

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH, Mumbai.**

**ORIGINAL APPLICATION No. 739/2013**

**Dated this Friday the 3<sup>rd</sup> day of February, 2017**

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

Anil Kumar Kuldeep  
R/at Room No.713,  
Behind Ration Store,  
Shelar Chawalm Javsai Gaon,  
Ambarnath.

... *Applicant*

*(By Advocate Shri Arvind Kaur )*

**Versus**

1. Union of India, through  
The Secretary, Ministry of  
Defence, North Block,  
Indian Ordnance Factory,  
New Delhi 110 001.
2. The General Manager  
Govt. of India,  
Ministry of Defence,  
Indian Ordnance Factories,  
Ordnance Factory, Ambarnath  
- 421 502. Thane.
3. The General Manager,  
Govt. of India,  
Ordnance Factory Board  
Ayudh Bhawan, 10-A,  
Shaheed Khudira Bose Road,  
Kolkatta 700 001.  
... *Respondents*

*(By Advocates Shri R.R. Shetty &  
Smt. H.P. Shah )*

**ORDER**

*Per : Dr. Mrutyunjay Sarangi, Member (A)*

The Applicant has challenged the order dated 30.06.2010 passed by the General Manager, Ordnance Factory, Ambarnath rejecting his application for appointment on compassionate ground consequent to the death of his father on 19.07.2001.

**2.** The brief facts of the case, as they appears from the OA, are as follows:

i) The father of the applicant was working as a Skilled Fitter at the Ordnance Factory, Ambarnath. He met with a fatal accident on 19.07.2001 and expired on the same day. The Applicant's mother i.e., the widow of the deceased employee submitted an application to the Secretary, Ministry of Defence, Govt. of India (Respondent No.1) on 08.09.2001 (Annexure A-3) seeking employment for her son. On 04.11.2002 she received a reply from the General Manager, Ordnance Factory, Ambarnath (Respondent No.2) informing her that her application for compassionate appointment for her son, Anil Kumar (the applicant in the present OA) was rejected since there were other candidates more deserving than him (Annexure A-4). On 08.12.2004 she

received another letter from the Respondent No.2 informing that her application for compassionate appointment for her son was under process by the Board of officers constituted for the purpose and in case she was not satisfied with the findings of the Board of Officers she should file an appeal to DGOF and Chairman Ordnance Factory Board, Kolkata within two months from the date of receipt of the communication. She was also informed that on the parameters laid down for the scheme for compassionate appointment her son, Anil Kumar (the applicant in the OA) had scored 49 marks. On 10.01.2005 she sent another letter to the Respondent No.2 requesting for employment under compassionate appointment for her son. On 27.09.2010 the applicant sent a letter to the Respondent No.2 on 24.09.2010 informing that his mother expired on 26.08.2009 and therefore his case may be considered sympathetically and he may be offered appointment on compassionate grounds. The Applicant drew the attention of the Respondent No.2 to the letter No.039(6)/OFBA/A/A dated 19.07.2010 which stipulated that request for compassionate appointments received from the dependant of the Govt. servant who died in accident while on duty should be processed

immediately, on priority and the first available vacancy should be utilized for appointment to the dependent.

ii) On 30.06.2010 the Applicant had received the impugned letter in response to his application dated 12.06.2010 for compassionate appointment. The impugned letter reads as follows:

*“Sub: Compassionate Appointment.  
Ref: Your Application dated 12.06.2010.*

*With reference to your application it is stated that in terms of letter No.039/(6)/A/A.(Vol-III) dt. 18.01.2006 received under instructions No.3054/A/A vide OFB letter No.039/6/A/A/Vol-III dt. 07.02.2006, the case of compassionate ground appointment in respect of the personnel died in harness is required to be considered within a period of three years from the date of demise of the employee and appointment can be made up to a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post.*

*In view of the above your case will not be considered for compassionate appointment.*

*The above is for your information please.”*

iii) In response to the applicant's further representation dated 24.09.2010 the respondents sent a reply to the applicant on 07.02.2011 rejecting his further representation for compassionate appointment. The said impugned letter dated 07.02.2011 reads as follows:

