

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(CIRCUIT BENCH AT JAMMU)**

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**ORIGINAL APPLICATION NO. 061/1337/2017
(Order reserved on: 11.07.2019)
Order pronounced on : 12.07.2019**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. ARADHANA JOHRI, MEMBER (A)**

...

Waseem Yousuf,

aged 26 years,

son of Mohammed Yousuf,

Resident of PDD Colony,

Rangwar, Baramulla.

(By Advocate: None)

....Applicant

VERSUS

1. Union of India
through Secretary,
Ministry of Defence,
New Delhi.
2. Chief Engineer,
31 Zone, `
Pin-914631, `
C/o 56 APO.
3. Chief Engineer,
Northern Command,
Pin-914698
C/o 56 APO.
4. Garrison Engineer,
969 Engineering Works Section
C/o 56 APO.

....RESPONDENTS

(By Advocate: Mr. Raghu Mehta, Advocate)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. The challenge in this Original Application (OA) is to the orders dated 27.5.2011, 27.8.2011, 29.1.2013, 30.11.2015, 21.1.2016 and 18.3.2016 vide which his claim for appointment on compassionate grounds has been rejected and to issue direction to the respondents to appoint him on compassionate appoint w.e.f. 2011 with all the consequential benefits.

2. The facts of the case are largely not in dispute. The father of applicant Yousuf was permanent employee under Garrison Engineer, 969 Engineering Works Section, as Safailwala. He died on 10.3.2010 in harness leaving behind a widow and two sons. The widow submitted application for appointment of applicant on compassionate grounds. In 2011-12, his case was rejected for want of vacancy. In 2013, it was rejected on the ground that applicant secured low marks than other candidates on a point-based system. He claims that his case was wrongly rejected for want of vacancies, as in fact vacancies were available with respondents at relevant point of time. On 30.11.2015, his case was rejected on the ground that he was married, in terms of policy dated 25.2.2015. Vide final order dated 18.3.2016, the applicant was informed that he could not be offered appointment being a married person. Hence, the O.A.

3. The respondents have resisted the claim of the applicant. They plead that in terms of letter dated 15.10.2012, the case of a person is to be considered for three consecutive years and then it is to be closed. It is admitted that during 2010-11 and 2011-2012, applicant was not appointed due to non availability of vacancy and low

merit as compared to other cases but during 2012-13 it was rejected as applicant was found to be married son.

4. We have heard the learned counsel for the parties at length and examined the pleadings on file, with their assistance.

5. It is not in dispute, at all, that the applicant's case was considered during 2010-11 and 2011-2012 but he could not be approved for appointment due to low merit and number of vacancies was quite less. However, during 2012-13, it was rejected on the ground that applicant was married son. The another ground to reject his claim that as per indicated OM, the case of a person is to be considered only thrice and then it is to be closed. In so far as first and second rejections during 2010-2011 and 2011-12 are concerned, this Court does not find any fault in action of the respondents as applicant could not secure more marks than his compatriots vying for such appointment.

6. However, one thing is clear that respondents have pleaded that after 3 years, case of a candidate for appointment on compassionate ground can be closed and is not to be considered after three considerations. This plea, to us, appears to be totally wrong as DoPT had also issued similar instructions for consideration of case of a candidate for thrice and then case was to be taken as closed. The instructions were considered and held by the courts as illegal and ultimately DoPT had withdrawn those instructions vide OM dated 26th July, 2012, pursuant to decision of Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 13102 of 2010 decided on 7.5.2010.

7. In so far as compassionate appointment to married son is concerned, this issue stands settled by latest instructions and law.

The instructions of 2013 had held that a married son cannot be appointed on compassionate grounds as he cannot be treated as dependent. The instructions at Sr. No. 13 of FAQs dated 30th May, 2013, were drawn/ modified by aforesaid clarification.

8. One can take judicial notice of the fact that instruction dated 30.05.2013 was the subject matter before the Hon'ble High Court of Punjab and Haryana in CWP No. 2392/2011 decided on 23.04.2013 wherein it has been held that married son is also entitled for consideration for compassionate appointment, if he fulfills all the criteria as laid down in the instructions issued on compassionate appointment. On the basis of this decision, Nodal Ministry DoPT had issued a clarification dated 25.02.2015 indicating that married son is also to be considered but they have put a rider that cases which have already been settled as per instructions dated 30.05.2013, will not be reopened.

