

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

Original Application No. 21/496/2018

Date of Order: 20.03.2019

Between:

1. Smt. P. Manga, aged about 50 years,
W/o. late Shri Ragunath, Group C,
House No. 11-48, Masjidh Road,
Sarpaka Village (PO), Burgam Pahad (M),
Badradhri Kothagudem Dist. (TS) – 507 128.
2. P. Kishore, aged about 35 years,
S/o. late Shri Ragunath,
House No. 11-48, Masjidh Road,
Sarpaka Village (PO), Burgam Pahad (M),
Badradhri Kothagudem Dist. (TS) – 507 128.
3. P. Srinivas, aged about 31 years,
W/o. late Shri Ragunath,
House No. 11-48, Masjidh Road,
Sarpaka Village (PO), Burgam Pahad (M),
Badradhri Kothagudem Dist. (TS) – 507 128.
4. P. Srikanth, aged about 29 years,
W/o. late Shri Ragunath,
House No. 11-48, Masjidh Road,
Sarpaka Village (PO), Burgam Pahad (M),
Badradhri Kothagudem Dist. (TS) – 507 128.

... Applicants

And

1. Union of India,
rep. by its Secretary to Govt. of India,
Department of Atomic Energy,
Anushakti Bhavan, CSM Marg, Mumbai – 400 001.
2. The Chief Executive,
Heavy Water Board,
V.S. Bhavan, Anushakthi Nagar,
Mumbai – 400 094.
3. The Heavy Water Plant (Manuguru),
Rep. by its Chief General Manager,
Dept. of Atomic Energy, Govt. of India,
Gauthami Nagar (P), Aswapuram (M),
Bhadradri Kothagudem Dist., TS- 507116.

... Respondents

Counsel for the Applicant	...	Mr. T. Koteswara Rao
Counsel for the Respondents	...	Mr. Sambasiva Rao, Advocate for Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

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

2. The OA is filed for not granting compassionate appointment.
3. Brief facts of the case are that the husband of the first applicant died in harness while working for the respondents on 9.8.2007. Consequent to the death of her husband, 1st applicant sought compassionate appointment to her second son who is the 3rd applicant in the OA. The same was rejected on 30.6.2008 by the respondents without assigning reasons. The 1st applicant made one another representation on 22.11.2016 to provide compassionate recruitment for the 4th applicant on grounds that the 1st applicant is suffering from cancer and they need a job to eke out a living. Followed it up by a representation on 21.5.2018. There being no response to the representations, the OA has been filed.
4. The contentions of the applicants are that they are living without proper shelter. Applicants have come to know that the respondents have provided compassionate appointment to others in the period 1.1.2001 to 30.6.2014 who were well off in terms of immovable assets when compared with the applicants. Through RTI query it was revealed that the application for compassionate appointment was not forwarded to the 2nd respondent who is the competent authority. Impugned order is devoid of reasons for rejecting the request for compassionate appointment .
5. Respondents per contra state that the request for compassionate recruitment in favour of the 3rd applicant was rejected on 30.6.2008 after making

an objective assessment of the financial condition, size and essential needs of the family and in relative comparison to other candidates who applied for compassionate appointment. After a lapse of 8 years another application was received from the 1st applicant for grant of compassionate appointment to the 4th applicant. This too was rejected on 3.1.2017. Applicant made a fresh representation on 21.5.2018 which has to be decided after weightage factors to assess indigent circumstances are revised consequent to implementation of 7th CPC. Respondents profess that Compassionate recruitment has to be decided strictly as per DOPT instructions. According to the respondents, applications made by the 1st applicant in 2016 and 2018 were only to circumvent the limitation clause of the AT Act. Applicants have received Rs.8,40,810/- towards death benefits which, the respondents have subtly hinted, is reasonable enough to get along with life after the demise of the bread winner. Applicants alleging that other candidates selected have sizeable immovable assets is based on hearsay and hence not credible. Respondents have cited the verdict of the Hon'ble High Court of Madras in P.Veerachamy v The Commissioner, Madurai Corporation and ors, in support of their decision of rejecting the claim for compassionate recruitment.

6. Heard both the counsel and went through in detail the documents and material papers submitted.

7(I) The objective of the Compassionate appointment scheme is to grant appointment on compassionate grounds to a dependent family member of a Govt. servant, who has died while in service or who has retired on medical grounds before attaining the age of 55 years (57 years for erstwhile Group 'D' employees), thereby leaving the family in penury and without any means of sustainable livelihood, so as to provide relief to the family of the Government

servant concerned from financial destitution and to help it get over the emergency.

II) Compassionate recruitment is a sensitive issue with emotional overtones which decides the future of the family of the deceased employee. Therefore proper care and concern in examining the request for compassionate recruitment is called for. There is no scintilla of doubt that the onus of responsibility fully lies with the respondents to decide whether family of the deceased employee is living in a penurious condition. This is indeed the key for decisions to be taken in regard to grant or repudiate compassionate appointment. Keeping the above in view and the DOPT instructions, which the respondents have rightly claimed to be adhered to strictly, let us examine the present case in a sequential manner.

III) The Impugned order issued by the respondents on 3.1.2017 does not provide comparative details as to why the request of the applicants was rejected vis a vis those selected. It also does not state about the financial status of the family giving cogent reasons. An attempt in this direction would have made things transparent. Unfortunately it is not so and hence the string of representations by a destitute family in distress. Respondents have opined that to avoid the lethal weapon of limitation, applicants have revived the plea for compassionate appointment by applying in 2016 and 2018. This is not a tenable assertion since a request for compassionate appointment can be made anytime as per DOPT instructions vide O.M. 14014/02/2012-Estt(D) dated 16.01.2013, which reads as under:

Subject to availability of a vacancy and instructions on the subject issued by this Department, as amended from time to time, any application for compassionate appointment can be considered without any time limit subject to the merit of each case.

