

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.746/2014

Dated this Thursday the 16th day of March, 2017

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

Mohammed Sagir
 S/o. Late Mohammed Shabbir
 Ex Driver Grade II
 Division PH/Transport BARC
 Trombay Mumbai – 400 085.
 R/o. Room No.26, Azad Nagar,
 Aziz Baug, R C Marg,
 Chembur (E),
 Mumbai – 400 074.

... Applicant

(By Advocate Ms. Priyanka Mehndiratta)

Versus

1. The Deputy Establishment Officer
 Bhabha Atomic Research Centre
 Government of India,
 Personnel Division
 Recruitment Section – II
 Trombay, Mumbai – 400 085.

... Respondents

(By Advocate Shri R.R. Shetty)

ORDER

Per : Dr. Mrutyunjay Sarangi, Member (A)

The Applicant is the son of one Late Shri Mohammed Shabbir who was working as a Driver Grade II at the BARC (Respondent) and died in harness on 02.07.2010. The Applicant is aggrieved by the rejection of his application for grant of compassionate appointment. He has prayed 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 15.03.2013 (A-1) and 4.11.11 (A-2) with consequential benefits.

b. This Hon'ble Tribunal may further be pleased to direct the respondents to appoint the applicant on Compassionate grounds immediately with all consequential benefits.

(c) Cost of the application be provided for”.

2. The brief facts of the case, as they appear from the OA, are as follows;

i) The Applicant's father left behind his wife aged 49 years, his son aged 28 years (the applicant) and two daughters aged 25 years and 18 years at the time of his death. On 16.12.2010 the applicant submitted an application for compassionate appointment which was rejected by the Bhabha Atomic Research Centre (hereinafter referred as BARC) and the applicant was informed of the decision through their letter dated 24.11.2011 (Annexure A-2). The letter which is impugned in the OA reads as follows;

“Sub:- Compassionate Appointment

Sir,

Please refer to your application dt.16.12.2010 for employment in BARC on compassionate ground. Your application was placed before the compassionate appointment committee for consideration in the CAC meeting held on 15.09.2011. After due deliberation, the committee has not recommended your case since your mother is in receipt of family pension of Rs.8,675/- p.m. + relief as

admissible (approx Rs.4,424/-) in addition your mother has received dues of Rs.6,35,565/- your family holds lacre land at village and LIC policy amounting to Rs.1,25,000/-. As there is no hardship in the family your case is not fit for grant of compassionate appointment as per para 13(c) of GOI DPT.O.M. No.14014/6/94 Estt.D dated 09.10.1998.”

ii) The Applicant submitted another representation on 07.11.2012 which was rejected by the impugned letter dated 15.03.2015 (Annexure A-1) which reads as follows:

“Sub: Compassionate Appointment

Sir,

Please refer to your letter dt.07/11/2012, for employment in BARC consequent on death of your father Shri Mohammed Sabbir. Your demand for reinstatement with full back wages is not coming under the purview of compassionate appointment.

However, your case was placed before the Compassionate Appointment Committee for re-consideration in its meeting held on 03.01.2013. After due deliberation, the committee has again rejected your case as there is no hardship in the family. Your case is not fit for grant of Compassionate Appointment and the decision communicated to you vide this office letter dated 04.11.2011 holds good. You may please note that no communication in this regard will be entertained.”

iii) On 28.11.2013, the applicant raised an industrial dispute before the Assistant Labour Commissioner (Central)-I Mumbai and was called upon to submit the details of his family. However, on 01.07.2014 the applicant was informed that the Ministry of Labour and Employment does not consider the dispute between

the BARC and the applicant on the subject of compassionate appointment fit for adjudication, since the Government of India, Ministry of Labour has not considered the Establishment of BARC, Trombay as an 'industry' within the meaning of Section 2(j) of ID Act, 1947. Having failed to obtain relief under the Industrial Dispute Act, the applicant has filed the present OA praying for the relief as enumerated in Para 1 above.

3. The Applicant has based his prayer on the following grounds as mentioned in para 5 of the OA and reproduced herein below;-

“A) The impugned orders dated 04.11.2011 and 15.03.2013 rejecting the case of the applicant for compassionate appointment are absolutely illegal and void.

B) The respondents have illegally ignored the name of the applicant for grant of compassionate appointment. The instructions/circular relied upon by the respondents for rejecting the claim of compassionate appointment rather justifies the claim of the applicant. The respondents did not seek any clarification or provided any opportunity to explain the financial condition of the family of the applicant. After payment of liabilities left by the father of the applicant nothing is left with the family. The income of the family has reduced to about 1/3rd of the salary of the deceased which is not sufficient to meet the day to day expenses of the family. There is no other source of income.

C) The respondents have not applied their mind while passing the non speaking order rejecting the claim of the applicant without valid reasons for the same.

