

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA



OA. 612 of 2007

Date of Order: 18.02.2016

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Smt. Sikha Rani Chal
Vs.
Union of India & Ors. (Defence)

For the Applicant : Mr. PC Das, Counsel

For the Respondents : Mr. MK Ghara, Counsel

O R D E R (Oral)

Per Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both the parties.

2. Heard both.
3. This OA was earlier disposed of on 09.04.2008 by a Hon'ble Single Administrative Member which was assailed by the applicant before the Hon'ble High Court in WPCT No. 200 of 2008 wherein the order passed by this Tribunal was quashed and set aside with request to the Tribunal to hear it out afresh as expeditiously as possible with an order dated 15.01.2016. Accordingly, the matter has come up for fresh hearing.
4. I have perused the materials on record.
5. It is noticed that the case of the applicant for employment assistance on compassionate ground was rejected on 18.05.2006, applying the DOPT OM dated 05.05.2003, as would be evident from the reply filed by the respondents. The said DOPT OM mandated maximum 3 times consideration of cases from the date of death and closure of a case if compassionate appointment could not be offered during such period.

6. Learned counsel for applicant submitted that subsequently the DOPT issued its circular dated 26.07.2012 withdrawing the earlier circular dated 05.05.2003 and taking away the time limit of consideration, therefore keeping the consideration open without such restriction. The relevant excerpts from the circular dated 26.07.2012 would be as under:

"Subject : -Review of three years time limit for making compassionate appointment.

The primary objective of scheme for compassionate appointment circulated vide O.M. No. 14014/6/94-Estt(D) dated 09.10.1998 is to provide immediate assistance to relieve the dependent family of the deceased or medically retired Government servant from financial destitution i.e. penurious condition. The Hon'ble Supreme Court in its judgment dated 05.04.2011 in Civil Appeal No. 2206 of 2006 filed by Local Administration Department vs. M. Selvanayagam @ Kumaravelu has observed that "an appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14 & 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind."

2. This Department's OM No. 14014/6/1994 -Estt (D) dated 09.10.1998 provided that Ministries/Departments can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it was, however, to be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases was to be taken only at the level of the Secretary of the Department/Ministry concerned.

3. Subsequently vide this Department's OM No. 14014/19/2002-Estt (D) dated 5th May, 2003 a time limit of three years time was prescribed for considering cases of compassionate appointment. Keeping in view the Hon'ble High Court Allahabad judgment dated 07.05.2010 in Civil Misc. Writ Petition No. 13102 of 2010, the issue has been re-examined in consultation with Ministry of Law. It has been decided to withdraw the instructions contained in the OM dated 05.05.2003.

4. The case of compassionate appointment may be regulated in terms of instruction issued vide OM dated 09.10.1998 as amended from time to time. The onus of examining the penurious condition of the dependent family will rest with the authority making compassionate appointment".

7. Learned counsel for respondents would vociferously submit that after 5 times consideration the applicant's case deserved no further consideration.

8. Learned counsel for applicant would argue that in view of latest stand of the DOPT the applicant would deserve a fresh consideration since the case was not rejected on merit.

9. Further, the latest view of the Hon'ble Apex Court, in regard to consideration for compassionate appointment, as rendered in **Canara Bank & Anr. v. M. Mahesh Kumar** [AIR 2015 SC 2411] is as under, extracted with supplied emphasis for clarity:

In the case, the Hon'ble Court laid down infra:

"20.while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

The Hon'ble Court earlier in the said decision held:

15. In so far 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.

16. In **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.**, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner 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 breadearner 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 breadearner; but that would undoubtedly bring some solace to the situation." Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

Further the Hon'ble Court directed as follows:

19.the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee....."

10. In view of the aforesaid, the OA is disposed of, with a direction upon the respondents to consider the matter afresh, in the light of the decision supra and pass an appropriate reasoned and speaking order within three months.

No costs.

(Bidisha Banerjee)
Member (J)

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