

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

ORIGINAL APPLICATION NO. 709/2015

Dated this the ____ day of January, 2018.

CORAM:- HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1) Smt. Chandrokar D. Pawar
Age 65 years
Residing at c/o
Chandra pratapsinghpatil
At post Varkhed
Tal. Bodwad Dist. Jalgaon

Pravin Kumar D. Pawar
Age 34 years
Residing at c/o
Chandra pratapsinghpatil
At post Varkhed
Tal. Bodwad Dist. Jalgaon

...Applicants

(By Advocate Shri Vicky Nagrani)

Versus

1) Union of India,
through The Secretary,
M/o Defence
South Block, New Delhi - 110001

2) The Chairman,
Ordnance Factory Board
10-A Shahid Khudiram Bose Road,
Kolkatta - 700001

3) The general Manager,
Ordnance Factory Bhusawal, Bhusawal.
Dist. Jalgaon 425201

...Respondents

(By Advocate Shri R. R. Shetty)

Reserved on :- 09.01.2017

Pronounced on:- _____.

O R D E R

This OA was filed on 16.12.2015 against orders of respondents dated 23.06.2015 rejecting his request for compassionate appointment in accordance with the directions contained in O.A. No. 456/2014 decided on 29.01.2015. Applicant no. 1 is the wife of the employee who passed away on 17.09.2005 due to cancer and left behind his wife aged 49 years, an elder unmarried son who is applicant no. 2 aged 26 years, younger unmarried son aged 23 years, who was employed at the same establishment at OF, Bhusawal, and a married daughter aged 32 years. At the time of inspection by the Labour Welfare Officer on 10.10.2014, the persons shown as dependents and staying together in village Varkhed were the wife, the elder son who is applicant no. 2, his wife, his son, widowed sister of the deceased employee and her daughter aged 23 years. In the application, dependents shown are the wife, elder son, younger son and widowed sister of deceased and her daughter, now noted as 20 years of age. The applicants sought compassionate appointment on 22.03.2006 for which they received a reply on 10.08.2006 declining appointment for applicant no. 2 after taking account of the family's pecuniary condition and family particulars which cited her pension and terminal benefits but also that she

had no major liabilities like minor children since all members of the family were major, that she scored merely 36 marks in the score sheet and that one of her sons was already employed in the Factory at Bhusawal. She appealed on 22.09.2006 to the Chairman, Ordnance Factory Board arguing that her pension was very small at Rs. 3675 per month and which was to be reviewed only after five years, that she had taken a bank loan for treatment of her husband and of herself and the terminal benefits had been used for clearing these dues, that GPC contribution should not be considered as her asset, that she had three members in her family dependent on her including an unmarried sister and her unmarried daughter. Further, she argued that the younger son was not supporting her and he stays with her relative and that his name had been deleted from their ration card. On not receiving a reply to this appeal, she filed an O.A. No. 456/2014 in mid 2014 which was disposed of with a direction to respondents to respond to her appeal. The O.A. noted that she had approached the Tribunal nearly seven years after her original application was rejected on 10.08.2006. The respondent no. 2, in compliance with the orders to the O.A. dated 29.01.2015, received her representation with additional grounds filed on 15.02.2015, and passed an order dated 23.06.2015 which noted the

points in appeal and additional grounds furnished by her in 2015. An additional aspect raised then was that two candidates who had secured 33 and 36 marks had later been given appointment in 2010 although they had applied along with her son in 2006 and had been rejected. She also cited DOPT order No. 14014/02/2012-Estt(D) dated 16.01.2013 containing FAQs under Sr. no. 18 which stated that in deserving cases, appointment on compassionate grounds can be given even when there is an earning member in the family but with prior approval of the Secretary of the Department. This provision is as under:

“18. Whether dependent of deceased government employee can be considered for compassionate appointment when there is an earning member in the family?

Yes. In deserving cases, even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to the other members of family.”

