

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

O.A.210/00577/2016

Dated this Tuesday the 8th day of January, 2019.

Coram: Dr.Bhagwan Sahai, Member (Administrative).

Vinayak Vijay Mohite,
R/at: House No.3,
Near Raut Bungalow,
Thomas Colony,
Shitale Nagar, Mamurdi,
Dehu Road, Pune - 412 101. .. Applicant.

**(By Advocate Ms.Sujata Krishnan holding
for Shri S.P. Saxena).**

Versus

1. Union of India, through
The Secretary,
Dept. Of Defence Production,
Ministry of Defence,
DHQ. P.O. New Delhi-110 011.
2. The Chairman,
Ordnance Factory Board,
10-A, Shaheed Khudiram Bose
Road, Kolkata - 700 001.
3. The General Manager,
Ordnance Factory,
Dehu Road, Pune - 412 101. .. Respondents.

**(By Advocate Shri V.S. Masurkar holding
for Smt.N.V. Masurkar).**

**Order reserved on : 03.12.2018
Order delivered on : 08.01.2019.**

O R D E R

This O.A. has been filed by Shri Vinayak Vijay Mohite, resident of Thomas Colony, Shitale Nagar, Mamurdi, Dehu Road, Pune seeking quashing and setting aside of the orders dated 25.03.2014,

25.10.2012 and 03.01.2012 issued by Respondent No.3 i.e. General Manager, Ordnance Factory, Dehu Road, Pune rejecting his request for appointment on compassionate grounds, and direction to the respondents to reconsider his case without taking into account retirement benefits received by the family of late Shri Vijay Shankar Mohite after his death and if found fit, to appoint him (the applicant) under the compassionate appointment scheme issued by the Government of India as revised from time to time.

2. Summarized facts:

2(a). The applicant claims that he is the eldest son of late Shri Vijay Shankar Mohite, who died on 06.08.2009 while working as Master Craftsman/HS-II in the office of Respondent No.3 died i.e. while being in service.

2(b). At the time of death of his father, the applicant has mentioned that he left behind 4 dependent family members i.e. Smt.Padmini Vijay Mohite (56 years old), Smt.Anita - married, age 40 years, Vinayak Vijay Mohite, the present applicant age 36 years, unemployed and Ajay Vijay Mohite, 33 years old, 2nd son, unemployed.

2(c). The applicant claims that he belongs to SC category as per the Caste Certificate issued by the

Sub-Divisional Officer, Pune on 17.12.1999 (Annex-A-5). Wife of the deceased employee i.e. Smt.Padmini Mohite submitted an application on 07.06.2010 to Respondent No.3 requesting for employment to the present applicant on compassionate grounds. She submitted a reminder on 06.07.2010. Respondent No.3 i.e. General Manager, Ordnance Factory, Dehu Road, Pune sent a letter on 03.01.2012 to the applicant informing the criteria for appointment on compassionate grounds and disclosed that the present applicant had received 38 marks when his case was evaluated.

2(d). The applicant submitted a representation on 01.11.2012 to Respondent No.3 expressing apprehension about the marks given to him in the evaluation relating to terminal benefits, moveable / immoveable property and number of dependents and requested for reconsideration of his application as family of the deceased employee was facing financial hardship.

2(e). In response to the representation submitted by the applicant on 23.04.2010 and 19.10.2013, he received a reply from Respondent No.3 dated 25.03.2014 (Annex-A-1) stating therein that as per the instructions of Respondent No.2 i.e. Chairman, Ordnance Factory Board, Kolkata dated 14.08.2013, a

married son is not eligible for compassionate appointment as he is not considered as dependent on the family of the deceased employee. It also mentioned that his case had been reviewed by the Competent Authority but his case cannot be accepted for appointment on compassionate grounds.

2 (f). The applicant again sent a representation on 07.04.2014 pleading that his case for compassionate appointment should be considered in accordance with the rules applicable in 2009 i.e. at the time of death of his father and at that time there was no prohibition in providing compassionate appointment to a married son of a deceased employee. With his application of 08.03.2015, the applicant also brought to the notice of Respondent No.3 contents of DOPT OM dated 25.02.2015 (Annex-A-11) which clarified that a married son can also be considered as dependent of a Government employee and for compassionate appointment. The applicant claims that he or his family does not own any property as per the certificate issued by the Tahsildar Haveli, Pune (Annex-A-12).

2 (g). The applicant and his younger brother reside in a rented accommodation for which monthly rent of Rs.3500/- is paid by the applicant. The family pension received by Smt.Padmini Mohite is

Rs.7000/- per month and the applicant earns through daily rated/contractual/temporary jobs about Rs.5000-6000/- per month.

