

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00188/2018

Thursday, this the 5th day of September, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

P.A. Aneeshkumar, aged 32 years, S/o. Late P.A. Achuthan,
 Pulickal House, Mambra PO, Koratty – 680308. **Applicant**

(By Advocate : M/s. Sanjay & Parvathy)

V e r s u s

1. Union of India, represented by Secretary,
 Director General Posts, Ministry of Communications,
 New Delhi – 110 001.
2. The Superintendent of Post Office, Irinjalakuda Division,
 Irinjalakuda – 680 701.
3. The Chief Postmaster General, Kerala Region,
 Trivandrum – 695 033. **Respondents**

(By Advocate : Mr. Sinu G. Nath, ACGSC)

This application having been heard on 02.09.2019 the Tribunal on
 05.09.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

- “(i) Call for the records leading to the issue of Annexures A2 and A4 and quash the orders.
- (ii) Direct the respondents to appoint the applicant in service under the dying in harness scheme;
- (iii) Direct the respondents to reconsider the application as per the relevant scheme applicable in matters of dying in harness.
- (iv) Award costs of and incidental to this application;

(v) Pass such other orders or directions as deemed just, fit an necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant's father expired on 21.1.2014 while in service. Immediately after the death, applicant applied for compassionate appointment under the dying in harness scheme and produced all the necessary documents including the no objection certificates from his mother and brother. However, the request was rejected vide Annexure A2 order stating that the relative merit points obtained by the applicant are very less than the cut off which according to the respondents is over and above 50 points. Aggrieved the applicant approached the Chief Post Master General vide Annexure A3 letter. Annexure A3 was also rejected without giving sufficient reasons. The applicant as well as his mother and younger brother were all dependents for the livelihood on his father. Applicant's mother is suffering from age related ailments. The awarded relative merit points to the applicant is irregular. Aggrieved the applicant has approached this Tribunal with the present OA.

3. Notices were issued to the respondents. They have entered appearance through Shri Sinu G. Nath, ACGSC. It is contended by respondents that the object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds thereby leaving his family in penury and without any means of livelihood and to relieve the family of the Government servant concerned from financial

destitution and help to get over the emergency. As per the rules, provision of appointment under the scheme is limited to 5% of vacancies falling under direct recruitment quota in any Group C or D post and as such while considering a compassionate appointment request, a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities, presence of earning member, size of the family, age of the children and all other relevant factors of the case, especially in view of the fact that in number of occasions the Hon'ble apex court has pronounced that granting of appointment on compassionate grounds without assessing the financial position of the family is impermissible. The deceased official was survived by his wife and two sons. The applicant son of the deceased official applied for compassionate appointment. The committee considered his case and allocated the relative merit points. The annual family income was taken and not the income of the applicant. Annexure R6 reveal that the annual income of the family is Rs. 53,986/-. Therefore, the family earnings per month has been shown as Rs. 4,499/-. The relative merit points secured by the applicant is only 33 and accordingly, the Circle Relaxation Committee rejected the case of the applicant. The respondents have relied upon the following judgments of the Hon'ble apex court:

- i) ***State of Haryana v. Rani Devi*** – (1996) AIR SCW 3002
- ii) ***Food Corporation of India v. Rajaram*** – 2010 (15) SCC 366
- iii) ***State Bank of India v. Rajkumar*** – 2010 (11) SCC 1
- iv) ***MGB Gramin Bank v. Chakrawarthy Singh*** – 2013 (3) AISLJ 328
- v) ***Mumtaz Yunus Mulani v. State of Maharashtra*** – (2008) 11 SCC 384

vi) *Union of India & Anr. v. Sasank Goswami & Anr.* - (2012) 11 SCC 307 and submitted that Compassionate appointment can only be made within the frame work of rules, regulations or administrative instructions. Further it is a beneficial measure and not means of obtaining employment at the matter of rules applicable to others. The respondents relying on the judgment of the apex court in *Mumtaz Yunus Mulani's* case (supra) submitted that now the terminal benefits received by the family can also be taken in to account for assessing the financial position of the family which considering the application for compassionate appointment. Respondents pray for dismissing the OA.

4. Heard the learned counsel appearing for the applicant and learned ACGSC, counsel appearing for the respondents Perused the record.

5. The Hon'ble apex court in a recent decision in *Canara Bank & Anr. v. M. Mahesh Kumar* – (2015) 7 SCC 412 held that grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The relevant part of the judgment reads:

“19. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.”

Further in *Balbir Kaur & Anr. v. Steel Authority of India Ltd.& Ors.* - (2000) 6 SCC 493 the apex court held that family benefit scheme assuring

monthly payment to family of deceased employee is not a substitute for compassionate appointment. The relevant part of the judgment reads :

“13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

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19. Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.”

6. The thrust is put on while considering the application terminal benefits has to be ignored, whereas in the present case while considering the application of the applicant this factor has been taken into account which is contrary to the judgment of the Hon'ble Apex Court in *M. Mahesh Kumar's* case (supra) and in *Balbir Kaur's* case (supra). Hence, this Tribunal feels that this is a fit case for consideration of application for compassionate appointment due to the penurious situation of the applicant's family. Accordingly, this Tribunal directs the respondents to consider afresh the application of the applicant for compassionate appointment keeping in view the law laid down by the Apex Court and pass a speaking order before the next meeting of the circle relaxation committee. The decision so arrived at should be communicated to the applicant in writing. In case the grievance of the applicant still subsists he can approach this Tribunal again, if so advised.

7. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00188/2018

APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the death certificate dated 22.1.2014.
- Annexure A2** - True copy of the letter No. B2/17/Rectt/PAA/2014, dated 20.3.2015.
- Annexure A3** - True copy of the letter dated October, 2017.
- Annexure A4** - True copy of the letter No. Rectt/7-45/GDS/2014 daed 6.11.2017.
- Annexure A5** - True copy of the order No. 17-17/2010-GDS Government of India Ministry of Communications & IT Department of Posts (GDS Section) dated 14.12.2010.
- Annexure A6** - True copy of the revised instructions dated 28.7.2017 relevant page.

RESPONDENTS' ANNEXURES

- Annexure R1** - True copy of Directorate letter No. 17-17/2010-GDS dated 14.12.2010.
- Annexure R2** - True copy of Directorate letter No. 17-17/2010-GDS dated 1.8.2011.
- Annexure R3** - True copy of Directorate letter No. 19-19/2009-GDS dated 21.2.2012.
- Annexure R4** - True copy of Directorate letter No. 17-17/2010-GDS dated 9.3.2012.
- Annexure R5** - True copy of Directorate letter No. 17-17/2010-GDS dated 13.4.2012.
- Annexure R6** - True copy of annual family income certificate issued by the competent authority.
- Annexure R7** - True copy of certificate dated 19.6.2014 issued by Tahsildar, Chalakudy.

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