

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 165 of 2013

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

HIRALAL MALLAH

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.Samanta, counsel

For the respondents : Ms. M.Bhattacharya, counsel
Mr.M.K.Ghara, counsel

Order on : 26.4.16.

O R D E R

This matter is taken up in the 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 sides.

2. Heard ld. Counsels for the parties and perused the materials on record.
3. It is evident, from a communication dated 28.10.10, as contained in Annexure A/7 to the OA, that the case of the applicant for employment assistance on compassionate ground was closed applying DOPT OM dated 5.5.03 which restricted consideration to three years from the date of death and if compassionate appointment could not be offered during these three years, the compassionate appointment case had to be closed. It could be noted that DOPT, on 16.1.13, changed its stand directing consideration of the past cases where cases were closed not on the basis of merit but due to non-availability of sufficient vacancies.
4. The following legal position could be noted from a latest judgment of Hon'ble Apex Court in **Canara Bank & Anr. v. M. Mahesh Kumar [AIR 2015 SC 2411]**. The Hon'ble Apex Court, in the matter, considered whether the compassionate appointment had to be granted in terms of the scheme that was in vogue at the time of death of the employee.

The Hon'ble Apex Court reminded us of the decision in **Umesh Kumar Nagpal vs. State of Haryana [(1994) 4 SCC 138]** propounding the following:

"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 de hors 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."

Further, referring to its earlier judgment in **State Bank of India vs. Jaspaul Kaur [(2007) 9 SCC 571]**, the Hon'ble Apex Court deprecated the practice of taking into consideration the terminal benefits for the purpose of consideration for compassionate appointment. It very eloquently and emphatically declared that "granting of terminal benefits is of no consequence" in the following way:

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."

Finally following **Jaspaul Kaur** (supra) 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....."

(emphasis supplied)

Therefore, while considering a case of compassionate appointment, apart from the factors to be borne in mind, , as were laid down in **Umesh Kr. Nagpal** (supra), the additional principles that could be culled out from the latest judgment in **Canara Bank** (supra), to be followed would be that :

- (i) "granting of terminal benefits is of no consequence"
- (ii) consideration would be "as per the scheme which was in vogue at the time of death of the concerned employee".

5. Furthermore, it is obvious and axiomatic that a decision of Hon'ble Apex Court is binding all Courts and Tribunals and there is no quarrel about it. Judgements of Apex Court are declaratory for the nation [(1980) 1 SCC 233] and in a judicial system governed by precedents the judgments delivered by the Hon'ble Apex Court must be respected and relied upon with meticulous care and sincerity.

6. Accordingly the OA is disposed of with a direction upon the respondents to consider the matter afresh untrammelled by earlier consideration, in the light of the settled law as enumerated supra, within a period of three months from the date of receipt of the copy of this order.

7. The OA is accordingly disposed of. No costs.

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(BIDISHA BANERJEE)
MEMBER (J)

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