9. A co-ordinate bench of this Tribunal in the case of **Sandeep Singh Vs. U.O.I & Ors.** , O.A No. 060/00395/2014 decided on 09.04.2015, which has already been upheld by the Hon'ble jurisdictional High Court in CWP No. 16510/2015 decided on 12.08.2015. In view of this, we are of the view that case of the applicant requires reconsideration on merit for simple reason that clarification dated 30.05.2013 has already been considered by Hon'ble High Court in the case of **Union of India Vs. Central Administrative Tribunal & Anr.** (CWP No. 16510-2015 (supra) where the Hon'ble High Court has already held that that clarification given by the department will not amend the original scheme dated 09.10.1998 for compassionate appointment where there is no bar to consider the

cases of a married son. The relevant observations made by the Hon’ble High Court in above referred case read as under:-

"5. We have duly considered the aforesaid contentions but we found no substance therein. Annexure A6 is the scheme for compassionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) vide memo dated 9.10.1998. This fact is not disputed that this Scheme for compassionate appointment was applicable on the date of death of Hakam Singh, the father of respondent No.2. This scheme was applicable to the "dependent family member" of the deceased. "Dependent Family Member" has been defined in Note-I of the Scheme which reads as under:-
"Note I "Dependent Family Member" means

- (a) spouse; or
- (b) son(including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para, who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be."

6. As per this note, the son (including adopted son) falls within the definition of "dependent family member". The Department of Personnel and Training had issued the clarification dated 30.5.2013 with respect to the frequently asked questions (FAQs) on compassionate appointment. Question No.13 reads as under:-

13	Whether 'married son' can be considered for compassionate appointment?	No. A married son is not considered dependent on a government servant.
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It is not disputed that later on further clarification was issued vide DOP&T's No.14014/02/2012-Estt (D) dated 25th February, 2015 which reads as under:-

S.NO.	Question	Answer
60	Whether "'married son' can be considered for compassionate appointment?	<p>Yes, if he otherwise fulfils all the other requirements of the Scheme i.e. He is otherwise eligible and fulfils the criteria laid down in this Department's O.M. Dated 16th January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. The FAQs dated 30th May, 2013, may not be reopened.</p> <p>Sr. No.13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.</p>

7. As per the aforesaid clarification, the married son can also be considered for compassionate appointment if he otherwise fulfils the other requirements of the scheme. The FAQs dated 30.5.2013 dated 25.2.2015 are only the clarifications given by the department on administrative side. These clarifications do not amount to the

amendment of the Original Scheme dated 9.10.1998 for compassionate appointment. In the Original Scheme "son (including adopted son)" falls in the category of the "Dependent Family Member". In the scheme, it is nowhere mentioned that only "unmarried son" will fall within the category of the "dependent family member" and "married son" shall be excluded. So, there is no categorisation of married or unmarried son in the scheme. The subsequent clarifications do not amount to amendment of the original scheme.

8. The Central Administrative Tribunal has rightly relied upon case *Satgur Singh versus State of Punjab* 2013 (3) SCT 629. In that case also, there was analogous note defining the "Dependent Family Members". In Note I, only son was mentioned and this Court held that the married son would also be eligible for appointment on compassionate grounds provided he fulfills the other requirements. Case *Krishna Kumari versus State of Haryana* (supra) relied upon by the learned counsel for the petitioners is entirely on different footing because in that case, the question for consideration was as to whether the policy applicable on the date of death of the employee will apply or the one applicable on the date of consideration of application would apply. But in the instant case, it is not the case of the petitioner that some different scheme was applicable on the date of death of the father of respondent No.2. It is the case where only the different clarifications have been issued on the same policy by the Department which does not amount to any amendment in the Original Scheme dated 9.10.1998.

9. Thus, we do not find any illegality in the impugned order dated 9.4.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

10. Before parting with this judgment, it will be pertinent to mention that even as per the admitted case of the petitioners as per para No.2 of the petition, *Hakam Singh*, the father of respondent No.2 has died on 17.9.2012 and respondent No.2 was married on 5.10.2012 which means that he has married after the death of his father. Thus, on the date of death, he was unmarried.

11. Thus, keeping in view our aforesaid discussion, the present petition has no merits and the same is hereby dismissed."

10. In the light of the above discussion, we are left with no other option but to quash and set aside the impugned orders. The matter is remitted back to the respondents to reconsider the case of the applicant for compassionate appointment as per instructions in that behalf, if he fulfills other conditions as stipulated therein, by passing a reasoned and speaking order within a period of two months from the date of receipt of a certified copy of the order under intimation to the applicant. No costs.

(ARADHANA JOHRI)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 12.07.2019

HC