*“**Sub: Appointment of Shri Anil Kumar S/o Late Shri Kuldipram (Ex.Tkt.No.2732/MCC/OFA) on Compassionate Ground.***

*With reference to the subject, it is intimated that your case was referred to Ordnance Factory Board, Kolkata for confirmation regarding compassionate appointment because it is an accident case while on duty but more than three years old.*

*In response to the same, O.F. Board examined the case and confirmed vide letter dated 13.01.2011 that:*

- a. The case scored meager 49 points on consideration on different parameters/attributes hence did not come within the zone of consideration for offering compassionate appointment.*
- b. At the time of consideration of request for compassionate appointment there was no provision/instruction for special consideration of employment to the dependents of the Govt. servant expired owing to accident while on duty.*
- c. The case has already become time barred (as Shri Kuldipram expired on 19.07.2001) in terms of DOP&T instruction.*
- d. Employment assistance cannot be claimed as a matter of right. Each case has to be decided on its merit keeping in view the guidelines framed by DOP&T.*

*In view of the above, your request for appointment on compassionate grounds can not be considered at this stage.*

*This is for your information please.*

*Sd/-  
(M. Venkataraao)  
Junior Works Manager  
For General Manager”*

iv) On 26.07.2012, the Department of Personnel & Training, Government of India issued an Office Memorandum withdrawing the instructions to follow three years time limit for considering cases of compassionate appointment in view of the judgment of the Hon'ble High Court of Allahabad dated 07.05.2010 in Civil Misc. Writ Petition No.13102/2010. The said OM reads as follows:

*“The primary objective of scheme for*

*compassionate appointment circulated vide OM No.14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to receive the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No.2206 of 2006 filed by Local Administration Department Vs. M. Selvanayagam @ Kumaravelu has observed that “an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind”.*

2. *This Department's OM No.14014/6/1994-Estt. (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to receive it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.*

3. *Subsequently vide the Department's OM No.14014/19/2002-Estt (D) dated 05<sup>th</sup> may, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No.13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw*

*the instructions contained in the OM dated 05.05.2003.*

4. *The cases of compassionate appointment may be regulated in terms of instructions issued vide OM dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment.”*

Consequent to the issue of the above-mentioned OM, the applicant has filed the present OA on 04.10.2012 praying for the following reliefs:

- “a) *Declare both the letter of orders passed by the Respondent No.1 dated 30.06.2010 and 07.02.2011 as illegal and bad in law.*
- b. *Direct the respondents to appoint the applicant on compassionate grounds”.*

3. The Applicant has based his prayer on the following grounds extracted from para 5 of the OA;

“5.a) *That the applicant's father died during the course of his employment on duty on 19.07.2001. Immediately thereafter, the applicant's mother made an application on 08.09.2001 within a period of 3 years of death of her husband.*

b) *That the Respondent No.1 the Company responded vide their letter dated 04.11.2002 stating that since there were no vacancies available and therefore the applicant cannot be appointed on compassionate grounds.*

c) *That as soon as the applicant's mother came to know about the vacancy she revived her application in January, 2005. That she had categorically stated that a few number of persons are already being appointed on compassionate ground owing to the number of existing vacancies in the Ordnance Factory, the Respondent No.1.*

d. That despite of several applications, the Respondent No.1 took almost two years to respond. It was only on 05.12.2007 that the Respondent No.2 the Ordnance Factory Board, Calcutta addressed a letter to the Respondent No.1 asking for certain documents pertaining to the employment of the applicant that the said documents were sent to the Board. Therefore, there has been no delay on the part of the applicant's mother in making an application for appointment on compassionate ground.

e. That, since it was a case of accident of the applicant's father while on duty, the request of the applicant's mother ought to have been considered on priority basis.

f. That, despite of the availability of several vacancies and certain vacancies being filled up on compassionate grounds during the period from 2002 to 2012, the applicant was denied his claim to be appointed on compassionate ground.

g. That the applicant ought to have been absorbed on compassionate grounds way back in the year 2001, under the rules, then.

h. That the weightage system, does not prioritise or attribute any weightage to those whose applications have been pending for a long time, and thus necessarily is not a proper system.