D) The respondents have denied compassionate

appointment to the applicant. The applicant's family has not been able to make both ends meet. The applicant has a family of 4 members. The applicant is in dire need of appointment in order to sustain himself and his family.

E) The father of the applicant late Sh. Mohammed Sabbir was also appointed on compassionate ground consequent upon the death of his father. The financial condition of his family then was also similar and it has not changed during his life time also. Rather the liabilities inherited by the family have taken away the gratuity amount received. The 1 Bhiga agricultural land belonged to applicant's Grandfather and by taking shelter of the fact that applicant possesses the same land, the respondents have rejected his claim. This 1 Bhiga land is the same land which the applicant's family owned even at the time of grant of compassionate appointment to his father. Hence, the respondents have mechanically rejected the claim of the applicant without application of mind.

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

G)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.

H) There is complete non application of mind on the part of respondents before rejecting the case of the applicant.

I) 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.

J) The Right to Livelihood is denied to the destitute.

K) The deserving case is not considered by the respondents.

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

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

N) It is almost impossible for the applicant to support a large family of 4 persons.

O) All the family members are dependent upon the applicant and he has no source of income to provide even basic needs of the family”,

4. The Respondents in their reply filed on 07.05.2015 have denied the averments made by the applicant. It is their contention that the applicant's application for compassionate appointment was considered by the Compassionate Appointment Committee and was not found to be a fit case for compassionate appointment. The applicant was informed of the decision in the letter dated 24.11.2011 (Annexure A-2) and he should have approached this Tribunal within one year of the rejection of his application. However, he chose to remain silent and submitted another representation which was rejected by the respondents' letter dated 15.03.2013. The Applicant has filed the OA in December, 2014 which is more than one year from the date of rejection of his second application. The respondents claim that the OA is barred by

limitation and the applicant has not even filed an Application for Condonation of Delay. It is the respondents' contention that appointment on compassionate ground is not a matter of right. A number of factors have to be taken into account while considering applications for compassionate appointment and those who are found to be the most deserving are given compassionate appointment. The applicant's case was submitted to the Committee for Compassionate Appointment twice and both the times more deserving candidates were offered compassionate appointment. The respondents claim that the applicant does not deserve compassionate appointment which is given immediately after the death of the head of the family to overcome the adverse pecuniary circumstances. The scrutiny of all applications for compassionate appointment is done on assessment and evaluation of the circumstances of the applicants and various other factors such as, financial position of the family, including the money received under pensionary benefits and various welfare schemes, age and status of children, assets and liability of the family etc. The respondents have submitted that the wife of the

deceased was in receipt of family pension of Rs.8,675/- + Dearness Allowance as per admissible rates. She had received dues amounting to Rs.6,35,565/-. The deceased had an LIC Policy for Rs.1,25,000/-. The family possesses one Acre of land at their village from which they received an annual income of Rs.12,000/-. The Committee for Compassionate Appointment took all these facts into account and noted that there was no hardship in the family. The applicant was already married. Therefore, after due deliberation the Committee did not find the applicant's case as fit for grant of compassionate appointment as per the guidelines laid down in para 16(c) of Government of India, DOPT OM No.14014/6/94-Estt(D) dated 09.10.1998.

5. The Respondents also filed an additional affidavit on 21.08.2015 submitting that the applicant had filed a WP No.1473/2012 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench on the same subject matter as the OA. The said WP was dismissed by the Hon'ble High Court on 26.03.2012 on the ground of jurisdiction. It is the respondents' contention that the applicant has not approached this

Tribunal with clean hands and the present OA may be dismissed on the ground of *suggestio falsi* and *suppressio veri*.

6. The Applicant filed a Rejoinder on 19.01.2016 in which he has submitted that he is not well conversant with rules regarding compassionate appointments and had approached various forum for redressal of his grievance and has finally knocked at the doors of this Tribunal. He has reiterated that the family is in economic distress. An amount of Rs.4,14,793/- was paid to the family of the deceased after recovery of Rs.2,19,613/- as Society Loan. The said amount of Rs.4,14,793/- has since been utilized for various purposes including payment of loans, meeting marriage expenses of the elder daughter, last rites of the deceased and other payables/necessities of the family. He has also submitted that they are living in a dilapidated house and the agriculture land mentioned in the properties owned by the family is an ancestral property and does not give much income.

7. In the Sur-rejoinder filed by the respondents on 24.10.2016, the respondent has reiterated the earlier averments made by him and

has contested the claim of the applicant on the ground that ignorance of law is no excuse. The respondent has also submitted that the application for compassionate appointment has already been considered twice and has been rejected since there were more deserving applicants who were granted compassionate appointment.

