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**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

DATED THIS THE 20th DAY OF MARCH, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/00927/2018

B. Mythili,
D/o Late C. Bulkanin,
No.31, Eastr Namachivayapuram,
Choolaimedu, Chennai 600 094.

...Applicant

-versus-

1. The Union of India rep., by
the Chief Engineer,
Military Engineer Services,
Chennaione,
Island Grounds,
Chennai 600 009.

2. The Commander Works Engineer,
Pallavan Salai,
Chennai 600 002.

...Respondents

By Advocates:

M/s R.S. Anandan, for the applicant.

Mr. M. Kishore Kumar, for the respondents.

T.J

O R D E R
(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"...to call for the records relating to the first respondent herein in No..10246/Gen/3866/E1B(3) dated 23.11.2017 and the consequential order passed in No.10246/CC/169/EIB(S) dated 12.4.2018 and quash the same and consequently direct the respondents to confer the compassionate ground appointment to the applicant forthwith and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice."

2. The brief facts of the case, according to the applicant, are that the applicant is the daughter of Late C. Bulkanin who died in harness while working as Mason (HS) of GE, Avadi on 18.1.2011 leaving behind his wife, the applicant herein and his mother. The applicant's father was the only bread winner of the family and there was no other source of income. The applicant was born on 24.3.1994 and was aged 16 years, nine months and 24 days as on 18.1.2011 and was a minor at the time of death of her father. She had completed Higher Secondary school education and was eligible for LDC post. On attaining majority, she submitted a representation seeking compassionate ground appointment on 5.8.2013. Her case was considered and rejected by the respondents by order dated 30.11.2015 as she secured only 56 Relative Merit Points as



against the cut off mark of 66 for the selected candidates for various posts for the 2013-14 board. Her case was considered in the 2014-15 and 2015-16 board but rejected due to non-availability of adequate vacancies as well as comparatively low merit points as against the cut off marks for various posts. Her case was again considered in the 2016-17 board but rejected vide order dated 23.11.2017 on the very same grounds as aforesaid.

3. The case of the applicant is that the Scheme for compassionate appointment based on Relative Merit Points and revised procedure for selection was issued by the Ministry of Defence on 14.5.2010 according to which, the applicant was to be awarded the Relative Merit points by assessing the condition of the family as on the date of death of the Government employee. But the respondents have rejected her claim for appointment on compassionate ground based on the Relative Merit Points awarded on the date of submitting her application for compassionate appointment which is illegal. Hence the applicant has filed this OA seeking the above reliefs.

4. Per contra, the respondents have filed a detailed reply statement stating that on receipt of the application submitted by the applicant, her case was considered for compassionate appointment. The main object of the Scheme is to alleviate the family of the deceased Government servant from indigence and help it get over the emergency. As per DOP&T guidelines and policy in vogue, the date of assessment of



Board is to be considered for assessing Relative Merit Points. Based on the guidelines, if the children are below 18 years on 1st April of the Board proceeding of the year, 05 marks will be allotted to each minor child. But if the children became major as on 1st April, 05 marks will not be granted. If the request for consideration of 05 marks towards minor children is considered as on the date of death, then the applicant is not eligible for compassionate appointment being minor at the time of death of her father. As the applicant became adult as on the date of application for appointment on compassionate ground, 05 marks on "minor" cannot be granted. The points awarded to the candidates are based on the policies and, accordingly, the applicant was awarded 56 points. Hence the candidates who have been awarded 61 points in the year 2015-16 and 59 points in the year 2016-17 were conferred with appointment.

5. The learned counsel for the applicant would submit that this Tribunal in OA.109/2016 dated 26.8.2017 had held that only the date with reference to the death of the Government employee is relevant for assessment of minority based eligibility by applying parameters/weightage as per the Circular issued in the year 2010.

6. The learned counsel for the respondents would submit that as per the guidelines, if the children are below 18 years as on 1st April 05 marks would be allotted to each minor child and if the children become major as on 1st April, 05 marks would not be granted.

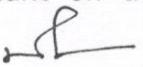


He has also referred to the Judgement of the Hon'ble Apex Court in the case of State Bank of India & Ors., vs. Sheo Shankar Tewari dated 8.2.2019 wherein a Division Bench of the Hon'ble Apex Court has directed the Registry to place before a Larger Bench for decision on the issue of governing Scheme.

