

**Central Administrative Tribunal
Lucknow Bench, Lucknow**

Original Application No. 332/00516/2016

This, the 10th day of September, 2018

By the Hon'ble Devendra Chaudhry, Member (Administrative).

Ram Sagar Maurya, aged about 38 years, son of Late Sant Ram, resident of Village- Raghipur, Post- Gauriganj, District-Amethi.

..Applicant

By Advocate : Sri Somesh Tripathi.

Vs.

1. Union of India, through Secretary, Ministry of Home Affairs, New Delhi.
2. Registrar General of India, 2/A, Mau Singh Road, New Delhi.
3. Director, Director of Census Operation, Chandigarh (U.T.) Jangarna Bhawan, Plot No. 2-B, Sector-19A, Madhya Marg, Chandigarh.
4. Assistant Director, Director of Census Operation, Chandigarh (U.T.) Jangarna Bhawan, Plot No. 2-B, Sector-19A, Madhya Marg, Chandigarh

.....Respondents

By Advocate: Sri Vishal Agarwal.

Order [Oral]

The present Original Application (OA) has challenged the order dated 12.01.2016 and 05.04.2016 passed by Under Secretary to the Government of India under the office of Registrar General of India, Ministry of Home Affairs, by means of which, the case for grant of compassionate appointment of the Applicant, which was remanded back vide order dated 23.09.2015 by Hon'ble High Court Allahabad, Lucknow Bench, Lucknow for reconsideration, was rejected. Accordingly, the relief sought is with respect to setting aside the order dated 12.01.2016 and 05.04.2016 (Annexure A & B to the OA) and directing the Respondents to consider the appointment of the petitioner to suitable post accordingly to his qualification under scheme for compassionate appointment.

2. The Applicant's case briefly as under:

2.1 The Applicant's father namely Santram while posted as Loader under the Respondents died in harness on 30.04.2006 leaving behind his wife, school going sons and daughter. After the death of Applicant's father, mother of Applicant namely Smt. Shiv Kumari wife of Late Sant Ram requested for employment of Applicants Sri Ram Sagar Maurya, son of demised employee under the scheme of Compassionate Appointment on the grounds that her husband had died leaving her, three sons, one daughter and father-in-law as dependants upon her. The mother of the Applicant also enclosed relevant information seeking appointment of the Applicant under the Compassionate Scheme. The Assistant Director also recommended vide 06.10.2006 (Annexure A-2) for appointment of the Applicant on compassionate ground as per Proforma. The Applicant giving reference of the request made by his mother seeking appointment of the Applicant on the compassionate ground, submitted another application dated 10.03.2008, requesting for providing a suitable job on the compassionate ground under the scheme for compassionate appointment. The mother of the Applicant in compliance of the letter dated 25.07.2008, submitted vide application dated 09.09.2008 details of family as well as source of income requested for appointment of the Applicant on the compassionate ground. The letter dated 29.09.2008 of the Deputy Director also directed the mother of the Applicant to furnish information regarding movable and immovable property left by Late Sant Ram so that the appointment on the compassionate ground may be considered. The Gram Pradhan of the Gram Panchayat issued certificate and also indicating the financial distress of the deceased family. The Applicant came to know about the denial of his appointment on the compassionate appointment through an information provided by the Under Secretary of the Government of India under Right to Information Act vide letter dated 10.12.2013 enclosing the copy of the list of the candidates whose request has been rejected due to being non-deserving cases.

2.2 That, the Hon'ble Tribunal after the exchange of pleadings dismissed the plea for compassionate appointment in an earlier Original Application No. 332/00085/2014 filed in this Tribunal by means of order dated 14.08.2015. The Applicant challenged the order of Tribunal before Hon'ble High Court, at Lucknow in Writ Petition No. 1477 (S/B) of 2015 and the Hon'ble Court vide order dated 23.09.2015 was pleased to direct

the respondents to reconsider the case of the Applicant for the appointment under the compassionate scheme in accordance with the existing Rules and Law specifically directing the authorities to keep into account all the relevant factors and considering the recommendation of the Assistant Director dated 06.10.2006. That, consequent to the order passed by the Hon'ble High Court (supra), the Director of the Census Operation, Government of India directed on 20.11.2015 to the Sub-Committee to verify the movable and immovable property of the Applicant including through spot inspection of the property belonging to the Applicant's family. The Sub-committee prepared an enquiry report on 30.11.2015 after inspecting the revenue records as well as spot inspection of the house and other assets belonging to the family of the Applicant. Further, the Applicant was informed by the Assistant Director, Office of the RGI, through a letter dated 09.12.2015 by which he was directed to place value of the land possessed by the him and property duly and certified by the Tehsildar/Land Record Office before the Review Committee to consider him for appointment under the Scheme for Compassionate Appointment. The Applicant accordingly obtained the Assets Evaluation Report of the Tehsildar and enclosing the same in his application dated 04.01.2016 again sought appointment on compassionate ground.

2.3 Now, after adducing all evidence & records, the impugned order has been passed by the Respondents without considering the order of the Hon'ble High Court (supra) and the report of the Sub-Committee. Therefore, Applicant filed a Writ Petition No. 21723 (S/S) of 2016 and hence the Applicant challenge the order dated 12.01.2016 and 05.04.2016 of the Respondents. The Hon'ble High Court vide order dated 09.09.2016 dismissed this Writ Petition No. 21723 (S/S) of 2016 with liberty to approach this Hon'ble Tribunal. Hence, this O.A.

