

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

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No. O.A. 1442 of 2015

Order dated: 07.04.2016

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

BABLU KAR & ANR.

VS.

UNION OF INDIA & ORS. (Posts)

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

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. The Counsels were heard.

2. This application has been filed seeking the following reliefs:

- (a) *Speaking Order dated 03/07/2015 issued by The Director of Postal Service (HQ), office of the Chief PMG, W.B. Circle, Kolkata - 700 012, cannot be tenable in the eye of law and therefore the same may be quashed.*
- (b) *An Order do issue directing the respondents to review the case of the applicant No.1 for grant of an appointment on compassionate ground and also to grant him an appointment at an early date.*
- (c) *Leave may be granted to file this Original Application jointly under Rule 4(5)(a) of the CAT Procedure Rule."*

3. The excerpts of the speaking order, impugned in the present O.A., would read as under:

DEPARTMENT OF POSTS, INDIA
OFFICE OF THE CHIEF POSTMASTER GENERAL,
WEST BENGAL CIRCLE
KOLKATA - 700 012

No.SFB/Z-13/06/GDS/RLX

Dated at Kol-12 the 03/7/2015

This is regarding compliance of Hon'ble Court's order date 29-04-2015 in WPCT No.432 of 2013 filed by Sri Bablu Kar son of Late Bholanath Kar ex-GDSMD, Kishorechak BO under Tamluk Division died in harness on 23-10-2013, claiming engagement in GDS cadre on compassionate ground.

The applicant filed OA No. 1113 of 2012 and MA No. 562 before Hon'ble CAT, Calcutta Bench.

Hon'ble Tribunal pleased to reject both MA & OA being devoid of merit and hopelessly time barred vide order dated 03-09-2013.

Being aggrieved, the applicant Sri Bablu Kar filed WPCT No.432 of 2013 before Hon'ble High Court Calcutta Challenging the order of Hon'ble CAT as aforesaid.

Hon'ble High Court vide order dated 29-04-2015 has been pleased to dispose of the Writ Petition filed by the said Sri Bablu Kar claiming compassionate engagement in GDS post with direction upon the respondent authorities to consider the claim of the petitioner in terms of this order (under the guidelines prevailing at the time of death of employee concerned) without any delay and positively within a period of two months from date.

Compassionate appointment/engagements are given to a dependent of deceased GDS in indigent and deserving cases. So, the objective of the scheme for compassionate engagement is same and one for all times. But to ensure complete transparency and uniformity, the system of allocation of points to various attributes based on a hundred point scale has been worked out by the Deptt. of Posts, MOC & IT on review of the procedure for selection.

The case of Sri Bablu Kar was placed before the Circle Relaxation Committee meeting in GDS cadre held on 16-6-2015 for consideration. The members of the Circle Relaxation Committee have observed that the applicant Sri Bablu Kar has earned 33 merit points which is less than 50 merit points required to treat a case as hard and deserving (as per Deptt of Posts, MOC&IT Govt. of India Communication No. 17-17/2000-GDS dtd. 09/03/2012). So the case of Sri Bablu Kar for engagement in GDS post on compassionate ground could not be recommended by the CRC as the case of Shri Bablu Kar did not come within the purview of hard and deserving cases.

This is issued in compliance of Hon'ble High Court's order dated 29-04-2015 in WPCT No. 432 of 2013 filed by Sri Bablu Kar.

(S.S. Kujur)
Director of Postal Services (HQ)
O/o the Ch.PMG, WB Circle, Kolkata-700012

4. The Ld. Counsel for the applicant would argue that, as the employed died on 23.10.2003 the cause of action arose in 2003 itself, therefore it was incumbent upon the authorities to consider the case in accordance with the prevailing guidelines of 2003 and not in accordance with the Circular dated 9.3.2012 which was not to be given retrospective effect in terms of the recent decision of the Hon'ble Apex Court in Mahesh Kumar. Such an action was in gross violation of the mandate of the Hon'ble High Court that directed consideration "under the guidelines prevailing at the time of death of employee concerned" as also the settled law.

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5. Learned counsel would place reliance on the latest judgment of Hon'ble Apex Court in **Canara Bank & Anr. v. M. Mahesh Kumar** [AIR 2015 SC 2411], where 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 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)

6. 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) case of compassionate appointment would be considered "as per the scheme which was in vogue at the time of death of the concerned employee".

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

8. The OA is accordingly disposed of. No costs.

(BIDISHA BANERJEE)
Member (J)

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