2(h). As per the decision given by the Principal Bench of the Tribunal in case of Smt.Anar Kali and another Vs. Union of India and others 2001(2) ATJ 387 (PB), retirement benefits of deceased employee are not to be taken into account while considering the case for compassionate appointment to the member of deceased employee. However, because of non-consideration of his case by the respondents, the present O.A. has been filed.

2(i). In the M.A.635/2016 for condonation of delay, the applicant has mentioned that he does petty /contract jobs on daily / contract basis for his living and to support his family, and because of financial constraints he could not approach the Tribunal as he was unable to engage any advocate and, therefore, the O.A. has been filed belatedly.

3. Contentions of the parties:

The applicant has contended that -

3(a). the applicant's father died on 06.08.2009 while in service and being eldest son of the deceased employee he should be provided employment on compassionate grounds as per the scheme issued by the DOPT in 1998;

3 (b) . the applicant had submitted all necessary documents, certificates, etc along with his application for proper consideration of his case;

3 (c) . nobody else in the family of the deceased employee is employed or has any regular source of income. The applicant had to pay a sum of Rs.22,105/- as rent at market rate for the Government Quarter in which they had resided. The applicant's younger brother is studying in Kendriya Vidyalaya No.2 at Dehu Road for which fee is Rs.5425/-;

3 (d) . marking system adopted by the respondents for assessing the suitability of candidates for appointment on compassionate grounds is grossly unjust, unfair and not based on sound principles. The applicant is physically fit and educationally qualified to take up any unskilled post under the Respondent No.3;

3 (e) . the scheme for compassionate appointment notified by the Government of India has been held as non-violative of Articles 14 and 16 of the Constitution and other contentions of the respondents in their reply are only surmises and required to be governed by them in considering the applicant's case;

3 (f) . order of this Bench of the Tribunal dated

27.11.2015 in O.A.624/2014 (V.R. Maruti Limbore Vs. Union of India) was challenged by the Government of India in the High Court of Bombay through Writ Petition No.7740/2016, which was dismissed on 07.06.2017 whereby the order of the Tribunal dated 27.11.2015 became final. The case of the applicant is squarely covered by the above order of this Bench of the Tribunal and also the DOPT OM dated 05.09.2016. Gender discrimination is not permissible in the matter of appointment to married children.

In the reply the respondents have contented that -

3(g). the applicant is aggrieved with the reply of respondents in letter dated 25.03.2014 when his case was closed as per the Government instructions at that time. This stand of the respondents is justified in view of Supreme Court judgement in case of General Manager, State Bank of India and others Vs. Anju Jain (2008) 8 SCC 475 holding that appointment on compassionate ground is never considered a right of a person, such appointment is violative of rule of equality guaranteed under Article 14 of the Constitution and when appointment is to be made in Government or semi-government or public offices, cases of all eligible candidates

must be considered alike. This mandate cannot be ignored by the State or its instrumentality while making appointment to public office. However, in certain circumstances appointment on compassionate grounds of dependents of the deceased employee is considered so that family of the deceased employee may not starve. The primary objective of such scheme is to save the bereaved family from sudden financial crisis 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.

If disciplinary proceedings had been initiated against an employee and the charges were proved and the employee punished, then it is indeed a relevant consideration for not extending the benefit to a dependent of such employee on the ground that he had been punished. Compassionate appointment is really a concession in favour of the dependents of the deceased employee and if during the career the employee had committed illegalities and misconduct and was punished, his dependents cannot claim right to the employment on compassionate grounds. The past conduct of an employee is undoubtedly an important consideration and the appellant Bank was right in rejecting the

respondent wife's request observing that unblemished service record is implicit and rejection was according to policy in force in 2000;

3(h). the applicant's father late Shri Mohite was working as MCM/HS-II in the office of Respondent No.3 i.e. General Manager, Ordnance Factory, Dehu Road and died on 06.08.2009 while in service. After his death, his wife Smt.Padmini Mohite applied for employment to herself on compassionate grounds.