2. The appeal was disposed of with the following comments which were additional to the comments already provided while rejecting the original request. This application seeking the relief of appointment on compassionate grounds was, thereafter, filed on 16.12.2015 and provides details of the family and its dependents that were left behind by the deceased

employee, argues that they had no source of income, contended that these aspects had not properly considered by the respondents and again pressed the grounds mentioned earlier in the appeal and the additional grounds made to the respondent no. 2 on 15.02.2015. She has explained the delay of seven years as caused by the respondents who neither accepted the case of the applicant nor rejected their appeal of 22.09.2006.

3. Respondents have reiterated the fact that the younger son of the applicant is already employed from 13.07.2004 as Durwan in the same factory and has made his mother as nominee as per service records for 100 per cent of benefit. They assert that the family has survived from 17.09.2005 when the employee was deceased and that they have not been found to be in indigent circumstances. They mentioned a difference between the nominees cited by the deceased employee in his service book as his mother, wife and daughter from which his wife has deleted his mother and his two unmarried sons. On 26.10.2005, after the death of the employee, even at that time, the daughter of the employee was married. They argue that they had assessed the family of the deceased as per their score sheet which included marks for pension, terminal benefits, monthly income of earning member and income

of property. Thereby, they awarded marks for pension 6 out of 20, terminal benefits of 0 out of 10, monthly income and income from property of 5 out of 5, movable/immovable property which included GPF of 3 out 10, no. of dependents at four of 15 out of 15, one unmarried daughters yielding 5 out of 15, no minor children yielding zero points, and left over service of Govt. Servant of 2 years and 11 months yielding marks of 2 out of 10, and after noting that the younger son was employed in the factory they awarded 36 marks out of 100. They state that the assessment was made including by reference to her additional grounds by a Board of officers and was in accordance with instructions.

4. During arguments, learned counsel for applicant traced the history of the case and argued that the impugned orders included a reference to the younger son who was employed with respondents whereas in DoPT's scheme for compassionate appointment, it is specifically laid down on how to process cases where there is already an earning member with the family and that the applicant had affirmed that this younger son was not supporting the family and was living independently. They also pointed to the provisions of the scheme under section 18(c) where it states that an application cannot be rejected merely on the ground

that the family had received benefits and various welfare schemes and called for a balanced and objective assessment of financial condition of the family. Therefore, the issue of the employee's son should not have been brought into consideration for this purpose. Further, learned counsel argues that others with equal or lesser marks have been appointed in a second review but no second review was done for the present applicant and if such a second review had been done, there is no record nor claim of its having being done at any point of time. Learned counsel also invites attention to the report of the Welfare Inspector in Annex. R-5 who has noted their financial conditions and that six members are there in the family of deceased excluding the younger son who is employed and is residing separately with his family. The dependents' list includes applicant no. 1 and 2, the wife of applicant no. 2 and his son, the widow sister of the deceased employee along with the unmarried daughter aged 28 years. All of them are shown as residing at post Varkhed, taluk Bodwad, district Jalgaon. The Welfare Officer has also seen and enclosed the ration card of the family members and the evaluation certificate given by the Gram Development Officer. In particular, the learned counsel points out that Shri Sandeep, son of Late J.

K. Kumbhar, who received 33 marks in initial review in 2006, less than the applicant was subsequently given appointment in 2010. Learned counsel underlines the need for compassionate appointment because the applicants are entirely dependent on the meagre amount of family pension and they are in great distress. He also emphasizes that the scheme of compassionate appointment is not for the son but to protect the family and therefore, the ages of family members at the time of death is not relevant.

5. Learned counsel for respondents urges attention to the fact that the elder son was 26 years old at the time of death in 2005 and is now 38 years old. This elder son had no claims to family pension even when his father was working and if he had superannuated in due course. He cannot, therefore, be considered dependent on the income of the father. This son is now 38 years old and has got married and has children which militates against ordinary prudence for the family that claims to be in great distress. Therefore, family pension should be adequate for the deceased employee's wife considering that her son who was then 26 is now 38 years old with a family of his own and the daughter was married even at that time and the younger son is employed with respondents and is living independently with his family. Learned counsel

