

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

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O.A./350/1288/2016

Heard on 12.09.2019

Date of Order: 11.11.19

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

1. Purnima Ghosh, wife of Late Keshab Chandra Ghosh, died in harness before the retirement as Sr. Accounts Officer under the Principal Controller of Accounts (Fys.), Ministry of Defence, Calcutta on 19.3.1999, aged about 65 years, residing at Jagacha, Post-Office-Jagacha, G.I.P. Colony, Howrah-711321.
2. Rahul Ghosh, son of Keshab Chandra Ghosh, residing at Jagacha, Post-Office-Jagacha, G.I.P. Colony, Howrah-711321

.....Applicants

Vrs.

1. Union of India,
Service through the Secretary,
Ministry of Defence, South Block, New Delhi.
2. The Controller General of Defence Accounts,
Ministry of Defence, Govt. of India,
Having its office at West Block V,
R.K.Puram, New Delhi-110066.
3. The Principal Controller of Defence Accounts,
Having its office at Ulan-Batar Road, Palam,
Delhi Cantonment-110010.
4. The Principal Controller of Accounts (Fys.),
Ministry of Defence,
Having his office at 10A, Shaheed Khudiram Bose Road,
Kolkata-700001.
5. The Assistant Controller of Accounts (A&N),
Ministry of Defence,
Having his office at 10A, Shaheed Khudiram Bose Road,
Kolkata-700001.

.....Respondents

For the Applicant(s): Mr. P.C.Das, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER

Bidisha Banerjee, Member (J):

Two applicants have sought for the following reliefs:

"a) Leave be granted to move one single application jointly under Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules, 1987 as the applicants have got a common grievances and both of them are similarly circumstanced persons;

b) To quash and/or set aside the impugned order No. 778/AN-II/COMPAPPTT/RG dated 12.07.2016 issued by the Joint Controller of Accounts (Fys.) whereby and whereunder without considering the observation made by this Hon'ble Tribunal in paragraph 7 and 8 of the order dated 17.11.2015 the case of the applicants has been rejected on the same ground which was rejected on the earlier occasion being Annexure A-30 of this original application.

c) To quash and/or set aside Copy of the impugned order being No. 78/AN/II/COMPAPPTT/RG dated 12.08.2014 issued by the Principal Controller of Accounts (Fys.) in respect of rejecting your applicants' claim for compassionate appointment by repeating the same thing which they have repeated earlier in the light of the judgment passed in the case of Balbir Kaur & Anr. -Vs- Steel Authority of India Limited & Anr. Reported in 2000 SCC Vol. 6 page 943=AIR 2000 (SC) page 1596 and also in the case of Govind Prakash Verma -Vs- Life Insurance Corporation of India reported in 2005 SCC(L&S) at Page 501 and in the light of the latest principle laid down by the Hon'ble High Court at Calcutta in the cases of Angurbala maity & Ors. -Vs- State of West Bengal & Ors. whereby the Hon'ble High Court has held that possession of a piece of agricultural land cannot disentitle the applicant No.1 for appointment on compassionate ground and in the case of Rajendralal Biswas -Vs- State of West Bengal & Ors. whereby the Hon'ble High Court has held that compassionate appointment cannot be ignored on the ground of delay, here the department is sitting tight over the matter for more than 13 years and for that the applicants will not be held responsible being Annexure A-27 of this original application;

d) To pass an appropriate order directing upon the respondents authority to consider the cases of the applicants for grant of appointment on the compassionate ground in the light of the para 4 of the agenda item as per the Minutes of the meeting dated 25.3.2009 vide Annexure A-17 of this original application wherein a

large number of vacancies are 5000 in Group-C level in the same department and against any suitable vacancy your applicant No.2 may be accommodated on compassionate ground to save the distress condition of his family and also in the light of the judgment passed in the case of Balbir Kaur & Anr. -Vs- Steel Authority of India Limited & Anr. Reported in 2000 SCC Vol.6, Page 943=AIR 2000 (SC) page 1596 and also in the case of Govind Prakash Govind Prakash Verma -Vs- Life Insurance Corporation of India reported in 2005 SCC(L&S) at Page 501 and also in the light of the judgments passed in O.A. No. 594 of 2006 and O.A. No. 647 of 2008 dated 25.8.2008 by this Hon'ble Tribunal and quash and/or set aside the impugned letter dated 23.5.2012;

e) To pass an appropriate order directing the respondent authority to consider the case of the applicants in respect of grant of compassionate appointment in favour of the applicant No.2 in any suitable post to save the distress condition of the family of the deceased employee."

