

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
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OA: 350/01120/2015

Date of Order: 07.09.2015.

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

Ganesh Varma @ Ganesh Hari & Anr.
Vs.
Union of India & Ors. (E. Rly)

For the Applicant : Ms. A. Gupta, Counsel

For the Respondents : Mr. MK Bandyopadhyay, Counsel

ORDER (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 sides.

2. Seeking employment assistance on compassionate ground this application has been filed by the son and widow of the deceased employee late Biren Prasad Varma who died while in harness.

3. The case of the applicants in a nutshell is as under:

The father of the applicant no. 1 was an employee under the respondent authorities and died in harness on 10.09.1987 leaving behind the applicants, and 3 minor sons. That after his death his widow, applicant no. 2, initially applied for appointment under compassionate grounds in favour of the Applicant no. 1 before the respondent authorities on 10.03.1998. That since then the respondent authorities took no initiative to appoint the applicant on compassionate grounds, due to the sudden death of her father. Despite repeated prayers, ^{as the D.D.} applicants time to time wrote to the respondent authorities to consider their prayer for appointment under died in harness category, ^{as} but the respondent authorities took no initiative till date. Hence the applicant intended to move this application.

4. Learned counsel for the respondents vehemently opposed the claim on the ground that the son became major in 1996 and failed to approach the authorities within one year of attaining majority.

5. I have heard the learned counsel for the parties and perused the materials on record.

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

"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."

(ii) 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."

(iii) In *Umesh Kr. Nagpal -vs- State of Haryana [(1994) 4 SCC 138]* it has been held by the Hon'ble Apex Court as hereunder (with supplied emphasis):

"The question relates to the considerations which should guide while giving appointment in public service on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public service should be made strictly on the basis of open invitation of application and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule, which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and living his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employments. The whole object of granting compassionate employment is, thus, to tide over the certain crisis."

(iv) 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."

(v) 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."

7. 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. 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.

8. In the aforesaid legal backdrop the hopelessly belated claim is rejected. Accordingly, OA is dismissed. No costs.

(Bidisha Banerjee)
Member (J)