also highlights the fact that the younger son had made his mother dependent on him in his nomination papers in 2004. On this aspect, learned counsel for applicants denies this aspect and says that the nominations have since been changed making his own family unit as nominees. On the general question of the grant of this dispensation of compassionate appointment, learned counsel for respondents argues that the administrative decision that has been taken in this case cannot be interfered with lightly by this Tribunal unless it is found to be perverse, or decision taken by an incompetent authority, or is completely unreasonable as set out by Wednesbury principles. With regard to the two other cases pointed out by applicant who received the benefit of second review and were granted compassionate appointment, learned counsel for respondents argues that the circumstances are not similar and they have not been indicated by the applicant nor have they indicated the age of family members and the age of the sons that they have proposed for employment. Reverting to the principles of the scheme of the compassionate appointment, learned counsel emphasizes that the scheme was meant to relieve immediate indigent circumstances which does not apply in this case where the family is evidently prospering and the second

applicant who seeks a job, got married and has a family of his own. Therefore, he concludes that this is not a fit case for interference and it would be inappropriate also to remit the matter for reconsideration to the respondents given the facts and circumstances involved.

6. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

7. At the outset, it is necessary to consider that the applicant filed an appeal on 22.09.2006 and did not pursue the matter of their own accord till they filed an original application on 30.07.2014. After this OA was disposed off on 29.01.2015 by a direction to respondents to respond to the appeal, the respondents gave a reply on 23.06.2015. It is evident that after Sept 2006, the applicants took no steps to pursue their claim which they would reasonably have done so if they were really in distress at the time of the death of the employee to whose family they belong. It becomes apparent that they were alerted to the possible gains in pursuing this application by the two other persons who were employed after the second review was conducted by respondents in 2010. Even after that, they took four

years to approach this Tribunal. It is apparent from this sequence of events that there seemed to be no desperate requirement for the applicants to pursue what they now perceive in this application as a great opportunity to relieve distress that they had at the time of the death of the employee and the continuing distress that they experienced from 2005 to 2014.

8. It needs to be noted that at the time of death of the employee, his service record noted only three dependents to which we could reasonably add the two sons and perhaps his mother had predeceased him. At the time of death the daughter was married, the younger son was employed and the elder son was 26 years old, although unmarried. Therefore, the burden on the surviving spouse was clearly not one that makes her in great distress. If indeed that was the case, then she would not have chosen to take all the responsibility of her sister-in-law and niece. The perusal of the score sheet shows that the respondents have been extremely generous in granting marks to the applicants and they seem to have proceeded on the basis of the declaration made to the service book which did not reflect his position at the time of death. Therefore, they should have received 5 less marks for the unmarried daughter and the no. of dependents should have been only one whereas they have

included the unmarried daughter, adult son and the employee's mother who is not on the list at the time of death, as also verified later on by the Labour Welfare officer. Therefore, if these points are deducted, the scores earned by the applicant would perhaps only be around 25. This also compares well and supports the decision of the respondents in rejecting the applicant's case for compassionate appointment.

9. The applicant has also made a comparison with two other persons who received the benefit of second review, although they had received only 36 and 33 marks. Since the applicant has not furnished any other details of these persons to compare her circumstances with their allegedly indigent circumstances, no valid comparison can be made to hold that the applicant is also eligible.

10. The law is settled on the issue of compassionate appointment that this scheme is not an alternate route of employment and it is specifically intended to relieve immediate distress. As pointed out in the scheme compilation by DoPT in Section 19 in the case of Umesh Kumar Nagpal vs State of Haryana, the Court held that only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on

compassionate ground. Further 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 and offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government Servant is legally impermissible. Finally, the Hon'ble Apex Court held that compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future. These aspects are also reflected in the objects set out for the scheme for compassionate appointment. The case of the applicant is entirely contradictory to these provisions. A clear indication to their ineligibility is also the nature of their behaviour from 2006 to 2014 and the delay that occurred at that stage, is clearly fatal to their application.

11. In the circumstances, this OA is dismissed as entirely without merits and there shall be no order as to cost.

(R. Vijaykumar)
Member(A)

gm.