

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00470/2015

Date of order : 17.3.2016

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

RADHA KANTA DAS

VS

UNION OF INDIA & ORS.

For the applicant : Mr.A.Chakraborty, counsel
Ms.P.Mondal, counsel

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

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. This application has been filed seeking quashing of an order dated 5.9.14 whereby and whereunder the Superintendent of Post Offices informed the applicant that his candidature for engagement in GDS cadre on compassionate ground in relaxation of normal rules/requirements was not considered by the Circle Office.

3. It is an admitted fact that the father of the present applicant died while in harness as GDSMC in Garh Krishnagar on 6.1.2010. The impugned order does not reveal any particular reason for not considering the matter. However, reply filed by the respondents indicated that prior to 1.1.11 there was no provision of ear-marking vacancies for compassionate appointment in GDS cadre. The merit point system and reservation of 10% vacancies was introduced w.e.f. 1.1.11. On 14.10.10 it was stipulated that compassionate appointments were to be given only to indigent and deserving cases of 1.11.08. The Director's letter removed the ceiling of 10% and prescribed that compassionate appointments would be considered only in hard and deserving cases which would mean cases over and above 50 merit points. Since the

applicant failed to earn 50 merit points the CRC that met on 22.8.14 could not recommend his case for compassionate appointment.

4 Ld. Counsel for the applicant would strenuously urge that in view of the latest decisions of the Hon'ble Apex Court rendered in **Canara Bank & Anr. v. M. Mahesh Kumar [AIR 2015 SC 2411]**, consideration would be in terms of the rules that were prevalent as on the date of death of the employee and not accordingly to the rules that were introduced subsequently and did not hold the field as on the date of death. Since the said rules would have no retrospective effect.

Ld. Counsel would further argue that even prior to 1.1.11 the erstwhile Gramin Dak Sevak Rules had provisions for grant of compassionate appointment to the legal heirs of the deceased GDS employees.

5. Ld. Counsels for the parties were heard and records were perused.

6. Infact it was found that the GDS rules had provisions for employment assistance on compassionate ground to the family members of the GDS employees, the employees who had died while in harness during the course of their engagement. Further the tenor of the recent decision of the Hon'ble Apex Court in **Canara Bank** (supra) could be noted :

The Hon'ble Court in **Canara Bank** (supra) 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 **Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.** [(2000) 6 SCC 493], the Hon'ble Apex Court 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" :

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 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."

Finally 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)

It would therefore be evident that recently the Hon'ble Apex Court in no uncertain terms has directed consideration in the light of the scheme prevailing as on the date of death of the employee. Furthermore it is obvious, axiomatic and settled law 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.

7. In such view of the matter, the respondents would consider the matter afresh untrammelled by earlier consideration, in the light of the settled law as enumerated supra. The matter be placed before the next meeting of CRC for appropriate consideration as indicated above.

8. The OA is accordingly disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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