

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(order reserved on 8.3.2019)**

O.A.NO. 060/00205/2017 Date of order:- 05 .4.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

Kharaiti Singh s/o late Sh. Sada Singh, r/o H.No.28, Near Harijan Gurudwara vill. Bharhaujian, P.O. Mullapur Garibdas, Tehsil Kharar, Distt. Mohali (Punjab).

.....Applicant.

(By Advocate :- Mr. Parminder Singh)

Versus

1. Union of India through Secretary, Ministry of Science & Technology Bhawan, New Mehrauli Road, New Delhi.
2. The Director, Central Scientific Instrument Organization (CSIR), Sector 30, Chandigarh.
3. Council of Scientific & Industrial Research, Anusandhan Bhawan, 2 Rafi Marg, New Delhi-110 001 through its Director Administrative Officer.

...Respondents

(By Advocate : Mr. K.K.Thakur, for respondent no.1.
Mr. Sunder Singh, for respondent no.2).

O R D E R.

Sanjeev Kaushik, Member (J):

The applicant assails order dated 18.1.2017 (Annexure A-13) whereby his claim for appointment on compassionate ground has been turned down.

2. The facts broadly are not in dispute. Father of the applicant namely late Shri Sada Singh, while working as Laboratory Assistant in the office of respondent no.2, unfortunately died on

30.4.2013, leaving behind the present applicant as the only surviving member in the family as the mother of the applicant had already expired. After death of his father, the applicant moved an application on 12.6.2013 for considering his case for appointment under compassionate scheme. By letter dated 3.4.2014, the applicant was informed that his case was considered by a Committee constituted for the purpose in the meeting held on 23.9.2013 and has not recommended his case for appointment being not eligible. Aggrieved against that order, the applicant approached the Tribunal by filing O.A.No.060/00917/2014 which was disposed of vide order dated 14.10.2014 by directing the respondents to decide his claim by passing a reasoned and speaking order. Pursuant thereto, the respondents again rejected his claim vide order dated 20.11.2014 on the ground that the married son is not considered dependent on a government servant.

3. Applicant again approached the Tribunal by filing O.A.No.060/00116 of 2016 by impugning the order dated 20.11.2014. During the pendency of the OA, the respondents have issued new policy dated 5.9.2016 wherein it was laid down that married son can also be considered for compassionate appointment and the respondents again vide order dated 18.1.2017 have rejected the claim of the applicant for compassionate appointment. Hence the OA.

4. The applicant has taken various grounds for invalidation of impugned order. Firstly that the respondents have not considered his claim in right perspective and have rejected his claim for

considering the terminal benefits which they cannot, thus, the impugned order be quashed and set aside.

5. The respondents, while resisting the claim of the applicant, filed detailed written statement, wherein they refuted the claim of the applicant and have submitted that the case of the applicant has been considered three times in terms of order passed by this Court and his case was not recommended by the Committee as he secured less marks than the cut-off marks. It has also been submitted therein that in terms of the instructions issued by the Government of India, where a married son is also eligible for appointment on compassionate grounds, his case was also considered along with others, but the case of the applicant was not found in indigent condition. The respondents have also placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **MGB Gramin Bank versus Chakrawarti Singh** (2014(13) S.C.C. page 583) and the order passed by the Tribunal in the case of **Lakhwinder Aheer versus Ministry of Science & Technology & Ors.** decided on 13.10.2018.

6. We have heard the learned counsel for the parties and have perused the pleadings available on record.

7. By now it has been settled by the plethora of judgments that employment in public service as a rule, can be made strictly based on open competition and merit. Any other basis will defeat the Articles 14 & 16 of the Constitution and is fraught with chances of malpractice and nepotism. However, to this general rule there have been exceptions in order to meet the necessity of conforming to larger ideals of the State. Incorporating appropriate provisions in the

Constitution has advanced some of these ideals, yet some have to be carved out by executive instructions. One such ideal is discernible in the executive orders providing for a scheme for compassionate appointments for wards of deceased or disabled public servants, where death occurs in harness or disability arising during service. The salient features of the scheme are outlined by the Government from time to time. Instructions have been incorporated in the Government of India, Department of Personnel & Training OM dated 9.10.1998. Subsequent to OM dated 9.10.1998, certain clarifications were issued, but the main spirit of OM dated 9.10.1998 still exists. Compassionate appointment is an exception carved out by the judicial pronouncements to the wards of the deceased employee who die in harness and to remove the financial constraints on the bereaved family which has lost its bread earner. The Government of India decided to provide compassionate appointment to the tune of 5% out of direct appointment. Mere death of government employee in harness does not entitle the family to claim compassionate appointment. The competent authority has to examine the financial condition of the deceased employee and it is only when if it is satisfied that without providing the compassionate appointment to the dependent of the deceased employee, the family will not be able to live it can be given. The consistent view by the Apex judicial dispensation is that the compassionate appointment cannot be claimed as a matter of right as it is not a vested right. Such appointment should, therefore, be provided immediately to redeem the family in distress condition for years. The Lordships in the case of **Umesh Kumar Nagpal versus State of Haryana** (1994(4) SCC Page 138) have considered the policy framed by the Government of

India and laid down the parameters for considering the cases under the said Scheme. That view has consistently been followed in subsequent decisions. In the case of Chakrawarti Singh(supra), the Lordships have again reiterated the law and held that the appointment cannot be claimed as a matter of right.

8. In the light of the above authoritative law laid down by the Hon'ble Apex Court, when we consider the facts of the present case, we are unable to persuade ourselves to issue any direction to the respondents to offer appointment to the applicant under the Compassionate Scheme for the reason that his case has been considered by the respondents thrice and stands negated. We have gone through the proceedings which has been annexed by the respondents and are part of the pleadings. The Committee, while examining the case of the applicant, along with other cases for compassionate appointment, has not found it more deserving due to financial position and dependency than the other incumbents and as such has negated it.

9. Accordingly, we find that the present OA is found to be bereft of any merit and the same is dismissed, with no order as to costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**(P.GOPINATH)
MEMBER (A).**

Dated:- 5.4.2019.

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