

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORGINAL APPLICATION NO.200/00521/2018

Jabalpur, this Thursday, the 22nd day of August, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER

Gudia Kalsa, Wife of late Manoharlal Kalsa (Chowkidar) Aged about 39 years, R/o 496, Kanjar Mohalla, Belbagh, Chotti Omti, Jabalpur-482002(M.P.) Mobile N/A, Email- NA
- **APPLICANT**

(By Advocate –Shri Sapan Usrethe)

Versus

1. Union of India through Secretary, Ministry of Finance, North Block, New Delhi- 110 001

2. Chairman, Central Board of Direct Tax, North Block, New Delhi- 110001

3. Principal Chief Commissioner of Income tax, Aayakar Bhawan, Hoshangabad Road, Opposite Maida Mill, Bhopal-462011 (M.P.)

4. Principal Commissioner of Income Tax-1, Central Revenue Building, Napier Town, Jabalpur-482001.
- **RESPONDENTS**

(By Advocate – Shri Sanjay Lal)

O R D E R

By Navin Tandon, AM.-

The applicant is aggrieved that she is not being granted compassionate appointment by the respondent-department.

2. The applicant has submitted the following in the Original Application:-

2.1 Her husband late Manoharlal Kalsa worked as Chowkidar in the Income-tax Department, Jabalpur. He expired on 06.09.1999 (Annexure A-3). At the time of the death he had more than 25 years of service left.

2.2 She applied for compassionate appointment on 29.11.1999 (Annexure A-4) which was forwarded by respondent No.4 to respondent No.3 on 15.12.1999 (Annexure A-5). The family of the applicant consists of herself, her daughter and mother of the deceased employee.

2.3 She belongs to scheduled caste and has limited source of income. She does not have any moveable or immovable property.

2.4 She has to incur huge amount of expenditure on treatment of her mother-in-law and her daughter due to frequent illness (Annexure A-7).

2.5 She has submitted several reminders regarding compassionate appointment. Letters dated 31.05.2006 to 26.04.2013 are filed as Annexure A-8 collectively. In her letter dated 10.11.2008 she has submitted that many people have got appointment who had applied after her.

2.6 She has obtained information under the Right to Information Act that there have been various communications between the various offices of the respondents from 01.11.2004 to 28.08.2017 (Annexure A-9 collectively). The respondents had asked the applicant to submit details vide their letter dated 11.01.2013 which was promptly submitted by her on 29.01.2013 (Annexures A-10 & A-11).

2.7 She was again asked to submit no objection certificate vide letter dated 16.08.2015. She has submitted the required information including oath and the same has been forwarded by the respondents to their higher officers on 07/09-09-2012 (Annexure A-12).

2.8 She is working with respondent No.4 on daily wages since 2002 and presently working under the contract system and fulfilling her daily needs.

2.9 The respondents have rejected her case vide order dated 18.01.2018 (Annexure A-1).

2.10 The impugned order dated 18.01.2018 has been passed without assigning any reason for the rejection. As the respondents have failed to give any reason, the order itself is bad in law and has to be quashed.

3. She has prayed for the following reliefs:-

“(8.1) To quash the order dated 18.01.2018 (Annexure A-1) and 05.02.2018 (Annexure A-2) and direct the respondent to consider the case of the applicant for compassionate appointment.

(8.2) To direct the respondent to produce the record of the applicant and also the record between 2000-2018 of persons to whom appointment on compassionate basis was given.

(8.3) Any other relief which the Hon'ble Tribunal deems appropriate may be granted”.

4. The respondents have filed their response in which they have made the following submissions:-

4.1 The Departmental Screening Committee (for brevity ‘**DSC**’) was held on 18.09.2015 for considering cases for compassionate appointment against the vacancies for V.Y.2011-12 and 2012-13. The case of the applicant was considered by the DSC. It was found by the DSC that Education qualification was 8th pass and there was also earning member. The DSC recommended the case of the applicant for compassionate appointment subject to relaxation of education qualification and earning member.

4.2 The case was forwarded to Central Board of Direct Taxes (for brevity ‘**CBDT**’) for granting relaxation in respect of education qualification and earning member as per existing instructions.

4.3 The applicant was recommended for appointment to the post of Multi Tasking Staff by the DSC.

4.4 The recruitment rules for MTS specify the age between 18 to 25 years (relaxed 3 years for OBC and 5 years for SC/ST) and matriculation or equivalent pass.

4.5 As per their records the applicant has qualified 8th standard, and in addition to the pension of Rs.6,020/-, she was also earning Rs.3400/-. After considering these facts the Secretary, CBDT, New Delhi has not approved the case of the applicant for compassionate appointment and has not granted the required relaxation and approval.

4.6 The names of eligible candidates are arranged on the basis of points awarded as per point wise criteria issued by the CBDT, New Delhi. On that basis, the DSC recommended the case of the applicant.