2. The admitted facts of the case are as follows:

The husband of the applicant Purnima Ghosh, namely Keshab Chandra Ghosh, was employed as Accounts Officer. He died while in harness, on 19.03.1999. Purnima Ghosh, applicant No.1 herein, requested in her application dated 07.04.1999 for employment assistance on compassionate ground for her son Shri Rahul Ghosh, applicant No.2 in this O.A. Her request was examined by the competent authority, who felt that Shri Rahul Ghosh, did not deserve the benefit of compassionate appointment. Aggrieved, the applicants preferred O.A. 1046/2009 before this Tribunal. This Tribunal in consideration of the Original Application No. 1046 of 2009 preferred against the order refusing appointment in respect of Shri Rahul Ghosh on compassionate ground, passed an order dated 11.02.2010 directing the respondents to consider the case of the applicants for compassionate appointment, under O.M. dated 05.05.2003, as a last chance. The department filed Writ Petition No. 16 of 2011 challenging this order. Hon'ble High

Court, Calcutta vide order dated 01.08.2011 held "We do not wish to exercise our discretion on the other part of the order, where the Tribunal asked the authority to consider him as last chance".

To comply with the directives of this Tribunal dated 11.02.2010 and Hon'ble High Court order dated 01.08.2011, the request of the applicant was examined as a last chance, as per DOP&T OM No. 14014/6/94/Estt-(D) dated 09.10.1998, by the Board of Officers constituted for the purpose and finally the case was rejected vide speaking order No. 778/AN-II/COMP.APPTT/RG dated 23.05.2012.

Aggrieved, the applicants once again filed OA No. 1108/2012 before this Tribunal. This Tribunal, vide its order dated 20.01.2014, directed the respondents to consider the matter afresh under 1998 scheme, in accordance with law and to pass a reasoned and speaking order while coming to a definite finding in regard to the penurious/financial condition of the family, its assets, liabilities and dependents left by the deceased, their gross income, income from other sources if any and to pass appropriate orders within a period of three months from the date of receipt of the copy of its order.

To comply with the order of the Tribunal dated 20.01.2014, the request of the applicant was examined as per DOP&T OM No. 14014/6/94/Estt-(D) dated 09.10.98, along with DOP&T F.No. 14014/02/2012-Estt.(D) dated 16.01.2013 & DOP&T OM No. 14014/02/2012-Estt.(D) dated 30.05.2013 by the Board of Officers constituted for the purpose and rejected once again, vide order dated 12.08.2014 (Annexure-A/27), which was under challenge in O.A. 1214/2014.

The speaking order dated 12.08.2014, challenged in O.A. 1214 of 2014,

reads as under:

WHEREAS, to comply with the order dated 20.01.2014, duly nominated Welfare Officer made a physical visit to the residence of the applicant i.e. Smt. Purnima Ghosh and did not find the family in financial destitution. The family of the deceased informed the Welfare Officer that the son of the deceased i.e. the applicant for compassionate appointment is employed in a computer related institution but despite repeated insistence, the family did not reveal the name of the institution, amount of his remuneration and the period for which he is employed. Further, the family of the deceased did not reveal the Bank Passbook, documents related to property holdings and employment details of the applicant making it impossible for the department to have any definite and confirmed idea about the gross income, assets and liabilities of the family. And hence, the department has been left with the only option to examine the suitability for the extension of benefit of compassionate appointment to the applicant based on logical inferences drawn from circumstantial evidences and the provisions contained in the Scheme for Compassionate Appointment as laid down in the ibid DOP&T orders.

WHEREAS, the assets for which the department has definite information are the amounts paid to the family of the deceased employee i.e. Rs. 8,57,359.00 paid as leave encashment, DCRG, CGEGIS and GPF. The other asset as reported to the Welfare Officer by the family of the deceased consists of a residential accommodation of 750 sq.ft. The widow of the deceased is receiving monthly family pension with dearness relief for more than Rs. 12000.00. The reported liability of the family is payment of a Bank loan of Rs. 60,000.00 raised in the month of January 2014. Part 'A' Proforma duly filled up and signed by the applicant shows dependent as blank which establishes that the family has no dependent.

WHEREAS, on the basis of above information as available in records of the department and as far as revealed by the family of the deceased Govt. servant, the Board while assessing the desirability of the extension of the benefit of compassionate appointment as per the provisions of the Scheme of Compassionate Appointment and logical inferences, observed that the Scheme of Compassionate Appointment stipulates that the benefit is to be extended to a dependent family member of a Govt. servant dying in harness. In the present case, the applicant, aged 42 years, is of normal health and hence, with no yardstick of dependency he can be considered as dependent to the family. Further, Para 8 of the Scheme of Compassionate appointment clearly states "the very fact that the family has been able to manage somewhat all these years should normally be taken as adequate proof that the family had some dependable means of subsistence". In the present case, the family has already survived long 15 years after the death of the Govt. servant; the family has no dependent, no cognizable liability and hence, extension of the benefit of the Compassionate Appointment would tantamount to recognition of a claim derived from a right which is against the Supreme Court judgment dated May 04, 1994 in the case of Umesh Kumar Nagpal v. State of Bihar and others.

