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M.A. 350/00486/2015  
O.A. 350/01486/2015

Order dated: 1.7.2016

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

Kulsuma Khatun,  
Daughter of Late Omar Farukh Sheikh,  
Ex-Electrician of GE Panagarh,  
Residing at Village - Banogram,  
Post Office - Rondia,  
Police Station - Bud Bud,  
District - Burdwan,  
West Bengal, Pin - 713 420.  
As unemployed.

..... Applicant.

Versus

1. Union of India,  
Service through the Secretary,  
Ministry of Defence,  
Government of India,  
Kashmir House,  
New Delhi - 110 011.
2. The Chief Engineer Kolkata Zone  
Military Engineer Services,  
Ballygunge Maidan Camp,  
Gurusaday Road,  
Kolkata - 700 019.
3. The Chief Engineer,  
Head Quarter Eastern Command,  
Fort William,  
Kolkata - 700 021.
4. The AGE "T" For Garrison Engineer,  
Military Engineer Services,  
Post Office : Panagarh,  
District : Burdwan,  
Pin - 713 429.

..... Respondents.

For the Applicant : Mr. A. Mookherjee, Counsel  
For the Respondents : Mr. S. Banerjee, Counsel

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## ORDER

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. The applicant in this O.A. has assailed an order dated 13.02.2007 issued by Chief Engineer, CE Kolkata Zone whereby and whereunder her claim for employment assistance on compassionate ground has been rejected in the following manner:

“5. According to the information available on record, the following is the position/Status of the family of the deceased Government servant :-

- (a) The death of the Government servant occurred on 28 Apr 2004. His wife & Dependent 02, survived him. The deceased Government servant's family received Rs. 2,39,833/- as terminal benefits. At present they are in receipt of monthly pension of Rs. 2,505/- plus Dearness Relief.
- (b) The family owns (movable/immovable property(land) worth Rs. 66,000/- with income of Rs. Nil and house (flat) worth Rs. Nil to live in.
- (c) The family has liabilities of 01 marriageable daughter and has No minor School going children.

6. The Board of Officers at this Zone after taking into account each aspect referred to above has considered your case along with other candidates. However, due to more deserving cases and for no vacancies available, your case was not recommended by the Board of Officers for appointment on compassionate ground. In view of this the competent authority is of the view that your case does not deserve employment assistance on compassionate grounds. Moreover, the need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in your case as the Government servant died on 28 Apr 2004 i.e about 02 Years and 08 Months ago as on 31 Dec 2006 and about 08 Years and Nil Months before his normal retirement.

7. Therefore, after due circumspection and consideration in the light of various guidelines of DOP&T and various Judgements of the Hon'ble Supreme Court enclosed that the appointment on Compassionate grounds is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case including the decision of Board of Officers at this Zone, the competent authority has rejected the employment assistance to Kumari Kulsuma Khatun, D/O Late Omar Faruk Sheikh, Ex-Elect of GE Panagarh on Compassionate grounds

8. This is without any prejudice."

3. M.A. seeking condonation of delay has been preferred on the ground that the respondents never communicated the order dated 13.2.2007 on time. The applicant came to know of the rejection only in May 2015.

4. In their parawise comments the respondents have submitted as follows:

(i) "The petitioner lodged complaint against rejection of her prayer for compassionate appointment on 20 Aug 2015, i.e., after eight and a half years of issue of the speaking order by the authority through her learned advocate that too was addressed to only HQ Chief Engineer Kolkata Zone quoting wrong reference vide para 1 of the letter dt 20 Aug 2015 (copy att as Annx C) and within one month after which she has gone to the law."

(ii) "To know the value of the movable/immovable property left by the deceased employee is an essential requirement for considering compassionate appointment case as per existing Govt policies. As in the case of the petitioner, though it was mentioned in the enquiry report (copy att as Annx D) given by the BDO, Galsi I Dev Block, Bud Bud, Burdwan, that a small piece of cultivable land and one residential building (pucca) were possessed by the family but its valuation was not given, the concerned SDO/BDO had to be requested severally to know the valuation and no correspondence were made unnecessarily as alleged by the petitioner."

(iii) "This department has nothing to comment on the reason for which the speaking order addressed to the petitioner and sent by registered post was delivered to someone else by the postal authority. But it is apparent that though the petitioner is living at a distance of only 7-8 km from the office of GE Panagarh where the deceased was last serving, she did not ever contact or make correspondence with the office during last eight and a half years after Feb 2007 (the date of dispatch of speaking order) to know the position of her case."

5. In view of the submissions supra that and in absence of materials in support substantiating service of rejection order dated 13.7.2007, the M.A. is allowed and the delay in filing of the O.A. is condoned.

6. On merits it could be noticed that the basis of the conclusion that the land owned by the family generated Rs. 66,000/- a year is on the basis of whims and fancies, not supported by cogent materials.

7. Further the liabilities of the family and meager terminal benefits and pension are not disputed.

8. In a recent decision in **Canara Bank & Anr. v. M. Mahesh Kumar** [AIR 2015 SC 2411], the Hon'ble Apex Court considered whether the compassionate appointment had to be granted in terms of the scheme that was in vogue that the time of death of the employee. The Hon'ble Apex Court referring to its earlier judgment in **State Bank of India vs. Jaspaul Kaur (2007) 9 SCC 571** deprecated the practice of taking into consideration the terminal

benefits for the purpose of consideration for compassionate appointment.

The Hon'ble 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."*

The Hon'ble Court very eloquently and emphatically declared in the following words 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 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 referring to 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, apart from the factors to be borne in mind, while considering a case of compassionate appointment as were laid down in **Umesh Kr. Nagpal (supra)**, the additional principles that could be culled out from the judgment supra would be that :

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

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.

What transpires from the aforesaid enumerations are that 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 backdrop the respondents are directed to consider the case in the light of the decisions supra, came to a definite finding about the financial condition of the family and pass appropriate, reasoned and speaking order, within 3 months.

O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)  
Judicial Member

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