

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. MA 350/00246/2014
OA 350/00022/2014

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

HIREN BISWAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr. N. Roy, counsel

For the respondents: Mr. B. P. Manna, counsel

Order on : 23.9.15

O R D E R

Ms. Bidisha Banerjee, J.M.

This application has been filed seeking the following reliefs :

- a) To issue direction upon the respondents to give compassionate appointment on compassionate ground forthwith;
- b) To issue direction upon the respondents to cancel, quash, set aside the impugned order dated 15.4.13 forthwith;
- c) To issue direction upon the respondents to consider case of the applicant on compassionate ground forthwith;
- d) To produce connected departmental record at the time of hearing.

2. The case of the applicant in a nutshell is that the father of the applicant died on 20.1.1991 while in service. After death of his father the applicant applied for employment assistance on compassionate ground. On completion of age and education the applicant submitted school certificate before the respondent authorities, but the respondents misplaced the same from office of Divisional Railway Manager (P), Katihar. He again submitted application along with all requisite documents but the respondents did not consider his appointment on compassionate ground although the family was suffering from acute financial problems. The respondents passed an order dated 10.5.13 stating that ^{he} the applicant's mother applied for appointment on compassionate

ground after 8 (eight) years from the date of his father without justifying such long delay and that he was not having the requisite qualification i.e. Class VIII pass, at the time of application. The Id. Counsel for the applicant vociferously submitted that the applicant submitted all requisite documents for compassionate appointment but the respondents deprived him wilfully.

3. No reply has been filed to refute the facts, despite repeated opportunities.

4. We have heard the Id. Counsels for the parties and perused the materials on record.

5. From the records and pleadings we discerned the factual matrix as follows :

- i) The employee died on 21.1.1991, while in service.
- ii) His widow died on 2.6.09.
- iii) The applicant whose date of birth has been shown as 1.1.1965 had attained majority in 1.1.1983. Thus, as on the date of death of employee, he was not a minor.
- iv) The first application for compassionate appointment was made on 26.1.2013, which was rejected on 10.5.2013 (Annexure A/4).
- v) Although an MA ^{seeking condonation of delay, b.b.} has been filed no plausible explanation for such delay in making application is noticed.

6. The DOPT OM dt. 9.10.98 which envisages the scheme for grant of compassionate appointment is explicit that the

"The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness of who is retired on medical grounds thereby leaving his family in penury and without means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency."

On belated requests the scheme lays down

"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."

7. In **State of J&K -vs- Sajjad Ahmed Mir [2006 (5) SCC 766]** Hon'ble Apex Court observed that,

".....such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

8. Hon'ble Apex Court in the case of **Umesh Kr. Nagpal -vs- State of**

Haryana & Ors. [1994 SCC (L&S) 930] has observed as follows :

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

It held

"Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

The Hon'ble Court also held,

"Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."


9. The Hon'ble Apex Court in the case of **Eastern Coalfields Ltd. -vs- Anil**


Badyakar [2009 (3) SLJ 205] has held that compassionate appointment is

not a vested right which can be exercised at any time in future.

10. In the case of ***State of Manipur -vs- Md. Rajaodin [2004 (1) SLJ 247]*** the Hon'ble Apex Court has held that compassionate appointment cannot be claimed or offered after a lapse of time when the crisis is over.

11. Considering the factual matrix in the aforesaid legal backdrop since we find that there has been an enormous delay in approaching the authorities and consequently this forum, we dismiss the MA. Accordingly OA stands dismissed. No order is passed as to costs.


(R.BANDYOPADHYAY)
MEMBER (A)


(BIDISHA BANERJEE)
MEMBER (J)

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