5. The applicant has filed the rejoinder. She had asked for a copy of the minutes of the meeting where her name was considered for compassionate appointment as well as a copy of the letter addressed to the CBDT, but the same has been denied to her vide letter dated 26.11.2018 (Annexure RJ-2). Further in the consolidated instructions issued on compassionate appointment by the DoPT vide O.M. dated 16.01.2013 (Annexure RJ-1) relaxation have been provided in Para 6-B. Also as per para 3(b) of the said instructions, there was no need to send the matter to CBDT and respondent No.3 was competent to take a decision.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available on file.

7. The arguments of the counsel were on the lines of the pleadings.

8. The learned counsel for the respondents brought to our attention Important Court Judgments of Hon'ble Supreme Court which have been listed at para 19 of the DoPT OM dated 16.01.2013 (Annexure RJ-1). He submitted that compassionate appointment is not to be granted as a routine measure and it is not a source of recruitment.

9. I find that this is a classic case of sheer apathy and insensitivity towards need of the applicant for compassionate appointment. The Government of India has formulated the scheme of compassionate appointment as a welfare measure and it dates back to 1958. The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness thereby leaving his family in penury and without any means of livelihood. DoPT's OM dated 09.10.1998 referred to in OM dated 16.01.2013 (Annexure RJ-1) lists the procedure regarding processing of compassionate appointment. It specifies the proforma for ascertaining necessary information and processing the case of compassionate appointment. Further the welfare officer of the office should meet the members of the family of the Government servant in question immediately after his death and advise and assist them in getting appointment on compassionate grounds.

10. In the instant case it is shocking to find that a lady, who became widow at the age of 20 years, was kept on waiting for the decision on her application for compassionate appointment for more than 18 years. Even in the last stage, the meeting of the DSC was held on 18.09.2015 wherein the case of the applicant was recommended to CBDT for relaxation of educational qualification and earning member. The rejection of this request has been sent after more than two years on 18.01.2018.

11. Para 6(B)(a)(b) &(d) of the Office Memorandum dated 16.01.2013 (Annexure RJ-1) on the subject of Consolidated Instructions on Compassionate Appointment (Annexure RJ-2) reads as under:-

(6). B. RELAXATIONS:

(a) *Upper age limit could be relaxed wherever found to be necessary. The lower age limit should, however, in no case be relaxed below 18 years of age.*

Note I *Age eligibility shall be determined with reference to the date of application and not the date of appointment;*

Note II *Authority competent to take a final decision for making compassionate appointment in a case shall be competent to grant relaxation of upper age limit also for making such appointment.*

(b) *In exceptional circumstances Government may consider recruiting persons not immediately meeting the minimum educational standards. Government may engage them as trainees who will be given the regular pay bands and grade pay only on acquiring the minimum qualification prescribed under the recruitment rules. The emoluments of these trainees, during the period of their training and before they are absorbed in the Government as employees, will be governed by the minimum of the – IS pay band Rs.4440-7440 without any grade pay. In addition, they will be granted all applicable Allowance, like Dearness Allowances, House Rent Allowance and Transport Allowance at the admissible rates. The same shall be calculated on the minimum- IS pay band without any grade pay. The period spent in the-1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-1 of Rs.5200-20200 along with grade pay of Rs.1800. (Para 1 of O.M. No.14014/2/2009-Estt.(D) Dated the 11th December, 2009)*

Note *In the case of an attached/subordinate office, the Secretary in the concerned administrative Ministry/Department shall be the competent authority for this purpose.*

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(d) *In case of appointment of a widow not fulfilling the requirement of educational qualification, against the post of MULTI TASKING STAFF, she will be placed in Group ‘C’- Pay Band – 1 (Rs.5200-20200)+ Grade Pay Rs.1800/- directly without insisting on fulfilment of educational qualification norms,*

provided the appointing authority is satisfied that the duties of the post against which she is being appointed can be performed with help of some on job training. This dispensation is to be allowed for appointment on compassionate ground against the post of MULTI TASKING STAFF only. (Para 2 of O.M. No.14014/2/2009-Estt. (D) Dated 03.04.2012)"

(emphasis supplied)

12. The respondents in their reply have not filed either the minutes of the meeting or the points obtained by the applicant in the evaluation system (as mentioned in Para 10 of the reply of the respondents).

13. If a widow, whose husband had more than 25 years of service left; has no moveable or immoveable property; has a young daughter and mother-in-law to support; as well as has been forced to work as a contract labourer, can not be granted exemption as per rules, then the whole purpose of the scheme is lost.

14. Since the DSC has already recommended the case of the applicant for compassionate appointment, the CBDT should reconsider the case of relaxation, which is specifically provided for in the rules for widows.

15. Accordingly, the Original Application is allowed. The impugned orders dated 18.01.2018 (Annexure A-1) and 05.02.2018 (Annexure A-2) are quashed and set aside. The respondents are directed to consider the case of the applicant afresh. The provisions of DoPT's OM dated 09.10.1998 and 16.01.2013 should be kept in mind to help the applicant wherein relaxations are permissible. This exercise should be completed

within 30 days from the date of receipt of a certified copy of this order and a decision communicated to the applicant.

16. In the special circumstances, I also order a cost of Rs.10,000/- (Rs.Ten Thousand only) to be paid to the applicant within 30 days from the date of receipt of a certified copy of this order.

**(Navin Tandon)
Administrative Member**

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