IV) Respondents claimed that they have made an assessment of the financial condition of the family but did not give the financial details which they considered, for rejecting the request. As per DOPT memo dt 16.1.2013, death benefits received by the family of the deceased employee should not be the factor to decide compassionate appointment. DOPT in the said memo has clarified as under:

An application for compassionate appointment cannot be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes.

It appears that the respondents have been swayed by the death benefits of around Rs. 8 lakhs received by the deceased employee's family in negating the request for compassionate recruitment, which obviously is incorrect, in the light of the DOPT instruction referred to above.

V) In fact, as per DOPT memo cited supra, respondents are expected to send a Welfare Officer to call on the bereaved family and guide them on the norms for compassionate appointment. This will give a first hand opportunity to the respondents to assess as to whether the family of the deceased employee is living in indigent circumstances. Without doing this exercise, it is not known as to how the respondents have come to a conclusion about the financial status of the family. The exact wording of the DOPT memo is extracted hereunder to underline the significance of the visit of the welfare officer.

Welfare Officer of the concerned Ministry/Department/Office is responsible for appropriate counselling and facilitating the process of compassionate appointment of the dependent of a deceased or medically retired Government employee.

This vital step has been glossed over by the respondents. Papers do not reveal the true facts, but the ground reality does. The first applicant who is presently the

head of the family is suffering from cancer and is in a hapless state. Medical records submitted evidence this fact. The disease is deadly and debilitating. To fight it, one needs emotional and financial strength. Who else can provide such strength in the hour of crisis to the family but for the respondents! It is common knowledge that there would be considerable expenditure on medicines and consultation. It would invariably push the family to severe financial distress. These are facts to be verified before coming to a conclusion in regard to the penurious condition of the deceased employee's family. Hence the prescription of DOPT that a welfare officer has to visit and guide the family members of the deceased employee in regard to compassionate appointment. It is often adduced by the respondents in regard to compassionate appointments in different cases that since the family of the deceased employee could pull along for many years without compassionate appointment it would mean that the family can take care of itself without compassionate appointment. If the request of the candidates for compassionate appointment is rejected without proper assessment of the indigent circumstances then the very purpose of compassionate recruitment is defeated. To survive the family has to undertake some activity lest they may starve. Hence it is a dire necessity, in the interest of justice, to ascertain the truth about the circumstances in which the family is placed irrespective of the time that lapsed after the death of the bread winner. Therefore, the mention in the DOPT Memo that compassionate applications can be accepted any time. Hence, care and concern is required to evaluate every parameter defined for examining the request for compassionate appointment. The intrinsic factor to be gauged as per Hon'ble Supreme court is whether the family is in penurious condition. In ***Union of India and anr. v. V.R. Tripathi*** as reported in ***2018 SCC OnLine SC 3097***, Hon'ble Apex Court has opined as under:

While stressing on the purpose of compassionate appointment, the Bench stated that compassionate appointment is granted to prevent destitution and penury in the family of a deceased employee.

VI) We are in total agreement with the observation of the Hon'ble Madras High Court cited by the respondents wherein it was declared that compassionate recruitment cannot be sought as matter of right. However, the applicants have a right to be considered for appointment. Hon'ble Supreme Court has observed in a catena of judgments that a candidate applying for selection to a post has the right to be considered for appointment based on relevant rules. Incidentally the request for compassionate appointment of the applicants in the present OA was not even sent to the competent authority as is seen from the Annexure IV of the OA wherein the list of candidates considered for compassionate appointment from 2004 has been furnished. The implication of not sending the request to the competent authority would mean that the request was rejected by an incompetent authority. Without examining the request by the competent authority negating such a request by others is irregular and gives room for suspicion as to whether the applicants are being discriminated by forces in the organisation that are inimical to the family of the deceased employee. As per DOPT memo dt 16.1.2013, request for compassionate appointment has to be examined by the competent authority and not by anybody else. The DOPT memo referred to, clearly specifies the following as the competent authority to examine requests for compassionate recruitment:

- a) Joint Secretary in-charge of administration in the Ministry / Department concerned; b) Head of the Department under the Supplementary Rule 2(10) in case of attached and subordinate office; c) Secretary in the Ministry/Department concerned in special type of cases;

VII) Thus it is seen from the aforesaid that albeit respondents affirmed that Compassionate appointments have to be granted exactly as per DOPT instructions, they have violated the same in regard to the request made for compassionate recruitment by the 1st applicant for her sons. The latest representation of the 1st applicant is still to be examined in view of the pending revision of norms to assess the indigent circumstances based on the implementation of the 7th CPC. Keeping the above in view the respondents are directed to consider as under:

- i) To send a responsible officer to visit the family of the deceased employee to obtain a factual report about the circumstances in which the family of the deceased employee is living and thereafter place the report before the competent authority, for consideration of the request of the 1st applicant for providing compassionate appointment to the 4th applicant strictly as per DOPT instructions as discussed in paras cited supra.
- ii) Time allowed to implement the judgment is 3 months from the date of receipt of this order.
- iii) With the above directions the OA is allowed. No order as to costs.

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

Dated, the 20th day of March, 2019

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