i. That the applicant claim for appointment on compassionate ground is covered under the scheme as applicable to the Respondent No.1.

j. That the applicant claim for appointment on compassionate ground was rejected by Respondent no.1 on the grounds of scoring insufficient points in merit. Whereas on the contrary, the Respondent No.1, the Factory have already appointed many employees including Mr. Jangam and Mr. Swapnil R. Bhosale in the similar case of accident on duty seeking compassionate appointment despite of scoring the marks lesser than that of the applicant.

k. That the applicant claim for appointment on compassionate ground is not time barred since it is covered under the reviewed government Scheme and

*officer memorandum dated 26.07.2012 instructing to withdraw limitation period as prescribed for appointing any applicant on compassionate grounds.*

*l. The Applicant craves leave to add, alter or amend any of the forgoing grounds, if and when found necessary.*

*m. The Applicant craves leave to add, alter, amend and / or withdraw any of the necessary ground as and when necessary in the interest of justice.*

*n. The Applicant submits that he has no other alternative and / or adequate and / or equal efficacious remedy other than to file the present application.*

*o. The Applicant is residing at Ambarnath and the Respondent No.1, the Ordnance Factory is having its office in Mumbai. Therefore the cause of action arises in the Jurisdiction of this Hon'ble Tribunal to entertain and try this application.*

*p. The Applicant had earlier preferred to file the same application in the Hon'ble High Court vide Petition No.94272011 which was disposed on 15.03.2012 allowing the Petitioner to withdraw the same.*

*q. The Applicant has paid the Court fee of Rs.50/- for the purpose of filing this application.*

*r. The Applicant has not received any Caveat Application from any of the Respondents.*

*s. The other grounds will be urged at the time of hearing of OA."*

**4.** The Respondents in their reply filed on 04.04.2014 contested the claim of the applicant for compassionate appointment. It is their contention that the case of the applicant was considered for three years as per the OM No.14014/19/2002-Estt(D) dated 05.05.2003 (Exh. R-1) which was the prevalent instructions at the

time of the consideration of the applicant's case. The Applicant scored 49 marks on different parameters. Since only 5% of the direct recruitment vacancies were available for compassionate appointment those who were more deserving than the applicant were given compassionate appointment. At the time of consideration of the applicant's case there was no provision/instruction for any special consideration of employment to the dependants of Government servant who expired due to accident while on duty. The Respondents claim that the Hon'ble Supreme Court in the judgment in ***Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SSC 138*** pronounced on 04.05.1994 had made it clear that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

As per the respondents' contention, the Applicant's claim for compassionate appointment need not be considered by this Tribunal since the applicant has been able to manage all these years without compassionate appointment. The Respondents have also cited the judgments of the

***Auditor General of India & Ors, Vs. G. Ananta Rajeswara Rao, 1994 I***

**SCC 192** and ***Umesh Kumar Nagpal (supra)*** to support the argument that compassionate appointments are given only to tide over immediate crisis. The Respondents also submit that the letter of the applicant dated 24.09.2010 was referred to the Head Office at Ordnance Factory Board, Kolkata who had again considered the application vide their letter dated 427/OFA/A/I/KR/156 dated 13.01.2011 and rejected the case for grant of compassionate appointment. The Respondents claim that employment on compassionate ground cannot be claimed as a matter of right. The Respondents have contested the claim of the applicant that in view of the DOPT instruction in OM No.F. No.14014/3/2011-Estt.(D) dated 26.07.2012 his application needs to be reconsidered. Their contention is that the reliance on the above mentioned OM is misplaced since the first paragraph of the OM itself states that the primary objective of the scheme for compassionate appointment is to provide immediate assistance to the dependent of the family of the deceased to relieve them from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment ***dated 05.04.2011 in Civil Appeal No.2206 of***

**2006 filed by Local Administration Department Vs. M. Selvanayagam**

@ **Kumaravelu** has observed that "an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind".

