

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,

ALLAHABAD BENCH, ALLAHABAD

Allahabad, this the 27th day of November 2019

Hon'ble Mr. Rakesh Sagar Jain – Member (J)

Original Application No. 330/00010/2018
(U/S 19 Administrative Tribunals Act, 1985)

Ripu Daman Singh, aged about 31 years, son of Late Shri Indrajeet Singh, R/o Sundar Vihar Colony, Kerakatpuri, Varanasi.

.....Applicant

By Advocates – Shri Jaswant Singh

V E R S U S

1. Union of India through its Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi.
2. Director of Subsidiary Intelligence Bureau, Ministry of Home Affairs, Ministry of Home Affairs, North Block, New Delhi.
3. Joint Director, Subsidiary of Intelligence Bureau (MHA), Government of India, Varanasi.
4. Under Secretary, Department of Personnel & Training Estt. (D).

.....Respondents.

By Advocate : Shri A.K. Rai

O R D E R

1. The present O.A. has been filed by the applicant Ripu Daman Singh under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-

- (i) *To issue order or direction in the nature of certiorari quashing the impugned orders dated 6.4.2016 and 30.11.2017 passed by Assistant Director, Subsidiary Intelligence Bureau, Government of India, New Delhi.*
- (ii) *To issue order or direction in the nature of mandamus directing the respondents to consider the appointment*

of the applicant on compassionate ground on any post suitable as per his qualification.

- (iii) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.
- (iv) To award cost to the applicant".

2. Case of applicant is that on death of his father Indrajeet Singh while working as Junior Intelligence Officer – I/G in the office of Subsidiary Intelligence Bureau, Ministry of Home Affairs, Varanasi who expired on 01.12.2009, applicant's mother filed an application dated 11.01.2010 for appointment of the applicant on compassionate ground.
3. It may be noted that there was previous litigation against the rejection of the compassionate appointment application and which order of rejection was set aside by the Tribunal vide order dated 07.04.2015 and direction was given to the respondents to reconsider the case of applicant for compassionate appointment.
4. On reconsideration, the said application was rejected by the respondents vide impugned order dated 06.04.2016 which has been assailed in the present O.A. The impugned order dated 06.04.2016 reads as under:-

"Whereas Shri Ripu Daman Singh, S/o Late Shri I. J. Singh, Ex-JIO-I/G of IB had filed an OA No. 1042/2012 Vs UOI & Ors. before the CAT, Allahabad bench, Allahabad for his appointment in IB on compassionate grounds.

2. And whereas, the CAT, Allahabad bench, Allahabad disposed off the case vide order dated 07.04.2015 with the direction to the respondent to re-consider the case of the applicant for appointment on compassionate grounds within six months. Hon'ble CAT further agreed to give three months's additional time for re-considering the case of the petitioner.
3. And whereas, the case of Shri Ripu Daman Singh was re-considered by the Compassionate Appointment Committee on the basis of prevailing guidelines/rules of DoP&T governing the

compassionate appointment, the applicant should apply afresh. He was informed about the above decision vide out memo of even no. Dated 13.11.2015.

4. And whereas, in response to our above memo dated 16.11.2015 Shri Ripu Daman Singh applied afresh requesting for compassionate appointment. Accordingly, his case was placed before the Compassionate Appointment Committee, which observed as below:

5. The family of the deceased official, comprise his wife and four sons. Out of four sons, three are employed in Govt. Services and are financially well off. In addition to this, Shri Ripu Daman Singh was pursuing his MBA in London, UK, prior to his father's death, which reflects the sound financial condition of the family. Further, the wife of the deceased govt. Servant got Rs. 7545/-p.m. + D.A. as pension and an amount of Rs. 10 Lakh (approx) as DCRG Besides having some income from a piece of agricultural land at her native place. All these facts clearly establish that the family has enough dependable means of subsistence and there is no financial destitution or economic distress.

6. Furthermore, the very objective of offering compassionate appointment is to ensure that the deceased' family is not driven to hardship due to penury. The Supreme Court's judgment dated May 04, 1994 in the case of Umesh Kumar Nagpal Vs. State of Haryana and others (JT 1994(3) S.O.525 laid down that offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible. And, compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

7. And therefore, taking into account all the facts mentioned above, the Compassionate Appointment Committee observed that the case of Shri Ripu Daman Singh does not meet the eligibility criteria as mentioned in the scheme for Compassionate Appointment, as the family is not found in penury/destitution. Hence, the Committee did not recommend Shri Ripu Daman Singh for appointment on compassionate grounds."

