

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/206 of 2018

Date of Order: 05.12.2018

Between:

1. Smt. Susheela Yadav, W/o. Late Sri Jagmohan Yadav,
Group C, (Ex. MT Driver), aged about 56 years,
R/o. H. No. 1-24-53, Military Dairy Farm Quarters,
Old Bowenpally, Secunderabad.
2. Smt. Sudha Yadav, D/o. Late Sri Jagmohan Yadav,
(Ex. MT Driver), aged about 28 years,
R/o. H. No. 1-24-53, Military Dairy Farm Quarters,
Old Bowenpally, Secunderabad.

...Applicants

And

1. Union of India, Rep. by
The Director General of Military Farms,
QMG Branch, Army Headquarters,
West Block, R.K. Puram, New Delhi.
2. The Deputy Director General of Military Farms,
Quartermaster General's Branch, Integrated HQ of
Ministry of Defence (Army),
West Block, R.K. Puram, New Delhi.
3. The Director of Military Farms,
Headquarters, Southern Command,
Kirkee, Pune.
4. The Officer-in-Charge,
Military Farms, Bowenpally, Secunderabad.

...Respondents

Counsel for the Applicant	...	Mr. Rachna Kumari
Counsel for the Respondents	...	Mrs. L. Pranathi Reddy, Addl. CGSC

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA has been filed against the impugned order No. 080808/E/MF-2/CA dated 20.11.2017 denying compassionate appointment to the 2nd applicant who is the daughter of the 1st applicant.

2. Brief facts of the case are that the husband of the 1st applicant joined the respondent organization in 1979 and his services were made permanent in the year 1982. Thereafter, the husband of the 1st applicant was promoted as Driver and while working as Driver, he died on 11.08.2016 leaving behind three married daughters and his wife. The 3rd daughter i.e. the 2nd applicant herein continued to stay with the 1st applicant as the deceased employee had no son. The marriage of the 3rd daughter was conducted by incurring huge loans and the deceased employee had to spend considerable amount on his health and that of his wife as well. Hence, their financial position has been precarious. The 1st applicant is also suffering from cancer and has undergone operation in 2009. In view of the circumstances, the 3rd daughter Mrs. Sudha Yadav was staying with the 1st applicant and the deceased employee to take care of them. After the demise of her husband, the 1st applicant represented on 11.11.2016 and 15.05.2017 to provide compassionate appointment to the 2nd applicant who is taking care of her. The respondents obtained the requisite documents and rejected her request on 20.11.2017 stating that the 2nd applicant was not dependent upon the deceased employee and she was married before the death of the husband of the 1st applicant. The respondents further stated that compassionate appointment can be provided to either the spouse or to any child subject to the condition that the child will be the breadwinner of the family concerned. Aggrieved over the rejection of her request for compassionate appointment for the 2nd applicant, both the applicants have filed the OA.

3. The contention of the applicants are that there should not be any gender discrimination in providing appointment on compassionate grounds. Applicant's

main emphasis is that when a married son could be given compassionate appointment why not a married daughter. The 1st applicant had to incur loans for conducting the marriages of the daughters and also towards medical expenses.

4. The respondents in their response confirmed that the deceased employee was not maintaining good health. He was even going on leave without pay on health grounds. The deceased employee did seek light duties on health grounds but it was not offered due to acute shortage of drivers. On the death of the husband of the 1st applicant, the family was provided with the following terminal benefits:

- (a) Provident fund : Rs.8,08,017/-
- (b) Pension : Rs.17,500/- plus DA per month
- (c) Death gratuity : Rs.11,78,100/-
- (d) CGEGIS : Rs.57,928/-
- (e) Leave encashment : NIL (indl was on leave without pay for 6 months w.e.f. 06.02.2016 to till his death on 11.08.2016)

In addition, they were also provided accommodation with nominal rent of Rs.426/- per month. The respondents contend that there is no provision to provide compassionate appointment to a married daughter and hence, the request for compassionate appointment for the 2nd applicant was rejected. The three daughters of the 1st applicant were married and settled even before the death of the husband of the 1st applicant. The respondents also claim that the applicant has been provided with CGHS card to seek medical treatment from the concerned health dispensary. The respondents enclosed the death certificate of the deceased employee and the marriage certificate of the 2nd applicant confirming her marriage.