Para 2 of the said OM also makes it clear that while considering belated requests it is to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The case of the applicant has been considered on merit and persons more deserving than him have been given appointment. The Respondents have also pleaded that the application is hit by delay and laches, since the cause of action for the applicant arose in the

year 2002 when his case was rejected, whereas he has filed the OA in 2012. Since the applicant's father died due to accident while on duty, his case was referred to the Ordnance Factory Board, Kolkata vide letter No.OFA/LB/1035/COMP-APPT/10 dated 24.09.2010 seeking clarification with regard to old cases but the case of the applicant was turned down by the OFB. The Respondents have submitted that after the death of the applicant's father due to the accident, the family had got a total amount of Rs.5,81,050/- by way of terminal benefits and compensation. This fact was taken into consideration as also the fact that the mother of the applicant had three dependants namely, one unmarried daughter and two unmarried sons while computing the score of 49 during the consideration of the applicant's case. As per the instructions issued by the Government in DOPT OM No.14014/6/94-Estt(D) dated 09.10.1998 and 31.08.1999, the score is calculated on different parameters such as terminal benefits, number of dependants, left over service, etc and the applicant scored 49 points. No time limit for consideration of cases of compassionate appointment was laid down in DOPT instruction dated October 9, 1998. However, as per DOPT

Instruction No.14014/6/99-Estt(D) dated December 3, 1999, a time limit of one year was prescribed for consideration of cases for compassionate appointment.

5. The Applicant filed a Rejoinder on 03.09.2015 in which he has reiterated his claim for compassionate appointment on the ground that consideration of his application for compassionate appointment was delayed with the result his mother and family had to undergo a loss. The Applicant's case is special since his father died due to accident while on duty. By rejecting his application dated 08.09.2001 for compassionate appointment, the State had responded in an insensitive manner and having denied him compassionate appointment, it is unfair on their part to take the stand that since he has managed for many years without the compassionate appointment his case deserves no consideration. The Applicant has also questioned the grading system as faulty and unfair and has cited the judgment of the Hon'ble Gujarat High Court in the case of ***Jagdishbhai Amrutbhai Patel Vs. Divisional Controller, 1998 (1) GCD 306 (Guj)*** wherein it was held that "the compassion in such cases is the very essence by which the scheme of giving

appointment has been introduced and if such cases are rejected with computer-machine application, oblivious of an orientation of compassion, the whole purpose of introducing such scheme would stand thwarted and defeated". The Applicant is aggrieved that his case was considered along with all other cases of compassionate appointment whereas his case should have been treated special, his father having died due to accident while on duty. He claims that his case should have been dealt with as per instructions dated 19.07.2010 which provides for special dispensation for cases due to accident while on duty.

**6.** The Respondents have filed an MA No.441/2016 on 25.04.2016 for taking additional affidavit-in-reply on record. The said MA No.441/2016 is **allowed**. In the Additional Affidavit the respondents have reiterated their stand that the applicant had scored 49 marks while evaluating his case for compassionate appointment and persons more deserving than him had been granted compassionate appointment. Although, subsequently the Government had issued instruction dated 19.07.2010 for special consideration for applicants whose father died due to accident while on duty, at the time of

consideration of the applicant's case in 2001/2002 such provisions were not available. Therefore, his case was again referred to the OFB which considered his case and rejected it after due consideration. At the time of the death of the applicant's father as per the prevalent DOPT instruction No.14014/6/99-Estt(D) dated 03.12.1999 a time limit of one year was prescribed for consideration of cases for compassionate appointment. The Applicant's case was considered along with other cases in 2002 against the vacancies that arose in November 2001, January 2002 and March 2002. The Applicant was not given compassionate appointment as there were other more deserving cases on relative merit points than the applicant.

**7.** During arguments the learned counsel for the applicant relied upon the judgment of the Hon'ble High Court of Allahabad in ***Union of India & Ors. Vs. Smt. Asha Mishra & Anr., MANU/UP/0363/2010*** to support the argument that three years restriction on consideration for compassionate appointment is unreasonable.

**8.** In the present OA the applicant's father had expired in an accident while on duty. The

applicant's case has been considered by the Board of Officers for granting of compassionate appointment. His score has been computed as 49 marks taking into account the prescribed parameters such as the retirement benefits disbursed, number of dependents, number of years of service left, etc., and the applicant's case has been rejected. The Applicant has mainly relied on two grounds for reconsideration of his case, namely, (i) the Government's decision to remove the three years restriction on considering the application on compassionate appointment, (ii) the decision of the Government to give priority to the applicants for compassionate appointment whose father has died due to accident while on duty. The issue for consideration before me in this OA is whether the applicant's prayer for compassionate appointment in the above context is legally sustainable.