Based on that, Assistant Welfare Commissioner was asked to verify the family particulars and their financial condition;

subsequently she again applied on 23.04.2010 requesting to consider the present applicant for appointment on compassionate grounds instead of herself. Based on the verification report, the case was considered along with other cases by the Committee for the years 2010-11 and 2011-12. However, due to limited number of vacancies available during those two years, the applicant could not be offered appointment;

3(i). thereafter as per DOPT OM of 26.07.2012, the three years limit for considering cases for compassionate appointment was withdrawn. However, the Competent Authority had already closed the case of the applicant after considering it for two years

and he was informed accordingly vide letter dated 19.12.2012. However, as per DOPT OM on consolidated instructions on compassionate employment dated 16.01.2013, cases of compassionate appointment can be considered without any time limit and accordingly the case of the applicant was again considered by the Committee for the year 2012-13;

3(j). in the DOPT OM dated 30.05.2013 pertaining to certain frequently asked questions, it was clarified at Point No.13 that a married son is not dependent on a Government servant and, therefore, the married son cannot be considered. In view of this the Committee concluded that the applicant is a married son of the deceased employee and, therefore, he cannot be considered for appointment on compassionate grounds and accordingly his case was closed and he was intimated vide letter dated 25.03.2014;

3(k). with the subsequent development in terms of DOPT OM dated 25.05.2015, a married son can also be considered for appointment on compassionate grounds. However, it was further mentioned in the O.M. that cases closed before the issue of that OM on 25.02.2015, need not be reopened. As a result since the case of the applicant had already been closed vide letter of 25.03.2014 i.e. before issue of the

OM of 25.02.2015, his case could not be reopened;

3(1). thereafter the DOPT again issued another OM on 05.09.2016 (Annex-R-4) by which the frequently asked Question No.13 in the OM dated 30.05.2013 and frequently asked Question No.60 in the OM dated 25.02.2015 had been withdrawn and it has been decided that married son of an ex-employee can be considered for compassionate appointment if he otherwise fulfils all the other requirements of the scheme and it has been further clarified that this decision would be effective from 25.02.2015 and that cases of compassionate appointment rejected solely on the ground of marital status in respect of a married son may be reopened or reconsidered against the vacancy, occurring after issue of OM dated 25.09.2016;

3(m). after issue of the above OM by DOPT, the applicant submitted one more application for considering his case. Accordingly his application has already been considered by the Competent Authority and the Deputy Labour Welfare Commissioner was asked for applicant's family and property status for considering the case. In view of that the present O.A. is premature at this stage;

3(n). the letters of 23.04.2010 and 19.10.2013 were not representations of the applicant but they

were only applications requesting for his case on compassionate grounds. As per the instructions of Ordnance Factory Board, Kolkata dated 11.08.2010, for assessing any case for compassionate appointment the points are to be awarded as per the Ministry of Defence letters of 22.01.2010 and 14.05.2010, and according to them the terminal benefits received from the family of deceased employee are one of the criteria for awarding the points to the applicants. In view of this, there is no merit whatsoever in the O.A. and, therefore, it should be dismissed.

4. Analysis and conclusions:

I have perused the O.A. memo, rejoinder filed by the applicant, reply of the respondents, the caselaws cited and heard contentions of the parties made before me. From the consideration of all these, my conclusions emerge as follows:-

4 (a). From the submission of the parties, it is clear that the death of the ex-employee of the Ordnance Factory, Dehu Road took place on 06.08.2009. In the facts of the case under Para 4 of the O.A. memo, the applicant has mentioned his date of birth as 10.08.1979 and his age at the time of death of his father i.e. 06.08.2009 has been mentioned as 36 years.

4 (b). The respondents have elaborately narrated

the sequence of events in terms of various instructions issued by the DOPT on the subject of eligibility of a married son of a deceased employee for compassionate appointment and consideration of the case of the applicant for compassionate appointment by the respondents at different stages along with its review and reconsideration for the year 2013. Although as per DOPT OM of 25.02.2015, a married son was allowed to be considered for compassionate appointment if he otherwise fulfils all the requirements of the scheme i.e. if he is otherwise eligible, fulfils the criteria laid down in the DOPT OM dated 16.01.2013 but this relaxation was made effective from 25.02.2015 and cases of compassionate appointment already settled were not allowed to be reopened.

4 (c). Then again as per subsequent OM of DOPT dated 05.09.2016 it has been further clarified that the married son can be considered for compassionate appointment if he is otherwise eligible and fulfils the criteria laid down in the OM of 16.01.2013. It has been further mentioned that this relaxation would be effective from the date of issue of the OM on frequently asked questions vide 25.02.2015 and the cases already settled with reference to reply to frequently asked questions dated 30.05.2013 cannot

be reopened.

4 (d). In Para 4 of that OM of 05.09.2016, it has also been stated that cases of compassionate appointment rejected solely on the grounds of marital status during the period from 30.05.2013 to 25.02.2015 in respect of married son may be reopened or reconsidered against vacancies occurring after issue of that OM. When the case of the applicant is considered in view of these two clarifications / relaxations (as per DOPT OM of 25.05.2015 and 05.09.2016), it is clear from the case record that the respondents had considered the case of the applicant for the year 2010-11, and 2011-12 but he could not be offered an appointment because of non-availability of vacancies.