5. In the counter affidavit, it has been averred that:-

"10. That in reply to the contents of Para 1 of the Original Application, it is submitted that the order dated 06.04.2016 30.11.2017 were issued in the light of findings of CAC, which did not find the case fit for recommendation on the basis of DOP&T guidelines on compassionate appointment viz. a viz financial condition of the family. While considering his case, CAC took a holistic view and observed that three (3) brothers of applicant are employed in Government jobs. Their separate living cannot be considered as a reason for giving employment to the applicant. The Committee further observed that there are only two members left in family, who are unemployed i.e. Smt. Nirmala Singh and the applicant. Smt. Nirmala Singh is getting pension of Rs. 16,000/- per month (which is to be revised @ Rs. 19,600 + D. R. as per 7th CPC report and the applicant is living with her. Further, the family owns some agricultural land in native village. Keeping in view this fact and other aspect of case such as size of family, source of earning, liability etc., the Committee did not recommended the case of the applicant. Any allegation are contrary to the same are denied and not admitted.

22. That in reply to the contents of Para 4.17 of the Original Application, it is submitted that the request for compassionate appointment are decided taking the family in entirety, which includes deceased's spouse and children. In the instant case, three out of four children of deceased were gainfully employed and left alone members of the family i.e. wife of deceased and applicant were living separately having sufficient source of income to maintain livelihood such as family pension @ Rs. 16,000/- p.m. (which is to be revised @ Rs. 19,600 + D. R. as per 7th CPC report) and also some earning from agricultural land. Hence, family cannot be said to be in destitution. Any allegation are contrary to the same are denied and not admitted.

28. That in reply to the contents of Para 4.25 of the Original Application, it is submitted that as directed by this Hon'ble Tribunal in its order dated 07.04.2015 in Original Application No 1042/2012, the case of applicant was considered by Compassionate Appointment Committee on 26.10.2015 as per the provisions of the scheme for compassionate appointment circulated by the DOP&T in 1998. It is however, to be mentioned here that no scheme for compassionate appointment was issued in the year 2007. By the time the case of the applicant was reconsidered on 26.10.2015, the marital clause was removed by DOP&T by another FAQ dated 25.02.2015. On 26.10.2015, the Committee re-examined the case and directed the applicant to apply afresh, as a period of over 5 years had lapsed since his first application was rejected by the then concerned authorities. On receipt of his application in prescribed format and ascertaining family's financial condition afresh, the case was referred to the 'CAC' on 12.01.2016. However, which after due deliberation and considering all relevant facts on records did not find it fit for recommendation on the ground that the family was not fond in penury/destitution. On 12.01.2016, the Committee observed that out of four sons, three are gainfully employed in Government services and are financially well off. Further, left alone members i.e. Smt. Nirmala Singh (wife) and applicant are in receipt of pension @ Rs. 19,600/- + D. R. as per 7th CPC report) and having some income from agricultural land. These facts clearly establish that the family was not in penury and has enough dependable means of subsistence and there is no financial destitution. The applicant was informed of his on 06.04.2016. Any allegation are contrary to the same are denied and not admitted.

44. That the contents of paras 5 (I) & (J) of the Original Application are accepted that the applicant took admission in MBA (Hospitality) Course in Ealing, Hammersmith and West London College, London. However, leaving studies by the applicant on the death of this father cannot be equated as if

family is in destitution. May be the family cannot afford foreign studies of one of its members but surely, it had enough means to sustain itself. Other sons of deceased were already gainfully employed in Government Jobs".

6. Respondents have taken the view that applicant does not meet the eligibility criteria as mentioned in the scheme for compassionate appointment as the family is not found in penury/destitution and rejected the application for compassionate appointment on the following grounds:-
 - (i) *The facts that (a) 3 sons of deceased are Government employees and are financially well off; (b) applicant was pursuing his M.B.A. in London (U.K.) prior to his father's death; (c) wife of deceased government servant receives Rs.7545 + D.A per month as pension, amount of Rs.10 lakhs as D.C.R.G. and income from agricultural land at her native place, establish that the family has means of subsistence and is not in penury.*
 - (ii) *As per the legal position, offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legal impermissible. And, compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.*
7. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record as well as the written arguments submitted by the parties.
8. Challenging the correctness of impugned order, learned counsel for applicant argued that the ground of three sons of deceased employee being employed in Government service taken by respondents to disallow the application is not tenable for the reason that mother of applicant in her first representation had

stated that her sons are living separately and do not support her in any manner whatsoever and placed reliance upon **judgment dated 25.05.2017 in O.A. No. 1314 of 2014 titled G.P. Dwivedi Vs. UOI and Ors. passed by C.A.T., Allahabad Bench**. Learned counsel further argued that applicant was pursuing M.B.A. from London for which his father had taken an educational loan from the Bank and after the death of his father, applicant discontinued his studies in London and returned to India. It was also argued that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance on compassionate ground and placed reliance upon **Canara Bank Vs. M. Mahesh Kumar, (2015) 7 S.C.C. 412**. It was also argued by the learned counsel for applicant that the agricultural land has 9 co-sharers and therefore cannot be made a ground that applicant is having an income from the said land, which is enough to sustain their livelihood. Learned counsel for applicant argued that the impugned order deserves to be set aside being in violation of statutory rules and principle of law.