8. I have heard the learned counsels for both the parties and perused all the documents submitted by them. I have also taken note of the case law cited by the applicant. During arguments, learned counsel for the applicant has cited the order of the Principal Bench of this Tribunal in ***Lekh Raj Vs. Union of India in OA No.3272/2010 decided on 16.08.2012*** in which it was noted that the DOPT has already superseded the OM of 05.05.2003 and the respondents were directed to consider the application for compassionate appointment as per the OM of 26.07.2012. In a similar matter this Bench of the Tribunal in OA No.475/2012 in the order pronounced on 31.07.2014 had observed that with the passing of the DOPT OM dt. 26.07.2012, all pending cases were to be considered with the overall condition that only

the most deserving candidates will be eligible for appointment on compassionate grounds.

9. The Applicant has filed this OA after approaching the Hon'ble High Court of Judicature at Lucknow and also after knocking at the doors of the Ministry of Labour and Employment for resolution of the matter as an industrial dispute. The order rejecting the application for compassionate appointment was passed on 04.11.2011. The applicant filed another application on 07.11.2012 which was also rejected on 15.03.2015. In desperation, he has approached the Ministry of Labour and Employment to bring his grievance as an industrial dispute and has failed in this attempt. He was informed of the decision of the Ministry of Labour and Employment on 01.04.2014 and has filed this OA in December, 2014. After considering the extenuating circumstances, I am of the opinion that the present OA will not be hit by limitation and it can be taken up for consideration on merits. The issue to be decided in the present OA is whether the applicant's prayer for compassionate appointment due to the death in harness of his father on 02.07.2010 at the BARC is legally sustainable.

10. The Applicant's prayer is mainly on the ground that his family is still suffering from economic distress and the financial benefits obtained by him on the death of his father are not adequate to meet all the needs of family. He has given the list of expenses incurred out of the amount received after the death of his father. He has also pleaded that he is unemployed and has to take care of his mother and his unmarried sister. The respondents on the other hand have submitted that the applicant's case was considered twice and he could not be granted compassionate appointment since there were more deserving cases who were granted such compassionate appointment.

11. 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.

12. 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.

13. 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.”

14. 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., (Civil Appeal No.11881/1996)*** 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 negated 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.”

15. 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."

16. 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 para 14 and 15 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.

17. 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.

18. In 2012, the Government issued the DOPT OM No.F. No.14014/3/2011-Estt.(D) dated 26.07.2012 in which the time limit for consideration of the request for compassionate appointment has been removed. The OM dated 26.07.2012 and the subsequent clarification dated 04.10.2012 read 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 05th 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.”*

Clarification dated 04.10.2012 :

Sub: Clarification for clarification to consideration of compassionate appointment cases reg.

Sir,

In continuation of Board's letter of even number dated 03.08.2012 on the above mentioned subject and to say that with reference to the DOP&T instruction contained in their OM No.14014/3/2011-Estt.(D) dated 26.07.2012 a reference was made them to clarify whether the cases of compassionate appointment already decided and closed after expiry of 3 years in terms of their OM dated 5.5.2003 are

required to be re-opened/examined or not.

2. The DOPT has now clarified that “with issue of instructions dated 26.07.2012, there is no time limit for consideration of request for appointment on compassionate grounds which is to be considered on merit in terms of instructions contained in their Department's OM dated 09.10.1998 as amended from time to time. To avoid grievances/litigations administrative Department is advised to consider requests for compassionate appointment which have been already considered/closed again and take decision on merit of the case”.

3. The above decision may please be brought to the notice of all concerned for information, guidance and compliance.”

19. The Respondents were directed to produce the case records pertaining to the meetings in which the case of the applicant was considered along with the other applications pending at the time. It is found from the records that the case of the applicant was considered first on 15.09.2011. A perusal of the cases which were selected for compassionate appointment shows that all the four candidates were more deserving than the applicant on various criteria such as amount of pension received, the consolidated pensionary benefits, the number of surviving children, the financial status of the family, movable and immovable properties held by them. In the next meeting on 03.01.2013 when the applicant's case was considered for the second

time, it is found the applicant was more deserving than two other applicants who were offered compassionate appointment. It will not be appropriate to reopen those cases since the selectees have already been working for more than four years. However, since the DOPT OM dated 26.07.2012 has removed the restriction of time limit of three years for the applicants for consideration for compassionate appointment, it is my view that interest of justice will be served, if the applicant's case is considered again as per rules vis-a-vis the other pending applications. In coming to this conclusion, I am guided by the various judicial pronouncements of the Hon'ble Supreme Court as discussed in para 14 and 15 above. I am also relying on the orders passed by the Principal bench of Tribunal in OA No.3272/2010 and my order in OA Nos.2030/2012, 2031/12 & 2141/2012.

20. In view of the above, this Tribunal finds that there is merit in the contention of the applicant. Accordingly, the respondent is directed to follow the instructions issued in the DOPT OM dated 26.07.2012 and consider the case of the applicant for grant of compassionate appointment as per the extant rules.

21. The OA is disposed of with the above directions. No order as to costs.

(Dr.Mrutyunjay Sarangi)
Member (A)

dm.