4 (e). The respondents reconsidered the case of the applicant for the year 2012-13. However, his case was again closed by the Committee and the applicant was accordingly intimated on 25.03.2014. In the caselaw cited by the applicant i.e. decided by Principal Bench of the Tribunal on 21.05.2001 (**Smt.Anar Kali and Anr. Vs. Union of India and others**) (Annex-A-13), the O.A. was allowed because of terminal benefits given to the family members of the deceased employee were considered by the then respondents.

4 (f). In the present case as per instructions of the Ordnance Factory, Dehu Road, the terminal benefits received by the family of the deceased employee are only one of several parameters/items considered while giving points/scores for relative assessment of the applicants, therefore, that decision is not specifically applicable to the present case.

Another caselaw cited by the applicant is that of **K. Thimmappa Vs. Chief Mechanical Engineer, Bangalore, (1989) 10 ATC 506** (Annex-A-14). But that also is not applicable to the present case.

4 (g). As per the case record and submissions of the parties, the death of father of the present applicant took place on 06.08.2009 and, therefore, cause of action for compassionate appointment arose from that time. The case of the applicant was not only duly considered by the respondents but it was reviewed twice. But his case could not be accepted and hence was justifiably closed.

4 (h). As per provisions of Section 21 of the Administrative Tribunals Act, 1985 i.e. within one year of arising of the cause of action i.e. after rejection of his case by the respondents for the years 2010-11 and 2011-12 he ought to have filed the O.A. Although the applicant has challenged the

communication of the respondents dated 25.03.2014, the present O.A. was filed only on 05.04.2016 i.e. its filing was belated and the applicant has not mentioned any reason for the delay in filing of this O.A. Now more than 9 years and half have passed from the date of death of the applicant's father.

4(i). The core objective of the scheme for compassionate appointment is to help the family of the deceased employee to overcome the sudden crisis following the death of a bread earner by providing a regular source of income. This means the employment on compassionate grounds should be considered to be provided in close proximity to the time of death. Since more than 9 years and half have passed after the death of the father of the applicant in the present case, the issue seeking employment on compassionate ground has become stale. Since the respondents had already considered his case for the years 2010-11 and 2011-12 but could not provide him employment at the most the applicant ought to have filed the O.A. at that time. The OA has actually been filed by the applicant on 05.04.2016 i.e. after 6 years and 8 months.

In view of this the M.A.No.635/2016 having no justified and satisfactorily explained reasons except simply mentioning the reason as financial

constraints is rejected.

4(j). In this context, pertinent are the views taken by the Apex Court in these cases:

(i) Local Administration Department & Another Vs. M. Selvanayagam Kumaravelu, Civil Appeal No.2206/2006 decided on 05.04.2011 that the objective of compassionate appointment is to provide immediate succor to the penurious condition of the deceased family. An appointment made several years after the death of the employee or without due consideration to financial resources available to his/her dependents and the financial deprivation caused by death, simply because the claimant happened to be one of his dependents would be directly in conflict with Articles 14 and 15 of the Constitution.

(ii) MGB Gramin Bank Vs. Chakrawarti in Civil Appeal No.6348/2013 (arising out of SLP(C) No.13957/2010) (Para 5) that mere death of the Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible

member of the family. Also the person claiming such appointment must possess required eligibility for the post. Compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The provision for liberal interpretation beyond permissible limits on humanitarian ground should not be stretched by the Court. Such appointment can be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

(iii). In **Umesh Kumar Nagpal Vs. State of Haryana & Ors. (1994) 4 SCC 138** decided on 04.05.1994, the Apex Court examined the considerations which should guide giving of appointment in public services on compassionate grounds. As a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. One such exception to this rule is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. It must be remembered in this connection that as against the destitute family of the deceased there are millions of the other families which are equally, if not more

destitute. Such an employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The compassionate employment cannot be granted after lapse of reasonable period which must be specified in the rule.

4 (k). After considering the submissions of the parties, and the views taken in the above caselaws, I am of the opinion that the applicant has failed in making out a case for exception to the normal rule of recruitment in his favour to provide him employment on compassionate grounds because of the long and unjustified delay in filing the O.A. and there being no acceptable reasons in the M.A.635/2016 filed for condonation of delay. The grounds submitted by the applicant for filing of the O.A. also have no merits. Therefore, the O.A. fails.

5. Decision:

The O.A. is dismissed for unjustified long delay as well as on merits.

(Dr.Bhagwan Sahai)
Member (A) .

H.