**9.** The Government has issued guidelines on compassionate appointment from time to time. 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 final 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 5<sup>th</sup> 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.** 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.”*

**12.** Apart from the judgments cited by the applicant, it is also relevant to mention some other important judicial pronouncements on the subject of compassionate appointment. 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.** 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.

**14.** Keeping this in mind, the Government in their wisdom have put a ceiling of 5% of direct recruit posts for compassionate appointment. This obviously implies that the opportunity for compassionate appointment will be limited and there will be a stiff competition for the jobs since at any point of time the number of applicants for compassionate appointment will far exceed the number of jobs available (5% of the direct recruitment posts). The Government have also made provision for consideration of the applications for compassionate appointment giving equal opportunity to all such applicants by providing for their consideration in the appropriate Committee for Compassionate Appointment which will examine each application against certain laid down criteria. Such criteria

include the level of indigence of the family, family pension, terminal benefits, monthly income, number of earning members and income from property, extent of movable/immovable property, number of dependents, number of unmarried daughters, number of minor children and left over service of the deceased employee. There is a reasonable expectation on the part of the applicants that their cases will be considered against a properly laid down criteria on an equal footing with other applicants and those who are the most deserving will be offered appointment on compassionate ground.

**15.** 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.”*

The Ministry of Defence had issued a letter on 03.04.2001 prescribing the parameters on which relative merits points for the applicants were prescribed on the criteria of (a)

Family Pension (b) Terminal Benefits (c) Monthly Income of earning member(s) and Income from Property (d) Movable/Immovable Property (e) Number of Dependents (f) Number of Unmarried Daughters (g) Number of Minor Children (h) Left over Service.

After the year 2001, all applications for compassionate appointment were evaluated on these parameters by the Board of Officers (BOO) for considering request for appointment on compassionate grounds.

**16.** The DOPT however on 26.07.2012 had issued an Office Memorandum (quoted at para 2(iv) of this order) by which the three years limit has been removed. The judgment of the Hon'ble High Court of Allahabad decided on 07.05.2010 in ***Union of India & Ors. Vs. Smt. Asha Mishra (supra)*** and referred to in the above OM dated 26.07.2012 dealt with the issue of compassionate appointment and the time limit of three years to offer such appointment. Relevant paragraph from the judgment are quoted herein:

*“2. The petitioners are aggrieved by the judgment of the CAT, Allahabad Bench, Allahabad dated 17th July, 2009 allowing the original application and quashing the instructions contained in the Office Memorandum dated 5.5.2003 of the Departmental of Personnel and Training, Ministry of Personnel, Public*

*Grievances and Pension, Government of India, fixing a maximum time limit of 3 years to offer compassionate appointment, and the order dated 25.5.2005 passed by the Deputy Director (Administration), Prasar Bharti, New Delhi. The Tribunal has directed that the applicant's case for compassionate appointment be considered afresh ignoring the aforesaid limit fixed under the circular, taking into account the financial condition of the family.*

3. *Brief facts giving rise to this writ petition are that late Shri Santosh Kumar Misra was serving as Upper Divisional Clerk in the office of Door Darshan, Kanpur. He died in harness on 14.8.1998 in Hallet Hospital, Kanpur leaving behind Smt. Asha Misra as his widow and two minor sons Prakhar and Shikhar. Smt. Asha Mishra, the widow of the deceased, had passed her High School and Intermediate examinations in the year 1982 and 1984, and B.A. IIIrd year examination in the year 2001 on 1.8.2001. She applied for compassionate appointment. She was informed by the Director General, Prasar Bharti, New Delhi by a letter dated 7/8.12.1999 that the competent authority has approved her compassionate appointment on the post of LDC, Group-C in Door Darshan and that her name has been included in the pending list of compassionate cases. She will be offered appointment, when her case will mature depending upon the vacancy, which may be available in future against 5% quota prescribed for compassionate appointments. Subsequently by letter dated 15.3.2000 the Door Darshan Kendra, Kanpur informed her that according to the instructions by the Director General, Doordarshan no further correspondence is required. The applicant awaiting the appointment letter continued to make representations on 10.3.2005 and 13.4.2005. In the meantime, her sons passed the High School Examination in the year 2004 and 2005 respectively.*

