

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00567/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr.K.N.Srivastava, Administrative Member

TERESA D ROZARIO & ANR.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.A.K.Banerjee, counsel
Mr.P.SAnyal, counsel

For the respondents : Mr.A.K.Guha, counsel

Order on : 4.5.16.

O R D E RMs.Bidisha Banerjee, J.M.

The ld. Counsels for the parties were heard.

2. The applicant in this OA has sought for the following reliefs :

- a) Leave may be granted under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 to the applicants to join together to file a single application as all of them are having the same cause and the nature of relief prayed for and that they have a common interest in the matter inasmuch as all the applicants are aggrieved by the common regret letter dated 9.5.2011.
- b) An order directing the respondent to rescind, revoke/cancel the regret letter dated 9.5.2011 (being made Annexure A/4 to the Original Application);
- c) To direct the respondents to provide with a suitable job either in Group 'D' or Group 'C' in favour of the applicant No.2.

3. The case of the applicant in a nutshell would be as follows :

Marconi D. Rozario, an Electric Fitter Gr. I in Eastern Railway died in harness on 16.11.2010 leaving behind his wife and two married daughters. Younger daughter being issueless stayed all along with her mother along with her unemployed husband and subsequently elder daughter also joined them with her two children. They were dependent solely on their mother and had her meagre family pension to fall back upon with hardly any other source of income to support the large family

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except a paltry sum of money earned by the younger daughter of the deceased and the family pension. A sizeable amount of retiral benefits received by the wife of Late M.D.Rozario had been spent by the widow for meeting the abnormal amount of medical expenses incurred for her husband (since deceased) rendering the family in a penurious condition. In order to find a way out from this severe economic hardship, Smt. Teresa Rozario, wife of the deceased employee made several representation to the Railway authorities for compassionate appointment of her younger daughter, Philomina (Kundu) (Rozario) the applicant No.2. But her prayer was not considered at all. Hence the applicants have preferred this OA, for the ends of justice.

4. The position that emerged from the Welfare Inspector's Enquiry Report would be that :

"Smt. Philomina D. Rozario was not dependent member of the family at the time of death of the deceased employee as she had married Sri Debasish Kundu on 10.7.01 as per Certificate of Marriage dated 10.7.01. However, elder married daughter of the deceased employee, Smt. Agatha Chettri had given no objection for appointment on compassionate ground of her younger married sister Philomina D. Rozario.

The applicant had stated that she has been working as Assistant Teacher at Holy Child School, Dayabari, Ranaghat with a salary of Rs.3000/- though she submitted an affidavit stating the salary earned Rs.4856/- and also submitted salary particulars i.e. from 2.5.05 up to March 2013 @ Rs.4146/- and from April 2013 @ Rs.4856/- issued by Headmistress, Holy Child School, Ranaghat dated 11.5.13.

As per Railway rules married daughters are not eligible for compassionate ground appointment, accordingly regret letter was sent to the widow of the deceased employee dated 9.6.11. It also appeared from the statement of Philomina D. Rozario that her husband is a business man of medicine supplier".

The report would therefore evidently denote that the rejection of the case of the applicant was due to the reason that her younger daughter Philomina D. Rozario earned Rs.4000/- and odds and she could manage with her family pension of Rs.7000/- and odds.

6. The order impugned in the present OA however, demonstrates a different reason for rejection, that

“married daughter are not eligible to be considered for appointment on compassionate ground as per extant rules.”

7. The legal position in regard to married daughters to be considered for employment assistance on compassionate ground could be noted in the following decisions :

(i) Hon'ble Apex Court in **Shreejith G. -vs- Director of Education** [(2012) 7 SCC 248] that marriage by itself cannot disqualify a person concerned from seeking compassionate appointment.

(ii) In WP 6056/10, **The State of Maharashtra & Ors. -vs- Medha Prashant Parkhe**, the Hon'ble High Court at Bombay has held that “Rule 3(A) which discriminates against unmarried women is arbitrary.”

(iii) In regard to marriage being a bar for consideration, in **Usha Singh -vs- State of West Bengal** [(2003) 2 LLN 554], Hon'ble Calcutta High Court observed as under :

“No authority need to be cited for the proposition that right to marry is a necessary concomitant of right to life guaranteed under Art.21 of the Constitution ‘Right to life includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition’. (See in this regard **Sr.X -vs- Hospital Z**, reported in (1998) 8 SCC 296)

Later in para 10 the Hon'ble Court observed that :

