

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.01/2015

Dated this Monday the 24th day of April, 2017

CORAM: HON'BLE Dr. MRUTYUNJAY SARANGI, MEMBER (A)

Ritu M. Motwani
 Working as Office Helper
 Central Drugs Testing Laboratory
 GMSD, Mumbai-Central
 Mumbai - 400 008.
 404/3, Sector-II CGS Colony,
 Kane Nagar, Antop Hill,
 Mumbai - 400 037.

... ***Applicant***

(By Advocate Ms. Priyanka M.)

Versus

1. The Union of India,
 Through the Secretary,
 Ministry of Health and Family Welfare,
 Nirman Bhawan, Maulana Azad Road,
 New Delhi - 01.
2. The Deputy Director Admn.(D)
 Directorate General of Health Services,
 Central Drugs Standard Control Organisation,
 FDA Bhawan, Kotla Road,
 Opp. Bal Bhawan,
 New Delhi - 110 002.
3. The Director,
 CDTL,
 ESIS Hospital Building,
 Wagle Estate,
 Thane - 400 604.

... ***Respondents***

(By Advocate Shri V.B. Joshi alongwith Shri P. Khosla)

O R D E R

Per: Dr. Mrutyunjay Sarangi, Member (A)

The applicant's husband was working as a
 Driver in the Central Drugs Testing Laboratory

('CDTL' in short), Mumbai under the respondent No.3. He died while in service on 19.10.2002. On 11.11.2002, the applicant submitted an application to the respondent No.3 for appointment on compassionate grounds. She followed it up with another application on 20.01.2004 and subsequent representations on 14.10.2004, 09.02.2005, 11.03.2005, 29.05.2005, 05.12.2005, 16.01.2006, 12.02.2006, 01.04.2006, 08.06.2006, 24.11.2007, 10.12.2007, 24.01.2008, 08.03.2008, 27.08.2008, 11.11.2009, 23.03.2010, 20.04.2010, 08.04.2011, 01.08.2011, 16.08.2011, 29.08.2011, 07.12.2011, 12.12.2011 and 05.03.2012. On 18.04.2012, the Deputy Director Administration (D), Directorate General of Health Services (Respondent No.2) informed the Director, CDTL (Respondent No.3) that the proposal for appointment of Mrs. Ritu M. Motwani, the applicant on compassionate grounds has been considered and it has not been found possible to accede to her request. The applicant received a further letter on 17.04.2014 informing her that no post in Group 'C' & 'D' cadre is available in the Central Drugs Standard Control Organisation under 5% quota for compassionate appointment. It is not possible to appoint her in any post in 'C' & 'D'

Group on compassionate grounds. The applicant received another letter dated 16.10.2014 informing her that as per the guidelines of Government, maximum time limit for retaining the name of applicant for consideration for offering compassionate appointment is three years only. Since more than 11 years have already passed in her case, it is not feasible to examine her request again. Aggrieved by the above impugned letters, the applicant has filed this O.A. praying for the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the impugned orders dated 16.10.2014, 17.04.2014 and 18.04.2012 with consequential benefits.

(b) This Hon'ble Tribunal may further be pleased to direct the respondents to appoint the applicant on compassionate grounds henceforth.

(c) Cost of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The applicant has based her prayers on the following grounds as enumerated in para 5 of the OA:-

"5(A) The impugned orders dated 17.04.2014 and 16.10.2014 rejecting the case of the applicant for compassionate appointment are absolutely illegal and

void.

(B) The respondents have delayed the case of the applicant by considerable time. Although she applied on 11.11.2002 the respondents took more than 11 years to offer appointment and ultimately informed her that her case is barred by 3 years limitation.

(C) There were some Group C and Group D posts available for compassionate appointment. In fact, in any case, the name of the applicant could have been considered for appointment against these vacancies.

(D) The respondents have illegally closed the case of the applicant by taking shelter under the 3 years Rule.