4. *Smt. Asha Mishra filed an Original Application in CAT for deciding her representation dated 13.4.2005 and to quash the order dated 25.5.2005 by which Shri Mashoda Lal, Deputy Director (Admn), Prasar Bharti (Broadcasting Corporation of India), in the office of Director General; Doordarshan, Doordarshan Bhawan communicated to her that all wait listed cases, which were approved in principle for compassionate ground in Doordarshan could not be offered appointment due to non-availability of 5% vacancies under the direct*

recruitment quota. In the meeting dated 17.3.2005 held at the Directorate the Committee while considering the cases of compassionate appointment observed, that since the adequate number of vacancies under the 5% of direct recruitment quota, in a year fixed by the DOP & T for compassionate appointment are not becoming available, and the number of such cases are increasing every year, therefore, keeping in view the instructions dated 5.5.2003 of DOP & T that if no appointment is offered within three years, no case be kept in the waiting list for more than three years. The Committee has further taken a decision that all such wait listed cases, which are more than three years old may be closed and their names be deleted from the wait list.

.....

15. The principles of consideration for compassionate appointment have been firmly settled and have been reiterated from time to time. Compassionate appointment is not a vested right or an alternate mode of employment. It has to be considered and granted under the relevant rules. The object of compassionate appointment is to tide over an immediate financial crisis. It is not a heritable right to be considered after an unreasonable period, for the vacancies cannot be held up for long and that appointment should not ordinarily await the attainment of majority.

.....

17. In this background, keeping the object and purpose of such appointment, the Tribunal rightly found that where family has been held to be living in penurious condition, and that appointment could not be offered for want of vacancies in 5% of the direct recruitment, the restriction of 3 years for consideration for such appointment is wholly unreasonable, irrational and arbitrary. Unless it is found that any member of the family has acquired employment or any asset, which may mitigate the continuing hardships, the closure of the case for consideration of compassionate appointment to a family of which the bread earner has died, after three years is extremely harsh and unjust. In such case the family in need of compassionate appointment may be displaced by another family, who may be suffering lesser hardships.

18. ... Where a member of the family of the deceased seeking compassionate appointment has applied within a reasonable time and that competent authority/ committee has found the application to fall within the prescribed norms, and living in penury, the delay on account of want of availability of vacancy in 5% quota of direct recruitment cannot be attributed to the applicant. The prescription of 5% quota may serve the principles of reverse discrimination to direct recruits, seeking employment and violation of their rights under Art.14 and 16, if all the vacancies are available for compassionate appointment, but confining the consideration for appointment in 5% quota for only three years has no rationale or any object to achieve for providing such appointment.

19. In the present case the respondents have neither pleaded nor placed any material to show that during the pendency of the application for three years within which it was considered, or thereafter the family has pulled out of financial distress, or that it no longer falls within the norms of offering compassionate appointment. The appointment has been denied only on the ground that for three years no vacancy could be found for her in 5% quota and thus her case was closed. The Tribunal in our opinion has rightly found that policy for consideration of application by only three years and the consequential order is wholly unreasonable, irrational and is violative of Art.14 and 16 of the Constitution of India.

20. *The writ petition is dismissed".*

**17.** In the present OA the applicant's case is different from other cases of compassionate appointment inasmuch as the applicant's father had died due to accident while on duty. His application has already been considered three times and since his score vis-a-vis the prescribed parameter was only 49, more deserving candidates were given appointment. I have perused

the records submitted by the respondents and find that in the years that the applicant's case was considered the persons who were given compassionate appointment had scored higher points and rightly so. During the meeting of the Board of Officers held on 07.10.2002 for the vacancy available on 30.06.2002 the applicant was considered along with 12 others and against his score of 49 the selected candidate has scored 71 and there were 5 cases who had scored between 49 & 71. For the vacancy as on 31.03.2002 the candidate selected has a score of 93 and there were 5 other candidates who had scored between 49 and 93 and for the vacancy as on 31.01.2002 the candidate selected had scored 67 marks and there were 6 other candidates who scored between 49 and 67.