9. On the other hand, learned counsel for the respondents submitted that the order has been passed in accordance with scheme providing for compassionate appointment and grounds taken by the respondents to reject the application is in accordance with law and therefore, the impugned order cannot be faulted with, in any manner whatsoever. Hence O.A. deserves dismissal.
10. Respondents have denied the compassionate appointment on the ground that three sons of deceased are employed in Government service and well off financially. Undoubtedly deceased employee has three sons in Government employment but the mother of applicant has stated in her first representation that her sons are living separately and do not support her in any manner whatsoever. This position of the applicant has not been discussed by the respondents in the impugned order and adversely affects the finding given that the sons are financially well off and, therefore, applicant is not entitled to compassionate appointment.

11. It is a well settled principle of law that an order which effects the civil rights of a person should be a reasoned order and should indicate how the respondents arrived at the conclusion for rejecting the cause of an applicant. In this regard, I may refer to ***Mukesh Kumar Vs. Union of India, (2007) 8 SCC 398***, wherein the Hon'ble Apex Court held that:-

"There is no indication as to on the basis of which materials the conclusion was arrived at. It is also not clear as to what were the materials before the Circle Level Selection Committee to conclude that the family was not in financially indigent condition".

12. In the present case, there is no indication available on the reading of the impugned order as to how the respondents arrived at the conclusion that the family was not found to be in financially indigent condition. No doubt the respondents have referred to factual condition of the family but how the respondents marshalled these facts to come to a reasoned conclusion that applicant is not entitled to compassionate appointment is singularly lacking in the impugned order.

13. Respondents have given the reason that three sons of deceased employee are employed in Government service and are financially well off. Whether the three sons are financially well off is a matter of speculation by the respondents. There is no evidence on record to show that the other sons of the deceased even though Government employees, are financially well off to support the family of the deceased. Even so, respondents have not taken into account the stand of applicant's mother that the said three sons are not supporting her.

14. Regarding the second ground taken by the respondents in the rejection order that applicant was pursuing his M.B.A. in London, U.K. which admittedly the applicant discontinued after the death of his father. Reference may be made to the averments in the

counter affidavit that "However, leaving studies by the applicant on the death of his father cannot be equated as if family is in destitution. May be the family cannot afford foreign studies of one of his family members but surely, it had enough means to sustain itself". I fail to understand as to what is the relevance of the applicant studying in London and leaving his studies after the death of his father, is to be the reason to reject the application for compassionate appointment.

15. The third ground in the rejection order is that the wife of deceased Government official is getting a pension as well as an amount of Rs.10 lacs approximately as D.C.R.G. It is a well settled principle that compassionate appointment is to be made strictly in accordance with the scheme for compassionate appointment. As held in *Bhawani Prasad Vs. Union of India, (2011) 1 S.C.C. (L&S) 667* by Hon'ble Apex Court that "Compassionate appointment 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 dehors the scheme".

16. Perusal of the Scheme of compassionate appointment of the year 1998 (Annexure A-14 of the O.A.) does not lay down that the retiral benefits and pension would be taken into account while deciding the question of the financial condition of the family of the deceased Government official. Therefore, compassionate appointment cannot be refused on this ground. It would be profitable to refer to the observations of the Hon'ble Apex Court in ***Govind Prakash Verma Vs. LIC, (2005) 10 SCC 289*** wherein it was held that:-

"In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half)

and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules".

17. Taking into consideration law laid down in the case of **Govind Prakash Verma (supre)**, this contention of respondents cannot be accepted and, therefore, rejected.

18. So, in the instant case, the ground for rejecting the case for compassionate appointment on ground of receipt of retiral benefits and pension by the wife of deceased Government servant is untenable, keeping in view the principle laid down by the Hon'ble Apex Court in **Govind Prakash Verma case (supra)** that the scheme of compassionate appointment is over and above whatever is admissible to the family of deceased employee as benefits of service which the family gets on the death of the employee.

19. The rejection order also mentions that the wife of deceased Government servant is having some income from a piece of agricultural land at her native place. In this regard, learned counsel for applicant argued that there are 09 co-sharers in the said land and that a very meagre income is derived from the said land. Other than a bald statement in the impugned order, no reason is coming out in the impugned order to show as to what amount of income was being derived from the land so as to refuse the compassionate appointment. In this regard, I may refer to **Govind Prakash Verma (supra)**, where the Hon'ble Apex Court held that:-

"So far as the question of gainful employment of the elder brother is concerned, we find that it had been

given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account".

20. In view of the facts and circumstances of the case and the legal position as discussed above, the impugned orders dated 6.4.2016 and 30.11.2017 are set aside. Respondents are directed to re-consider the case of applicants and decide the compassionate appointment application within a period of 4 months from the date of receipt of copy of this order by a reasoned and speaking order with intimation to the applicant. Accordingly, O.A. is disposed off. No order as to Cost.

(RAKESH SAGAR JAIN)
Member (J)

Manish/-