

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 30<sup>th</sup> day of August 2019

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J**

Original Application No.1530 of 2013

Khoob Karan, s/o Late Lakhan, S.S. Gr. III (Mazdoor) R/o Village Chhoti Vihar, P.O. Izatnagar, P.S. Izatnagar, Bareilly, U.P.

..... Applicant

By Adv: Shri R.C. Pathak

V E R S U S

1. The Director, Indian Veterinary Research Institute (IVRI), Izatnagar, Bareilly (U.P).
2. The Chief Administrative Officer (C.A.O), I.V.R.I 9, Izatnagar, Bareilly (U.P).
3. The Assistant Administrative Officer (AAO), M.R.D.P.C I.V.R.I Izatnagar, Bareilly (U.P).
4. Shri Himanshu Sharma (Mazdoor), I.V.R.I (Deemed University), Izatnagar, Bareilly.

..... Respondents

By Adv: Shri N.P Singh

**ORDER**

1. The present O.A. has been filed by applicant Khoob Karan seeking following reliefs:-

“(i) To issue an order or direction by way of certiorari quashing the orders dated 06.04.2013, 08.02.2013 and 30.09.2013 issued by Sr. Administrative Officer and Asstt. Administrative Officer (Respondent No. 5) on behalf of respondent No.3 shown as Annexure – 1, 2 and 2A to this O.A.

- (ii) To issue an order or direction of way of mandamus directing the respondents to comply Hon'ble Court judgments and policy in the case of applicant for giving him compassionate appointment.
- (iii) To issue an order or direction by way of mandamus directing the respondents to place all the records with regard considered the case of compassionate appointment other including the applicant w.e.f. 2003.
- (iv) To issue an order or direction in favour of the applicant as this Hon'ble Tribunal may deem fit and proper in the present facts and circumstances of the case so as to secure to end of justice.
- (v) To award the cost of the application to the applicant".

2. Case of applicant Khoob Karan is that on the death of his father Shri Lakhon on 26.02.2003 at 12.55 AM while serving in the respondents department, the mother of applicant filed an application before respondent No. 3 seeking appointment of applicant on compassionate ground, which was rejected by the respondents vide impugned orders dated 06.04.2013, 08.02.2013 and 30.09.2009. It is the case of applicant that respondents rejected the case of applicant that due to shortage of vacancies, his appointment cannot be ordered and when the vacancy falls in future, the case of applicant would be reconsidered by the committee for compassionate appointment (Annexure A-15). Applicant challenges the impugned orders more particularly order dated 30.09.2009 on the ground mentioned in the O.A. as:-

"Accordingly, the aforesaid respondent No.3 with a sorry submission not admitted and rejected the claim 'compassionate appointment' of applicant, neither the respondent No.3 considered the case of the applicant according to the policy of 09.10.1998, how many marks have been given to the applicant compare to other applicant on the aforesaid dates considered by the committee the respondent Nos. 6, 7 and 8 were appointed leaving aside, the claim of appointment as such the said order dated 30.09.2009

is illegal, unlawful, arbitrary, discriminatory, against Hon'ble Supreme Court, Hon'ble High Court and C.A.T., decision on the matter and also against the policy as such the said order is liable to be quashed and set aside and further be directed to consider the case of applicant a fresh".

3. It needs to be mentioned that order dated 30.09.2009 was set aside in O.A. No. 1494 of 2010 by this Tribunal vide order dated 18.12.2012 on the ground that:-

"3. A perusal of the impugned order clearly shows that it is non-speaking in nature and does not contain the details on the basis of which the claim of applicant has not been considered. Under the scheme for appointment on compassionate ground, circulated in August, 2007, there are certain parameters which have been laid down against which points/marks are to be awarded to each of the applicant and based upon the points secured, the candidates having secured highest marks are considered for appointment. It would be appropriate that these details are to be communicated to the applicant.

4. In view of the above, O.A. is allowed. The impugned order dated 30.09.2009 is set aside. The respondents are directed to consider the case of applicant afresh and to take a decision indicating parameter wise points secured by the applicant and the points secured by the last candidate who had been recommended for appointment on compassionate ground by the concerned Board/Committee. This exercise should be completed within a period of two months from the date of receipt of a certified copy of this order. The decision taken in this matter shall be communicated to the applicant within shortest possible time after the decision is taken. No order as to costs".