The rationale of the rules quoted hereinabove is that the son or the daughter who applies for an appointment in the died-in-harness category should have been dependent upon the income of the deceased so that his untimely death left him/her/them in extreme economic hardship. The Award object of the rules is to provide relief to the family which is in extreme financial hardship and for this purpose an unemployed son can apply whether married or unmarried. Why then is the restriction upon a daughter that she should be unmarried in order to be eligible for appointment? An unmarried daughter can be a divorcee duly dependent upon the father. She may have been abandoned wife again fully dependent

upon the father. She may have been married to an indigent husband so that both the married daughter and the son-in-law would have been dependent upon the income of the bread-winner whose death led them to extreme financial hardship. The concept of a 'Ghar jamai' (one who lives at one's father-in-law's house) is well accepted in Indian society particularly in those families where there is no son. There may be many other probabilities in which a married daughter may be fully dependent upon the income of her father so that death of the father would leave her and the rest of the members of the family in extreme economic hardship. Why should then a distinction be made between a son and a married daughter? An unemployed married son according to the rules is ineligible irrespective of the fact that they are or may be similarly placed and equally distressed financially by the death of the father. Take the case of a teacher who died in harness leaving his surviving his illiterate widow, an unqualified married son and a qualified married daughter who were all dependent on the income of the deceased. Following the rule as it is interpreted by the Council and its learned advocate, this family cannot be helped. Is this the intended result of the rule? What is the basis for the qualification which debars the married daughter? And what is the nexus between the qualification and the object sought to be achieved? In my view, there is none. If anyone suggests that a son married or unmarried would look after the parent and his brothers and sisters, and that a married sister would not do as much, my answer will be that experience has been otherwise."

(emphasis supplied)

(iv) In the case of **Manjula -vs- State of Karnataka by its Secretary, Dept. Of Co-operation Bangalore & Anr.** [2005 (104) FLR 271] Katnataka High Court held, after considering the judgments of the Supreme Court that a woman cannot be denied entry into service on compassionate employment just because she is married, had observed thus :

"In these circumstances, this Court is of the view that no married women can be denied of any entry into service on compassionate employment just because she is married. In fact the State Government has accepted the theory of no employment for married women living with her husband. There may be cases where the married woman may be living with her parents notwithstanding her marriage for various reasons and their parents on account of death of her husband. Therefore, what this Court would do is to read down the Rule thereby providing employment to dependent married daughters subject of course to the satisfaction of the management of the dependency of the said married daughters in the given circumstances. This view in my view would support the cause of women in terms of Article 14 and 15 of the Constitution of India. They cannot be denied employment merely on the ground of marriage. Therefore, the 'dependency' should be the yardstick and not the 'marriage' to wipe out the tears from the eyes of the suffering family on account of the loss of an earning member in the family."

(emphasis supplied)

(v) In **WP 11987/12 Sou. Swara Sachin Kulkarni (Kumari Depa Ashok Kulkarni) -vs- The Superintending Engineer, Pune, Irrigation Project Circle and Anr.**, it has been held -

"We cannot expect a Welfare State to take a stand that a married daughter is in-eligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. In this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. IN such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized form the income and the terminal benefits of the decease. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is disentitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged to bear in mind the constitutional mandate and also directive principles of the State Policy."

(emphasis supplied)

Therefore it would be evident that no bar could be imposed in regard to consideration of married daughter for employment assistance on compassionate ground. Taking a clue from the above cited decisions we would observe that if the object sought to be achieved by way of compassionate appointment scheme is to provide succour to the family in financial distress by giving employment to one of its dependents/near relatives, but the qualification debars married daughters from becoming the bread winner, there is no reasonable nexus between the qualification and the object sought to be achieved.

8. In regard to terminal benefits standing in the way of consideration, we would refer to a recent decision of the Hon'ble Apex Court in **Canara Bank & Anr. v. M. Mahesh Kumar [AIR 2015 SC 2411]**. There the Hon'ble Apex Court

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 in 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."*

While referring to its earlier judgment in **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.** [(2000) 6 SCC 493], the Hon'ble Apex Court expressly deprecated the practice of taking into consideration the terminal benefits for the purpose of consideration for compassionate appointment. In the following words it very eloquently and emphatically declared that "granting of terminal benefits is of no consequence" as extracted infra :

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 defendant 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 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." 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."

(emphasis supplied)

Therefore in view of the decision supra grant of terminal benefits would not stand in the way of grant of employment assistance.

9. It is obvious, axiomatic and settled law that a decision of Hon'ble Apex Court is binding upon all Courts and Tribunals and there cannot be any 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.

Therefore neither marriage of the daughter nor grant of terminal benefits to the widow would stand in the way of consideration of the married daughter to act as bread winner for the family of the deceased employee. The earnings of the daughter being too meagre ought to be ignored.

10. In the aforesaid factual and legal backdrop we feel it proper to direct the authorities to consider the case of Philomina for employment assistance on compassionate ground afresh, untrammelled by its earlier rejection and pass

appropriate orders within three months from the date of communication of this order.

11. The OA accordingly would stand disposed of.
12. No order is passed as to costs.

(K.N.SRIVASTAVA)
MEMBER (A)

in

(BIDISHA BANERJEE)
MEMBER (J)