3. As against this, the Respondents have filed Counter Reply dated 18.05.2017 and proofed that matter of compassionate appointment to the family members of the demised employee late Sant Ram, Loader who expired on 30.04.2006 has already been examined by the Review Committee as per prevailing rules taking into account the objective assessment of the financial condition, assets, liabilities/family status and all other relevant factors including Sub-committee report of Director of Census Operation (DCO), UP and other additional information

furnished by the applicant. After due examination of above, the Applicant has not been found fit for compassionate appointment. That, the same was considered also in light of order of Hon'ble High Court vide dated 23.09.2015. In support of Respondents argument that the Applicant's case is not fit for compassionate appointment, following facts have been stated in the Counter Reply:

“... (i) The mother of the applicant besides receiving basic pension of Rs. 4575/- per month (excluding DA) has also received the terminal benefits of Rs. 2,69, 311/- and is in possession of moveable and immovable property (Agriculture Land) valuing about Rs. 20,25,100/- as per the latest value furnished by the Tehsildar from the Land Records Office. The Applicant has income from Agriculture Land measuring 2 Bigha since 2006. As such, keeping in view the above factors, the family of the deceased was not found in an impecunious condition when compared to other applicants. Hence, it is not possible to grant compassionate appointment to him and the same was communicated to him.

(ii) It has been further submitted that the Apex Court has observed in the case of State bank of India and another Vs. Raj Kumar reported in (2010) 11 Supreme Court Case 661, that compassionate appointment is not a source of recruitment. It is an exception to general rule that recruitment to public service should be on the basis of merit, by open invitation providing equal opportunity to all eligible person to participate in selection process. Futher, Apex Court in Union of India Vs. Shashank Goswami (AIR 2012 Supreme Court 2294) observed that appointment on compassionate ground cannot be claimed as a matter of right and the same is based on premises that the applicant was dependent on the deceased employee. Strictly such a claim cannot be upheld on the touch stone of Article 14 or 16 of Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service.

(iii) The father of the applicant died in 2006, the case of the applicant no longer falls under the category of sudden crisis, leaving the family in penury and without any means of livelihood and requiring immediate assistance to get over the emergency, as envisaged in the objective of scheme of compassionate appointment. The applicant is therefore not eligible for relief sought by him...”

4. After filing of the pleadings, the case was put up for final hearing. Accordingly, Learned Counsel for both the parties were heard and material on record perused carefully.

5. Learned Counsel for Applicant has argued that in the Short Counter Affidavit (SCA) filed by Respondents, paper at Annexure A-1 has given the marking of the Applicant with respect to consideration of the case of compassionate appointment. In the marking, total 52 marks have been given to the Applicant against qualifying of 60 marks. Attention has been drawn by Applicant's Counsel at this stage that with respect to the column concerning "No. of minor children as on death", against which it has been recorded that number has been given 'Nil' by Respondents notwithstanding the fact that on the date of death of employee, that is, 30.04.2006, there were two minor children of the Applicant's father. In support of above, in the Short Rejoinder Affidavit (SRA), Applicant has filed the High School Marks Sheet of two children namely Vijay Kumar Maurya and Ajay Kumar Maurya (other two brothers of the Applicant). Examination of the High school marks sheet reveals that Date of Birth as being 25.04.1995 of Vijay Kumar Maurya and 13.08.1992 for Ajay Kumar Maurya. This would make the respective ages were about 11 and 14 years respectively which would be minor as on 30.04.2006 (age of death of their father). Hence, if the same is considered 10 additional points would be allowable to the Applicant as per guidelines/scheme of compassionate appointment dated 14.05.2010 (Annexure to SRA). This is a crucial datum of fact and which is undisputable and not disputed by Respondents with any counter proof although severely, this datum of Marks sheet has not been pleaded explicitly in the OA originally as filed on 07.11.2016, but only through mention of school going children is Annexure A-1 through mention of school going children has been made.

6. As against above, Respondents' Counsel has submitted today in Court a communication dated 16.01.2018 of the office of Registrar General, India (RGI), New Delhi signed by Sri Dinesh Kumar, Deputy Director in which direction have been issued to the Controlling Officers, All the Directorates under the RGI wherein it is mentioned that it has been ordered by Competent Authority to review the criteria of the compassionate appointment under RGI with respect to demise of the employee from the year 2006 onwards. Learned Counsel for the Respondents has argued that the case of the Applicant could accordingly

be considered under this review. Meanwhile, it is admitted by the Respondents that the communication dated 16.01.2018 has given the opportunity to the various dependents of the employee who have demised from the year 2006 for compassionate appointment. The major fact and evidence of High School Marksheets of the minor sons has not been rebutted by the Respondents. Therefore, I am of the view that while deciding review of the Applicant's case vide order dated 16.01.2018 of RGI, these facts must be considered as also any other criteria which may be presented during the course of compliance of the order no. 12012/10/15-Ad IV dated 16.01.2018 of the officer of Registrar General, India, New Delhi.

7. The OA is accordingly disposed of with direction to the Respondents to decide the case of compassionate appointment of the Applicant within three months from the date of this order in light of Respondent's submission for appropriate justifiable consideration for compassionate appointment under the aegis of the Order no. 12012/10/15-Ad IV dated 16.01.2018 and also fully considering the fact of marking with respect to minor sons in light of evidence of High School Marksheets, etc.(which may be verified by the Competent Authority as required). There shall be no order as to costs.

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

JN