4. The case of applicant was reconsidered by the respondents in compliance of direction of this Tribunal in O.A. no. 1494/2010 vide order dated 18.12.2012 and was rejected by respondent Director IVRI, Izatnagar, U.P. Apparently respondent passed impugned order dated 08.02.2013 rejecting the claim of applicant. Applicant during the arguments has challenged the impugned order on the following grounds:-

- i) Because the respondents never given detail of marks obtained as per policy to the applicant on rejection of claim of compassionate appointment.
- ii) Because the respondents made discrimination and given compassionate appointment to the respondent No. 6, 7 and 8 leaving aside to the applicant.

5. Before proceeding further, it would be pertinent to refer to impugned orders dated 06.04.2013 and 08.02.2013. It is to be noted that the impugned order dated 30.09.2009 has already been set aside as mentioned above. It is also to be noted that impugned order dated 6.4.2013 (Annexure A-1) is the covering letter of the impugned order dated 08.02.2013 (Annexure A-2). So in the present O.A the dispute is confined to impugned order dated 08.02.2013.

6. The impugned order dated 08.02.2013 reads as under:-

“And whereas, the Director has ordered that the case of Shri Khoob Karan S/o Late Shri Lakhan may be considered afresh by the Compassionate Appointment Committee in pursuance of the orders dated 18.12.2012 passed by the Hon’ble C.A.T., Allahabad in O.A. No. 1494/2010.

Now, therefore, the case of Shri Khoob Karan S/o Late Shri Lakhan was put up before the meeting of Compassionate Appointment Committee held on 07.02.2013, for considering the case afresh in pursuance of decision dated 18.02.2013 of Hon’ble CAT, Allahabad. The Committee has gone through the recommendations of the Committee on Compassionate Appointment held on 08.04.2009 and 11.08.2009 wherein the previous committee considered the parameter such as

category of deceased employee at the time of death, age at the time of death, number of minor dependents immovable property and liability etc. However, the previous Committee has not given any points to be secured by the candidates on the above parameters. The Committee has compared the case of Shri Khoob Karan S/o Late Shri Lakhan and Shri Himanshu Sharma S/o Late Shri S.B Sharma the last candidate who was earlier recommended for appointment by the Committee".

The impugned order also gives the detail of the merit points secured by the applicant and Himanshu Sharma (respondent No.4) who secured 31 merit points as compared to 21 merit points secured by the applicant and upholds the rejection of applicant's case on the ground that "Keeping in view of the criteria as adopted by the Committee in pursuance of the orders dated 18.12.2012 of Hon'ble CAT, Allahabad, Sri Khoob Karan has secured 23 points and Sri Himanshu Sharma has secured 31 points. Therefore, the recommendations of the earlier Committee held on 08.04.2009 and 11.08.2009 hold good."

7. In the counter affidavit, the stand of respondents is that due to non-availability of adequate vacancies in the quota of compassionate appointment as well as the low merit points secured by the applicant on the basis of information i.e. assets and liabilities etc. declared by the applicant in his application form, disentitled him for compassionate appointment. It is further averred by the respondents that applicant's father expired on 26.02.2003 whereas the application for compassionate appointment was filed on 16.4.2005 as is evident from Annexure CA-3 i.e. nearly 3 years after the date of death of Shri Lakhan, father of applicant and, therefore, it is apparent that the applicant and his family could manage their livelihood for the said 3 years. Hence the O.A. be dismissed.
8. The principles on which compassionate appointment is based have been laid down by the Hon'ble Apex Court in the below mentioned cases:

- A. SAIL vs. Madhusudan Das, 2008 (15) SCC 560 the Hon<sup>ble</sup> Supreme Court reiterated the principles in respect of such appointments and had stated as under: "..... This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor, viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right."
- B. General Manager, State Bank of India vs. Anju Jain, 2008 (8) SCC 475, following was clearly stated:"..... Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment."

- C. *Union of India vs. Shashank Goswami*, 2012 (11) SCC 307, following was observed: "9. . . .the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right."
- D. *SBI vs. Raj Kumar*, 2010 (11) SCC 661, following was ruled: "6. ....The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."
- E. *Chief Commissioner, Central Excise and Customs, Lucknow and others vs. Prabhat Singh*, 2012 (13) SCC 412, following was observed: "19. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion."