7. Heard the learned counsel for the respective parties and considered the pleadings and documents on record.

8. The limited issue for consideration in this OA is whether the applicant is eligible for award of 5 points in the category of "No. of Minor Children" which would raise the total from 56 to 61 and render her eligible for appointment. Secondly, whether in the criteria of "No. of Minor Children", weightage points should be assigned and eligibility assessed with reference to the date on which the applicant's case was examined for consideration or with reference to the date of death of the employee.

9. Admittedly, this is the second round of litigation before this Tribunal. Earlier the applicant had filed OA.187/2018 seeking the same relief, wherein this Tribunal by order dated 14.2.2018 disposed of the OA directing the respondents to reconsider the applicant's prayer for grant of Relative Merit Points and pass a reasoned and speaking order. In pursuance of the above order, the respondents have passed an order dated 12.4.2018 rejecting the request of the applicant on the



ground that there is no such provision for category of "Minority Status" against which marks could be awarded to the applicant. Pursuant to the above order, the applicant has filed this OA seeking the above relief.

10. The Hon'ble Apex Court in the case of Canara Bank & Anr. vs. M. Mahesh Kumar dated 15.5.2015 has held that the Compassionate Appointment has to be considered as per the Scheme which was in vogue at the time of death of the concerned employee. Here in this case, the Government employee died on 18.01.2011. On the date of death of the Government employee, the applicant was a minor aged 16 years and entitled to be awarded 05 points by applying parameters/weightage as per 2010 Circular. According to Ministry of Defence ID No.19(2)/2017-D(Lab) dated 09.01.2018, certain conditions have been laid down as follows:-

(a) For cases where death of the deceased Govt. servant occurred prior to 9.3.2001, parameters of 'terminal benefits' given in MoD ID note dated 2.11.1993 will be applicable.

(b) For cases where death of the deceased Govt. Servant occurred on or after 9.1.2001 till 21.1.2010, parameters of 'Terminal Benefits' given in MoD ID note dated 9.3.2001 will be applicable, and

(c) For cases where death of the deceased Govt. Servant occurred on or after 22.1.2010 till 31.12.2015, parameters of "Terminal Benefits" given in MoD ID note dated 23.1.2010 will be applicable.

From the above, it is clear that the applicant is governed by the condition No.3 above, which states that parameters of "Terminal



Benefits" given in MoD ID note dated 23.1.2010 is applicable. Now where it is stated that Relative Merit Points should be awarded based on the parameters available as on the date of application for compassionate appointment. Hence, point 05 in respect of minor child is applicable to the case of the applicant.

11. The Relative Merit Points awarded to the applicant as on the date of death the Government employee are as follows:-

| | |
|--|-----------|
| (i) Quantum of family pension | 14 points |
| (ii) Terminal benefits | 03 points |
| (iii) Monthly income of the family from other sources | 05 points |
| (iv) Movable/Immovable property held by the family | 10 points |
| (v) No. of dependents | 15 points |
| (vi) No. of unmarried daughters | 05 points |
| (vii) No. of minor children | N I L |
| (viii) Left over service | 04 points |
| <hr/> | |
| Total | 56 points |
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12. ~~12.~~ Incrementing the above points by addition of 05 marks for "No. of minor children" would increase the merit points from 56 to 61 which would enable the applicant eligible for compassionate appointment, since the candidates who were awarded 61 points and 59 points for the years 2015-16 and 2016-17 respectively were conferred with appointments.

13. Therefore, having regard to the facts and circumstances of the case and taking note of the observations of the Hon'ble Supreme Court



in the case of Canara Bank & Anr., Vs. M. Mahesh Kumar and others (2015 (7) SCC 412) supra, I do not find sufficient reason to deny the benefit of marks to the applicant under the caption of "No. of Minor Children" and accordingly direct the respondents to reconvene a meeting to consider the case of the applicant as on the date of death of the Government employee and award Relative Merit Points accordingly. If the applicant is found to have obtained merit points above the cut off, she shall be considered for compassionate appointment. The above direction shall be complied with within a period of three months from the date of receipt of a copy of this order.

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

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