(E) The respondents have denied compassionate appointment to the destitute. The applicant's family has not been able to make both ends meet. The applicant has a family of 2 members including her school going adopted son. The applicant is in dire need of appointment in order to sustain her family.

(F) The respondents have not applied their mind while passing the nonspeaking order rejecting the claim of the applicant without valid reasons for the same.

(G) The objective behind compassionate appointment, being to provide financial assistance to the family of the deceased employee, the objective is more approximately fulfilled by grant of compassionate appointment to the applicant.

(H) The right to compassionate appointment is governed by Statutory Rules framed by the Government and the same are binding. The Rules provide one appointment against the death of the bread winner.

(I) there is complete non application of mind on the part of respondents before rejecting the case of the applicant.

(J) The non consideration of the case of the applicant for grant of compassionate appointment amounts to infraction of

Article 14, 16, 19 and 21 of the Constitution of India.

(K) The right to livelihood is denied to the destitute.

(L) The deserving case is not considered by the respondents.

(M) The financial condition of the family of the applicant is such that they need immediate financial assistance in the form of compassionate appointment.

(N) There is no application of mind by the respondents to the destitute financial condition of the applicant."

3. The respondents in their reply filed on 19.11.2015 have contested the claim made by the applicant. It is their contention that the applicant had already been paid GPF amount of Rs.41,514/-, Rs.34,744/- towards DLI and Rs.1,50,043/- towards DCRG in March 2003. She is also in receipt of family pension @Rs.1863/- p.m. The applicant could not be provided compassionate appointment in Group 'C' & 'D' posts due to non availability of vacancies under 5% quota of the total (direct recruitment posts) vacancies. The respondents have considered her case for compassionate appointment from time to time but could not offer appointment to her because of limitation of non-availability of vacancy of 5% quota prescribed under the Rules. The applicant has been engaged on daily wage basis from February, 2009 and is being paid wages as per Minimum Wages

Act of the State Government. The Central Drugs Testing Laboratory, Mumbai (Respondent No.3) had sent a proposal to the Deputy Director Administration (D), Directorate General of Health Services, Central Drugs Standard Control Organisation, New Delhi recommending the case of Smt Ritu Motwani, the applicant in April 2010. However, on 18.04.2012 the Deputy Director Administration (D), Central Drugs Standard Control Organisation wrote a letter to the respondent No.3 that it was not found possible to accede to the request of the applicant to provide a job under compassionate appointment. The respondents have submitted that a post of sweeper had fallen vacant due to the demise of one Shri M.J. Jadhav on 09.12.2009. The post remained vacant for more than a year and in terms of Ministry of Finance OM No.F.7(7)-E(Co-ord)/93 dated 03.05.1993, posts lying vacant or kept in abeyance for one year or more are treated as abolished. From March, 2009, the work of cleaning and maintenance of the new office building has been outsourced, therefore, the applicant's application for compassionate appointment could not be agreed to. The respondents have also submitted that as per the DoPT's OM dated

26.07.2012, the time limit of 3 years has been removed. However, while considering such belated requests, it should be kept in view that the concept of compassionate appointment is related to the need for immediate assistance to family of the Government servant in order to relieve it from economic distress. The applicant has been engaged on daily wage basis since February, 2009 and is continuing in that job. The respondents have also replied to the submission made by the applicant that one Shri Vijay M. Ujagare had been appointed as Lab Attendant on 09.07.2007 ignoring her claim for compassionate appointment. It is the respondents' contention that Shri Vijay M. Ujagare has the requisite qualification of SSC for the post of Lab Attendant whereas the applicant submitted her matriculate equivalent pass certificate issued by Hind Sahitya Sanmelan, Allhabad dated 11.05.2007 claiming SSC passed in 2006 only on 12.12.2007 by which time Shri Vijay M. Ujagare had already been appointed. It is the respondents' claim that the applicant's case for compassionate appointment has no merit and, therefore, it should be dismissed.