**18.** The Applicant relies on the order issued by the OFB, Ministry of Defence in Instruction No.3251/A/No.039(6)/OFBA/A/A dated 19.07.2010 which reads as follows:

*“The Scheme for providing compassionate appointment to the dependants of Govt. servants dying in harness was introduced by Govt. of India vide DOP&T O.M. Dated 09.10.1998 followed by subsequent guidelines on the modalities for processing the requests under the scheme and weightage to be*

*given to different factors vide MOD/D(LAB) letter dated 09.03.01 as amended from time to time.*

*Simultaneous to the above, it was felt essential to provide immediate relief to the dependants of Govt. servants whose death occurred due to accidents while on duty and accordingly the issue was taken up by Ordnance Factory Board to the notice of MOD with the request to consider such case immediately as special dispensation beyond the stipulations encoded in the scheme.*

*Ministry of Defence has considered the above request of OFB and Direction/Decision has been conveyed that request for compassionate appointment received from the dependant of the Govt. servant died in accident while on duty should be processed immediately, on priority and the first available vacancy will be utilized for appointment to the dependant claimant provided he qualifies in terms of DOP&T orders cited above. Other cases compassionate appointment will be processed as per existing system.*

*It is also enjoined that if there are more such claimants than the number of vacancies, among them priority will be given as per weightage calculated in terms of MOD letter dated 09.03.2001 and subsequent amendment thereto.”*

**19.** After considering the various orders and instructions passed on the subject of compassionate appointment I hold that the Instruction No.3251/A/A No.039(6)/OFBA/A/A dated 19.07.2010 is quite emphatic about the need to

provide compassionate appointment to the dependant of the Government servants who died due to accident while on duty. It has been clearly stipulated that such cases will get priority "as special dispensation beyond the stipulations encoded in the Scheme". By this order the subordinate establishments of the OFB have been directed to provide employment to the dependants of the persons dying in accident while on duty as per the "weightage calculated in terms of MOD letter dated 09.03.2001 and subsequent amendments thereto". The Applicant had submitted a representation to the Respondent No.2 subsequent to the passing of the above instruction on 19.07.2010 praying for reconsideration of his case. The reply to the applicant by the respondents dated 07.02.2011 has not specifically stated that the applicant's case was considered in terms of the instruction issued on 19.07.2010. The Respondents have stated that the applicant had scored 49 points on consideration of the prescribed parameters and, therefore, did not come within the zone of consideration for offering compassionate appointment. The letter also states that at the time of consideration of applicant's request for compassionate appointment

there was no provision/instruction for special consideration of employment to the dependants of the Government servants who expired owing to accident while on duty. This statement by the respondents clearly reveals that the applicant's case has not been considered in terms of the instruction dated 19.07.2010. Consequent to the judgment of the Hon'ble Allahabad High Court in ***Union of India & Ors. Vs. Smt. Asha Mishra (supra)*** the Government have already removed the time limit of three years for consideration of applications for compassionate appointment vide OM dated 26.07.2012. Although it is a settled principle of law that the applicant in a case of compassionate appointment has no right to be appointed, he certainly has a right to be considered for appointment as per the existing rules. I am, therefore, of the view that the applicant's case deserves one more round of consideration by the Board of Officers which considers the application for compassionate appointment particularly because he belongs to the special category of those whose parent died in accident while on duty.

**20.** In view of the above, the OA is **allowed**. The impugned letters dated 30.06.2010 and

07.02.2011 are quashed and set aside. Since the applicant's father had died due to an accident while on duty, the respondents are directed to consider the case of the applicant as per the applicable rules and in terms of the instruction No.3251/A/ ANo.039(6)/OFBA/A/A dated 19.07.2010 for grant of compassionate appointment and pass a detailed and reasoned order within a period of 12 weeks from the date of receipt of this order. No order as to costs.

***(Dr. Mrutyunjay Sarangi)***  
***Member (A)***

*dm.*