9. It has been further argued by applicant that the respondents have wrongfully and arbitrarily rejected the case of the applicant in comparison to the other incumbents-private respondents, whose cases were considered by the respondents and were given compassionate appointment whereas applicant was discriminated against by not giving him the compassionate appoint. The applicant stated that the respondents have arbitrarily and illegally rejected the applicant's claim for appointment on compassionate and that the impugned order passed by the respondents is a non-speaking order passed without application of mind and thus the said order passed in arbitrary manner without considering the grounds raised by the applicant, the said order deserves to be quashed and set aside and that his case may be considered for compassionate appointment along with all consequential benefits. The applicant argues that there is no any earning family and therefore the applicant deserves compassionate appointment. Therefore, the impugned order dated 08.02.2013 deserves to be quashed and set aside.
10. On the other hand, learned counsel for respondents have rebutted the claim of applicant stating that it is clear enough that the case of the applicant was considered along with other such candidates and only the most deserving candidates were appointed on compassionate grounds keeping in view the directions of the CAT, Allahabad in O.A. No. 1494/2010. It was further argued by learned counsel for respondents that as held by the Hon'ble Apex Court and other Courts in catena of judgments on the issue of compassionate appointment, the same cannot be claimed as a matter of right and therefore there is no violation of Article 14 and 16 of the Constitution of India as the case of the applicant has been considered by the screening committee in its meeting, keeping in view various parameters and accordingly the case of the applicant was rejected.

11. The Scheme for compassionate appointment has been put in place by the Government of India to enable the family of the deceased to overcome the sudden vacuum and economic crisis which hits them when the sole bread earner of the family dies unexpectedly. It is unfortunate but true that there could be many similarly placed persons facing grave financial hardships. It is for these reasons that various parameters are provided so that situation can be assessed objectively and assistance provided by way of an appointment to the most deserving candidate. A compassionate appointment is not a vested right which can be claimed and exercised at any time.
12. The respondents thus pleaded that compassionate ground appointment is not a vested right. It is just a benevolent consideration which is to be extended by the respondents to provide immediate succour to the bereaved family and to avoid condition of penury. However, since applicant secured lesser points and number of posts were less as well as the fact that the applicant managed to sustain himself for three years after the death of his father, his case could not succeed. The OA needs to be dismissed.
13. Compassionate ground appointment is not a vested right. It is only a benevolent consideration to be extended by the respondents to take care of the immediate needs of the bereaved family when the bread earner is no more and to avoid conditions of penury in such circumstances based on the Scheme formulated for compassionate appointment.
14. After going through the entire pleadings, it is clear that the father of the applicant expired during his service and thereafter the case of the applicant was considered by the respondents in various Board meetings as detailed in the impugned order dated 08.02.2013 and perusal of the impugned order reveal that the case of applicant did not come up in the relative merit against the ceiling of 5% quote due to constraints of grossly inadequate vacancies and therefore, no employment could be provided to the applicant and the fact that the applicant secured less merits points than the point secured by last candidate appointed. Therefore the grounds taken by the

respondents clearly reveal that there were much deserving cases other than the applicant and the respondents have rightly rejected the claim of the applicant.

15. From the perusal of the impugned order dated 08.02.2013, it is clear that it is a reasoned and speaking order passed by the respondents and therefore there is no justification on the part of the applicant to state that the respondents have not passed a speaking order, as his entire representation and direction of the Tribunal was considered and after perusal of the same, the respondents had not found it feasible to accede the applicant's request for appointment on compassionate grounds. Applicant has been unable to show from the record or pleadings that the merit points were wrongly calculated by the respondents to his prejudice.
16. The facts would reveal that the name of the applicant has been considered by the Compassionate Appointment Committee on compassionate appointment and is not in dispute. It is clear that the guidelines on the subject have been duly followed by the respondents while filling up the vacancies in which the applicant case was also considered. There being other deserving candidates and a limited quota, he could not be given the appointment. In view of these facts, I find no ground for the Tribunal to intervene in this case. O.A. is dismissed. No costs.

**(Rakesh Sagar Jain)**  
Member (J)

Manish/-