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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 248/2003

New Delhi this the 18th day of September, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Subhash Yadav,
S/o late Sh. Ram Bharose,
R/o 26/383, Tilot Puri,
Delhi.

-Applicant

(By Advocate Sh. S.L. Hans)

-Versus-

1. Union of India through
Secretary, Ministry of
Urban Development,
Govt. of India,
Nirman Bhavan,
New Delhi.

2. Chief Engineer,
CPWD,
Nirman Bhawan,
New Delhi.

-Respondents

(By Advocate Smt. Avinash Kaur)

O R D E R

By Mr. Shanker Raju, Member (J):

Impugned in this OA is respondents' order dated 21.10.2002, rejecting the request of applicant for compassionate appointment.

2. Applicant's father who died in harness has left behind three sons and a widow. One son is working in CPWD and the other two are unemployed and living with the widow in the village.

3. The claim made on behalf of applicant for compassionate appointment was turned down as there has been an earning member in the family.

4. Aforesaid order was assailed in OA-3814/2001 and by an order dated 7.8.2002 quashing order dated

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8.8.2001 matter was remanded back to the respondents for reconsideration in the light of clause 10 (a) of the DOPT Scheme on compassionate appointment issued in 1998.

5. In pursuance thereof, on examination claim of applicant was considered upto the level of Secretary, Department of Urban Development and was rejected on the ground that the family received a sum of Rs.1,55,000/- as terminal benefits and the widow is drawing a family pension of Rs.1713/- per month.

6. Learned counsel for applicant Sh. S.L. Hans, strongly relying upon the decision of the Apex Court in **Balbir Kaur v. Steel Authority of India**, (2000) 6 SCC 493 that accord of terminal benefits cannot be the sole criteria to reject the claim of compassionate appointment.

7. Further relying upon the decision of the High Court of Delhi in **Jagwati Devi v. Union of India**, 102 (2003) DLT 414 DB, contended that restricting the compassionate appointment and waiting period to one year as per DOPT OM dated 3.12.1999 has been held to be unsustainable.

8. Further, it is contended that no strict compliance has been made to the directions of this court as consideration was not as per clause 10 (a) of the Scheme ibid. In this regard it is stated that both the sons are unemployed and one of the sons Permanand who lives in village works as daily wager as and when work is available.

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It is further stated that applicant has undertaken to support the mother and his brothers if accorded compassionate appointment.

9. On the other hand, respondents' counsel Ms. Avinash Kaur vehemently opposed the contentions and stated that the matter on being remanded back was considered as per clause 10 (a) of the Scheme and was not found deserving. There is no vested right for compassionate appointment. The case of applicant was considered at the highest level and was not found deserving and the family indigent keeping in view the terminal benefits and family pension. Relying upon the decision of a coordinate Bench of this Tribunal in OA-2986/2001 **Sanjay Mishra v. Union of India**, decided on 27.9.2002 it is contended that similar claim has been rejected.

10. I have carefully considered the rival contentions of the parties and perused the material on record. It is not denied that claim of applicant was remanded back to be considered in the light of clause 10 (a) of the Scheme *ibid*. As per the aforesaid provision in a deserving case if a satisfaction is arrived at by the Secretary of the Ministry concerned on justification regarding number of dependants, assets and liabilities left by the government servant, income of the earning member and also the fact that the earning member is residing with the family of the government servant and whether he should not be a source of support to other members of the family. Even in such cases having an earning member in the family a family member may be considered for compassionate appointment.

11. If one has regard to the aforesaid provision the only right is of consideration keeping in view several factors. In the orders passed by the respondents, which are assailed herein, what has been contended is that widow had a share of one room in kacha house in the village. As the elder son is employed in CPWD as chowkidar, the second son is settled in the village the family has received a sum of Rs.1,55,000/- and the widow is getting a pension of Rs.1713/- per month the family is not in penury.

12. The object of compassionate appointment is to redress the family from financial constraints and penury. It is to tide over the sudden financial crises. One has no indefeasible right to be appointed but a consideration as per the rules is mandated. Recently the Planning Commission has figured out a poverty line below which the compassionate appointment in the terms of indigent family is to be considered. The said figure is Rs.1767/- for a family of five members.

13. The matter has been remanded back for consideration. The Secretary has applied his mind keeping in view the attending circumstances, liabilities etc. The family now consists of two brothers and a widow. The amount which is now being paid as family pension including D.A. proportionately for a family of three is above the poverty line.

14. Moreover, I find that applicant's father died in 1998 and the family has managed to survive, it cannot be treated as indigent.

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15. Having considered the case in true perspective keeping in view the Scheme and its provisions I do not find any infirmity in the orders passed by the respondents. The compassionate appointment cannot be claimed as an alternate mode to gain entry in government service in isolation of the laid down procedure for such appointment.

16. The decision of the Apex Court in **Balbir Kaur's** case (supra) is distinguishable, as the same is confined to the facts and circumstances in SAIL where there was a scheme of family benefits equated with compassionate appointment. Accordingly, finding no merit in the present OA the same is dismissed. No costs.



(Shanker Raju)
Member (J)

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