08.08.2012. It will be useful to reproduce the abstract herein.

“...To,
The Additional Director,
CGHS, B-114-115, Vibhuti Khand,
Gomti Nagar, Lucknow.

Subject: Regarding the submission of the report of verification of the movable and immovable properties and annual income earned there from by the family in case of compassionate appointment of Sri Nitin Verma, S/o Late Sri Krishna Kumar who was employed as a Pharmacist at CGHS, Lucknow.

Sir,

In reference with your office Memo No. 3293/2012-CGHS/LKO/3936-37, dated 2.7.2012, the undersigned visited the residential address of Sri Nitin Verma on 17.7.2012 and verified movable and immovable properties from the records and statements furnished by him. The gist of report follows as below:-

The family does not own any land of property or agriculture land at their native place. The family is owning a house at E-3009, Raja Ji Puram, Lucknow which is a small 2 ½ story have built upon an area of 950 Sq. Feet. The ground floor of which seems to used as tent house.....The family have a hundai I-10 motor car having No. UP 32 DW 3343 which has loan against it also. The family does not have any significant jewelry except of daily use and no investment in shares and mutual funds.

Regarding cash payments made to the family of the deceased and family pension, it can be verified from the office records. The cash balance left as per the details of the photocopies of the latest statement of bank accounts can be found. In addition this family has liability of HBA from ICICI Bank amounting to Rs. 2093677/- as per latest statement.

1. GPF- Rs. 209771/-
2. CGEIS-Rs. 5000/-
3. DLI-Rs. 60000/-
4. EL Encashment- Rs. 280377/-
5. DCRG- Rs. 90000/-
6. Family Pension-Rs. 10550/- per month+ dearness relief at per present rate.
7. Cash balance- Rs. 567014.25 as per photocopies of latest bank pass book.

In addition to this, the movable and immovable property and annual income earned.....has been verified on the enclosed Proforma.

*Yours faithfully,
Sd/-
(Dr. Avnindra Kumar Singh)
CMO (SAG) CGHS
B-12, Mall Avenue, Lucknow....”*

7. The report also however disclosed that family has a Hyundai I-10 motor car No. UP 32 DW 3343 and has a stated cash balance of Rs. 5.67 Lakh as per photocopies of the latest bank passbook. After taking these movable and immovable properties and cash balance into account, there is difficulty in justifying indigency of immediate or penurious nature. Hence the OA is liable to be dismissed and is hereby dismissed. No Costs.

**(Devendra Chaudhry)
Member (Administrative)**

/JN/