5. Heard both the counsel and perused the documents on record.
6. Learned counsel for the applicants argued that when married son could be given employment under compassionate grounds a married daughter should not be discriminated as it amounts to gender bias. Learned counsel for the respondents emphasized that there is no scope in the rules to provide compassionate appointment to a married daughter and hence, they had to necessarily reject the request of the 1st applicant.

7. Having gone through the documents placed on record an interesting point which emerges for discussion is point No.12 issued by the Department of Personnel and Training Establishment 'D' Division vide No.14014/02/2012-Estt.(D) dated 30.05.2013 under the caption "Frequently Asked Questions" on Compassionate Appointment. The Question No.12 and Answer thereof are extracted hereunder for analyzing the case.

"Q. No.12 Whether a 'married daughter' can be considered for compassionate appointment?"

Ans.: 1) Yes, but subject to conditions:

- i. That she was wholly dependent on the Government servant at the time of his/her death in harness or retirement on medical grounds.
- ii. She must support other dependent members of the family."

Learned counsel for the respondents laid emphasis on this clarification and stated that the applicant is ineligible. A close reading of the clarification submitted by the respondents also reads as under:

"She must support other dependent members of the family."

In the present case, the 2nd applicant has been supporting the 1st applicant as well as the deceased employee on grounds of health and there being no son to take

care of them. After the demise of the ex-employee, it is but natural for one of the children to take care of the parents. Hence, the responsibility of taking care of the 1st applicant fell on the 2nd applicant. Besides, it is also noticed that the 1st applicant has undergone operation for cancer. Cancer is a terminal disease which requires close attention and intensive medical treatment. In such circumstances, someone has to take care of the patient and it is incidentally the second applicant in the present case. Records also confirm the same. The financial condition of the family also deserves to be looked into. The benefits released by the respondents would have been used for different family expenses related to after marriage ceremonies, medical expenses and so on. Keeping in view the inflationary trends the amount available to the 1st applicant may not be adequate to eke out a decent living and take care of her remaining life. In such circumstances, definitely the 1st applicant has to be supported by someone both financially and emotionally. Someone in this case is naturally the second applicant. The 2nd applicant has been discharging the responsibility of supporting the only surviving dependent member of the ex-employee i.e. the 1st applicant. It is not out of place to reiterate that the 2nd applicant has been taking care of the deceased employee and the 1st applicant, though she got married in view of the poor health of the deceased employee and the 1st applicant. The dependency of the parents i.e. deceased employee and the 1st applicant on the 2nd applicant is crucial in considering the issue in question. Hence, as per the facts explained the clause prescribed by the respondents is satisfied in considering the second applicant for compassionate recruitment.

8. In fact, Hon'ble High Court of Madras (Madurai Bench) in WP (MD) No. 14643/2015 has delivered a verdict on 04.01.2016 in regard to offer of compassionate appointment to a married daughter as under:

“17. In fact, the third respondent passed the impugned order without any application of mind and also in violation of G.O.Ms.No.96 dated 18.06.2012. The daughters, who got married after 29.11.2001, are entitled to seek compassionate appointment as per G.O.Ms.No.96. In the impugned order, the third respondent has mentioned the date of marriage of the petitioner as 01.05.2002. If that be so, the petitioner is entitled to compassionate appointment even as per G.O.Ms.No.96. In fact the date of marriage is erroneously mentioned in the impugned order as 01.05.2002, whereas, the date of marriage is 19.02.1999. Since the marriage of the petitioner took place on 19.02.1999, which is prior to the cut-off date of 29.11.2001 as fixed in the G.O.Ms.No.96, the impugned order declined to provide compassionate appointment, based on G.O.Ms.No.96.