4. The applicant has filed a rejoinder on 03.08.2016 in which she has claimed that according

to the respondents there were 10 vacancies of Group 'C' in the year 2006-2007 but the applicant was not given a compassionate appointment despite the availability of so many vacancies. The applicant has made a plea that she should have been considered for the post of Sweeper on the demise of Shri M.J. Jadhav but the respondents kept the post vacant for more than a year without any reason and treated the post as abolished. The applicant could have been appointed on compassionate ground in the clear vacancy of Shri M.J. Jadhav in 2009 itself. The respondents have denied the applicant's legal and just claim for compassionate appointment on some pretext or the other.

5. The respondents have filed an additional affidavit in reply to the rejoinder annexing the Office Memorandum issued by the DoPT on 16.01.2013 contains consolidated instructions on the scheme for compassionate appointment under Central Government. As per this scheme, compassionate appointment can be made only against regular vacancies subject to a maximum of 5% of vacancies under direct recruitment quota in any Group 'C' post. It is the respondents' contention that compassionate appointment cannot be made unless 20

vacancies arise in direct recruitment quota in Group 'C' post.

6. The applicant has cited the order passed by this Tribunal in OA No.475/2012 on 31.07.2014 (**Shri Avinash V. Bhoir Vs. The Union of India & Another**) to support her argument that "With the passing of the DoPT OM dated 26.07.2012, all pending cases including that of the applicant in OA No.475/2012 deserve consideration, with the overall condition that only the most deserving candidates will be eligible for appointment on compassionate grounds".

FINDINGS

7. I have heard learned counsels for both the parties and perused the documents submitted by them. The issue to be decided in the present OA is whether the applicant is entitled to compassionate appointment as prayed for by her. The death of the applicant's husband occurred in 2002. She had submitted more than 20 representations for her appointment on compassionate grounds. Only in April, 2014 after a gap of twelve years, she was informed that her case cannot be considered since no post in Group 'C' & 'D' cadre is available in Central Drugs Standard Control Organisation under 5% quota for compassionate appointment. She was

again informed on 16.10.2014 that the maximum time limit for retaining the name of the applicant for consideration for compassionate appointment is three years. The applicant is presently working on daily wage basis since February, 2009.

8. I had directed the respondents to submit the file relating to the consideration of the applicant's case at the Central Drugs Standard Control Organisation, New Delhi. I find that the case of the applicant has been examined in the file with notings at various levels and a decision has been taken on 24.12.2013 that since no vacancy is available under 5% quota, her case cannot be considered. In a small organisation like Central Drugs Testing Laboratory and Central Drugs Standard Control Organisation, 20 direct recruit vacancy at one time in Group 'C' is not possible. The application for compassionate appointment should be in all fairness considered every year and it is not possible that from year to year 5% vacancies from a total of 20 vacancies will be available for compassionate appointment. I find that merely rejecting the applicant's case on the ground of non-availability of vacancy under 5% quota shows that justice has not been done to the applicant.

Similarly, I find that the office noting in 2014 mentions that the maximum time limit for retaining the name of the applicant for consideration of compassionate appointment is three years. This position adopted by the respondents is incorrect since the Government in the DoPT OM No.14014/3/2011-Estt(D) dated 26.07.2012 had removed the three years time limit for considering compassionate appointment. This also shows that the applicant has not got justice in the hands of the respondents. It is also pertinent that when the applicant was waiting for compassionate appointment, the post of Sweeper which was vacant in 2007 was allowed to lapse by the Central Drugs Testing Laboratory, Mumbai and no attempt was made to consider the case of the applicant when the vacancy of Sweeper arose. This also added to the injustice meted out to the applicant.

9. The Government have issued guidelines on compassionate appointment from time to time including the OM No.14014/6/94-Estt(D) dated 09.10.1998. The following principles are followed while considering cases for compassionate appointment;

i) The Appointment on compassionate ground may be done when:

(a) a Government Servant dies in harness

or is retired on medical grounds before attaining the age of 55 years (57 years for Group 'D' Government servants);

(b) the family of deceased Government Servant is in indigent condition;

(c) the person seeking compassionate appointment is a dependent family member of the deceased Government servant, that is to say that he/she is spouse; son; daughter; brother/sister (in the case of unmarried Govt. Servant) of the deceased Government servant who was wholly dependent on him;

(d) the claimant has attained the age of 18 years;

(e) the claimant is eligible and suitable for the post on which his compassionate appointment is being considered.

ii) Any request for compassionate appointment may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

iii) 5% of the vacancies are to be filled by appointment on compassionate grounds.

iv) Compassionate appointments can be made in Group 'C' or 'D' post only.

v) While considering an application for compassionate appointment, a balanced and objective assessment of financial condition must be made taking into account its assets and liabilities, presence of earning member, size of the family, ages of children, and essential needs of the family etc.

vi) An application for compassionate appointment shall not be rejected merely on the ground that the family of Govt. Servant has received benefits under various welfare schemes.

vii) Compassionate appointment shall have precedence over absorption of surplus employees and regularization of daily wagers.

10. By an Office Memorandum dated 5th May 2003, following modifications were introduced in the compassionate appointment scheme-

(a) If compassionate appointment to genuine and deserving persons cannot be offered in the first year due to non-availability of regular vacancy, his name must be continued for consideration for one more year.

(b) The maximum time a person's name can be kept under consideration for offering Compassionate Appointment will be three years.

11. The DOPT OM No.14014/19/2002-Estt(D) dated 05.05.2003 has provided the following:

"1. The undersigned is directed to refer to Department of Personnel and Training OM No. 14014/6/94 Estt(D) dated October 9, 1998 and (O.M.) No. 14014/23/99 Estt. (D) dated December 3, 1999 on the above subject and to say that the question of prescribing a time limit for making appointment on compassionate grounds has been examined in the light of representations received, stating that the one year limit prescribed for grant of compassionate appointment is often resulting in depriving genuine cases seeking compassionate appointments on account of regular vacancies not being available, within the prescribed period of one year and within the prescribed ceiling of 5% direct recruitment quota.

2. *It has therefore been decided that if compassionate appointment to genuine and deserving cases as per the guidelines contained in the above OMs is not possible in the first year due to non-availability of regular vacancy the prescribed committee may, review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular cases warrants extension by one more year for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota. If on scrutiny by the committee a case is considered to be deserving, the name of such a person can be continued for consideration for one more year”.*

3. *The maximum time a person’s name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.”*

12. The issue of compassionate appointment has been extensively dealt with in a catena of judicial pronouncements. In the case of **Mukesh Kumar Vs. Union of India & Ors., (2007) 2 SCC (L&S) 926** the Hon'ble Supreme Court had remitted the appellant's case back to the Central Administrative Tribunal for fresh consideration since no indication was available on how the departmental authorities had arrived at the conclusion that the family was not in indigent condition. In **Syed Khadim Hussain Vs. State of Bihar & Ors., (2006) 9 SCC 195** the Hon'ble

Apex Court had held that the rejection of the appellant's application was not justified as at the time of rejection appellant had attained above 18 years of age, although at the time of filing the application his age was around 13 years. In ***Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors., 2005 (10) SCC 289***, the Hon'ble Apex Court had held that the scheme of compassionate appointment is over and above whatever is admissible to legal representatives of the deceased employee as benefits of service which they get on death of the employee. Hence compassionate appointment cannot be refused on the ground that any member of family had received such benefits. In ***Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors., 2000(6) SCC 493 and Smt. T.K. Meenakshi and Anr. Vs. Steel Authority of India Ltd. & Ors. (Civil Appeal No.11882/1996), 2002 LAB I.C.1900***, the Hon'ble Supreme Court had held that benefit of compassionate appointment cannot be negatived on ground of introduction of scheme assuring regular monthly income to a disabled employee or dependents of deceased employee. In ***Sudhir Sakharam Joshi Vs. Bank of Maharashtra & Anr., 2003(1) Mh.L.J.*** the Nagpur Bench of Hon'ble High Court of Bombay had directed the

respondents to give an appointment to the petitioner in clerical cadre since his application for compassionate appointment was rejected without assigning any valid reasons. The Hon'ble High Court had held the fact that retiral benefits given to the deceased cannot be a good ground for such rejection and no material was produced to show that any detailed inquiry was made in order to determine the financial condition of the deceased family.