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7. From the above said judgment, it is clear that this Court held in categorical terms that the Government cannot deny compassionate appointment to the daughter of the deceased Government servant on the ground of marriage and quashed the Government Orders denying compassionate appointments to the married daughters. It is relevant to note that the deceased Government servant had left behind his wife, two sons and his daughter/petitioner.”

Further, the Hon’ble Madurai Bench of Madras High Court in WP (MD) No. 17448/2013 has delivered a verdict on 04.01.2018 as under:

“2.The writ petitioner being the only daughter of the deceased employee got married on 03.02.2003 itself. However, in order to take care of the family, the writ petitioner made an application seeking appointment of compassionate ground. The same was rejected by the third respondent in proceedings dated 16.09.2009, on the ground that the writ petitioner is a married daughter and the married daughter is not eligible for seeking compassionate appointment.

3. This Court is of the opinion that the married son is made eligible for seeking appointment on compassionate ground. Thus, there cannot be any gender discrimination in respect of providing appointment on compassionate ground. The Courts have repeatedly held that the appointments cannot be denied on compassionate ground on gender basis. When the married son is eligible for compassionate appointment, then the married daughter also would be eligible for compassionate appointment. During the pendency of the writ petition, the Government also accepted the legal principles settled by the Court and issued orders stating that the married daughters are also eligible for compassionate appointment.”

Besides, Hon'ble Ernakulam bench of this Tribunal vide order dt. 18.07.2016 in OA No.565/2015 has held as under:

“6..... This Tribunal notes that she was 56 years old at the time of filing the OA and that it cannot be reasonably expected that she can be given an employment on compassionate grounds at this highly advanced age. It is, therefore, quite natural for her to look for a daughter to seemed to be more amenable to her for her future care in life, if she is given employment on compassionate grounds. From social circumstances prevailing in our country a daughter will be a more close and more understanding person to the mother rather than a married son who is living separately with his own family consisting of wife and three children. Therefore, the circumstance that daughter's husband is having property and income is not a plausible ground for rejection of the applicant's request for granting her appointment on compassionate grounds. It has to be noted that the applicant is seeking employment for her married daughter with the expectation that she would look after the applicant for the rest of her life.

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9. *In the circumstances, while quashing Annexure A2 communication this Tribunal directs the respondent No.1 to consider the applicant's request for appointment to her married daughter, in the light of the observations made in this OA. Ordered accordingly. He shall take a decision in the matter within two months from the date of receipt of a copy of this order and communicate the same to the applicant.”*

Thus, in the present case, clause (ii) of answer to Question No.12 of the FAQs issued in DOPT OM dt. 30.05.2013 provides for offering compassionate recruitment to a married daughter in case she takes care of the dependent members of the family of the deceased employee. There being no male child, it is incumbent on the second applicant to take care of the first applicant. As per the facts on file, she is already discharging the said responsibility. The 1st applicant has a fragile health due to terminal illness. The 1st applicant and her deceased husband were dependent on 2nd applicant, though she was married, because of circumstances of health and emotional security. The dependency was intense and acute. With the demise of her husband, it has become fait accompli

for the 1st applicant to depend on 2nd applicant. To take care of the 1st applicant, the 2nd applicant need to have a stable financial source and that would be possible if 2nd applicant is provided with a job under compassionate recruitment. If it were to be a married son such relief is generally granted. Same need to be extended to a married daughter is the sum and substance of the judgments cited.

Hence, the respondents need to consider her case keeping in view the observations of the Hon'ble High Court of Madras and Hon'ble Ernakulam Bench of this Tribunal supra wherein it has been categorically held that a married daughter also needs to be provided compassionate appointment. Based on the aforesaid facts the OA succeeds and the impugned order No. 080808/E/MF-2/CA dated 20.11.2017 is quashed.

9. The respondents are directed as under:

- i) To consider the case of the 2nd applicant for compassionate appointment with consequential benefits, if any, thereof.
- ii) Time allowed is three months from the date of receipt of this order.

10. OA is allowed with the above directions. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 5th day of December, 2018

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