Similarly in ***Rajani (Smt.) and Anr. Vs. Divisional Controller of M.S.R.T. Corporation, Bhandara & Ors., 2003-IV-LLJ (Suppl)-NOC-474***, the Hon'ble High Court of Bombay had ordered grant of compassionate appointment even, if necessary, by creating supernumerary post to the wife of an employee compulsorily retired on medical ground since such compassionate appointment was denied for more than 10 years resulting in grave injustice to the family of the said employee. In ***Arun Kumar Vs. Union of India & Ors., 2002 LAB.I.C. 3196***, the Hon'ble Himachal Pradesh High Court had held that grant of family pension or the fact that the family of the deceased employee was receiving benefit under various welfare schemes cannot be a ground to deny compassionate appointment. In ***Smt.M.Reddamma Vs. APSRTC & Ors., WP No.23759/1995 dated July 17, 1996*** the Hon'ble

High Court of Andhra Pradesh had gone to the extent of issuing a writ of *mandamus* to appoint the petitioner in a suitable post within three weeks on the ground that the Apex Court and the High Court have held that the appointment on compassionate grounds should be provided to the dependents of the deceased employee immediately after the death of the bread-winner to enable the family to tide over the sudden crises and denial of appointment even after a lapse of six years of making representation amounts to disobedience of the mandate of the Apex Court without any satisfactory explanation for the delay. In ***Mona (Smt.) & Anr. Vs. Municipal Corporation of Delhi & Others (WP No.4952/1994 dated 11.07.1996)***, the Hon'ble High Court of Delhi had quashed the impugned order denying compassionate appointment on the ground that relevant record justifying denial of appointment was not produced. In ***Swati Chatterjee Vs. State of West Bengal & Ors.(W.P.S.T. No.21/2010 decided on 02.02.2010)*** the Hon'ble Calcutta High Court had held that wife of the deceased employee was entitled to compassionate appointment and family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment. In ***OA No.2060/2008*** this Tribunal in its

order dated 22.01.2009 had considered the OA in the matter of compassionate appointment and held that the respondents cannot reject the application for compassionate appointment on the ground that the applicant did not apply within a period of five years. It was held by this Tribunal that the applicant was a minor at the time of the death of his father and deserved to be considered for compassionate appointment after attaining the age of a major. Similarly, in ***OA No.1005/2005*** in ***Akeel Ahmed Khan Vs. General Manager, State Bank of India & Ors., 2003 (4) MPHT 167***, the Hon'ble High Court of Madhya Pradesh had held that if an appointment on compassionate ground is rejected on the grounds of gratuity and provident fund amount received by the family, it will frustrate the entire purpose of compassionate ground appointment. In ***Aparna Narendra Zambre & Anr. Vs. Assistant Superintendent Engineer, Sangli & Ors., 2011(5)Mh.L.J., WP No.1284/2011 decided on 01.08.2011*** it was held by the Hon'ble Bombay High Court that the fact of receipt of family pension cannot be the basis to deny benefit of compassionate appointment. In the case of ***Director General of Posts & Ors. Vs. K. Chandrashekar Rao, Civil Appeal No.9049/2012 arising out of SLP (C) No.19871/2009 decided on***

13.12.2012 and similar Civil Appeals the Hon'ble Apex Court had laid down the principle that the 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. In ***Nirmala Saha & Anr. Vs. Union of India & Ors., 2010(124) FLR 88***, the Hon'ble Calcutta High Court had observed that by merely placing the application for compassionate appointment in three consecutive years from the date of filing the application irrespective of the fact that there were no vacancies will result in the applicant being deprived of the benefit under the scheme. In the case of ***National Institute of Technology Vs. Niraj Kumar Singh, (2007) 2 SCC 481*** the Hon'ble Apex Court had laid down the following principle with regard to compassionate appointment;

“All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not

become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.”

In ***Haryana SEB Vs. Naresh Tanwar, (1996) 8 SCC 23, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481, Haryana SEB Vs. Krishna Devi, (2002) 10 SCC 246, State of U.P. Vs. Paras Nath, 1998, (1998) 2 SCC 412 and National Hydroelectric Power Corporation Vs. Nanak Chand, (2004) 12 SCC 487,*** the Hon'ble Apex Court had recognized the need for providing compassionate appointment when the family of the deceased is in dire needs. In ***State Bank of India Vs. Anju Jain, (2008) 8 SCC 475*** the Hon'ble Supreme Court had pertinently observed the following;

“Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.”

13. In the case of *V. Sivamurthy Vs. State of A.P., (2008) 13 SCC 730*, the Hon'ble Supreme Court have observed the following in respect of principles relating to compassionate appointment.

“.....9. The principles relating to compassionate appointments may be summarized thus :

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are well recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well recognized contingencies which are carved out as exceptions to the general rule are :

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the bread-winner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

Another contingency, though less recognized, is where land holders lose their entire land for a public project, the scheme provides for compassionate appointment to members of the families of project affected persons. (Particularly where the law under which the acquisition is made does provide for market value and solatium, as compensation).

(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

14. A perusal of the catena of judgments pronounced by the Hon'ble Apex Court, Hon'ble High Court and various Benches of this Tribunal discussed at paras 12 and 13 above makes it abundantly clear that the Courts of law have firmly supported the principle that compassionate appointment cannot be denied merely because the family of the deceased have got some financial benefits consequent to the death of the sole bread winner of the family. The overwhelming trend of the judgments is that the applicants for compassionate appointment have to be considered for providing a fresh job so that the immediate financial need can be met and dire consequences of distress can be avoided. At the same time in various judgments the Courts have also laid down the principle that compassionate appointment is not a matter of right and cannot take away the principles enunciated in the constitution of equal opportunity for employment. In **V. Sivamurthy Vs.**

State of A.P., (2008) 13 SCC 730, Santosh Kumar Dubey Vs. State of U.P., (2009) 6 SCC 481) it has been held that there is no vested right on the relatives of the deceased employee to seek and obtain compassionate appointment. **In Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SSC 138** the Hon'ble Apex Court clearly stated that in public service appointments should be made strictly on the basis of open invitation of applications on merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood.

15. The facts in the present OA clearly indicate that the applicant's prayer for compassionate appointment could have been considered much earlier than 2014 when she was informed about the denial of such appointment. She has submitted more than 20 representations and got a reply from the respondents only in 2014 after a lapse of 12 years. By the DoPT OM dated 26.07.2012 the three years time limit has been removed. As mentioned in paragraph No.8 a small organisation like Central

Drugs Testing Laboratory, Mumbai and Central Drugs Standard Control Organisation, it may not be feasible to get 20 vacancies in a particular year to get a 5% quota to applicants under compassionate appointment. It is possible for the respondents to consider the case of the applicant in the next available vacancy in Group 'C'/'D' as per eligibility and strictly according to rules. The facts of the case, the points of law and the various judicial pronouncements clearly support the claim of the applicant.

16. In view of the above, the prayer of the applicant for compassionate appointment by the respondents deserves consideration. The impugned orders dated 16.10.2014, 17.04.2014 and 18.04.2012 are quashed and set aside. The respondents are directed to consider the case of the applicant at the time of filling up the next available vacancy as per the eligibility of the applicant and strictly as per rules and following due procedure to provide appointment to her, if found suitable.

17. The Original Application is allowed with the above directions. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

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