WHEREAS taking into account all the above considerations this Board unanimously comes to the conclusion that extension of the benefit of compassionate appointment to the present applicant in the present financial condition after long 15 years from the death of the Government servant will go against the basic objective of the Scheme for Compassionate Appointment and hence the case is not recommended as deserving.

AND WHEREAS, the undersigned, the Competent Authority in this regard after careful consideration of the request of the said Shri Rahul Ghosh and taking into account all the aspect relevant to the matter, has agreed to the views expressed by the Board of Officers constituted for the purpose and decided that the said Shri Rahul Ghosh is not deserving for appointment on compassionate ground in the department and accordingly informs the said Shri Rahul Ghosh that his request for appointment on compassionate ground has not been acceded to.

O.A. 1214 of 2014 was disposed of with the following observations:

"5. The point for consideration is as to whether the respondent authorities concerned were justified in rejecting the prayer of the applicants for giving compassionate appointment to applicant No.2 who is the son of the deceased employee on the grounds found set out therein.

6. The Learned Counsel for the applicants cited the recent decision of the Hon'ble Apex Court in the case of **Canara Bank and Anr V M. Mahesh Kumar and Anr Vs Chairman and Managing Director, Canara Bank & Ors**, reported in AIR 2015 SC 2411. An excerpt from it would run thus:

"15. Insofar 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.

XXX

XXX

XXX."

7. A mere running over eye over the decision in the case of **M. Mahesh Kumar, (supra)** would exemplify and demonstrate that the Hon'ble Apex Court categorically held that while considering the prayer for compassionate appointment the terminal benefits and the family pension extended to the family member(s) of the deceased should not be taken into consideration. Similarly, the Hon'ble High Court of Calcutta in the following judgments held that terminal benefits received by the family members of the deceased employee should not be taken into consideration for considering the prayer of the members of the deceased family for compassionate appointment:

(i) **Indrani Chakraborty Vrs Union of India and others, WPCT No. 18 of 2013 dated 04.07.2013;**

(ii) **Smt. Angurbala Maity & Anr Vs State of, West Bengal & Ors, 2012 (1) CU (Cal) 279;**

(iii) **Sujit Kumar. Datta Vs United Commercial Bank reported in 2011(4) CHN (Cal) 29.**

8. It is pertinent to point out that the Hon'ble Supreme Court in the aforesaid judgment of 2015 and the Hon'ble High Court of Calcutta in the cited decisions rendered during 2013, referred to the earlier judgment of the Hon'ble Supreme Court in the case of **Balbir Kaur & Anr V Steel Authority of India Ltd & Ors, (2006) 6 SCC 493**. As such it has to be taken that as of now the law laid down by the Hon'ble Supreme Court is to the effect that while considering the appointment on compassionate ground the terminal benefits received by the members of the family and/or the family pension extended by the department in favour of the family member(s) should not be taken into consideration, however, subject to the other conditions, the application for appointment on compassionate ground has to be processed, and accordingly it should be dealt with. In the impugned order it is clear that the authority concerned took into account the family pension which in our opinion is not correct.

9. The Respondent authorities also assumed and presumed as though the son of the deceased was engaged in a lucrative job. No doubt they tried to accuse the son for not furnishing the information about his employment. We are at a loss to understand as to how the son of the deceased if at all he was in any lucrative employment would prefer employment under govt leaving the said job. Even for argument's sake it is taken that the son of the deceased was working in a private firm for eking out of his living, the same cannot be taken as a ground to reject the prayer for appointment on compassionate ground.

Similarly, the family of the deceased, no doubt, is residing in a pucca house in the plot of 750 sq. ft. It is not the case of the respondents that any income is generated from that property. As such simply because the widow and her son are residing in a house of their own that cannot be a ground for rejecting the prayer for appointment on compassionate ground.

10. The Hon'ble Apex Court's decision relied on by the learned counsel for the respondents is concerning the scheme pertaining to the office of Comptroller General of India; as per which there was financial ceiling fixed for considering the request for compassionate appointment and accordingly, the judgment was rendered based on that scheme only, which is not the case here.

11. On balance, we are of the considered view that the matter requires reconsideration by the appropriate respondent authority within a period of four months from the date of receipt of a copy of this order.

12. This OA is accordingly disposed of. No costs."

Pursuant thereto, the case was once again rejected vide speaking order dated 12.07.2016.

3. The speaking order dated 12.07.2016, impugned in the present O.A. reads as under:

WHEREAS, to comply with the directive of Hon'ble GAT order dated 20/01/2014, the request of the applicant has again been examined as per DOP&T OM NO. 14014/6/94/Estt.(D) dated 09/10/98 along with DOP&T F. No. 14014/02/2012-Estt. (D) dated 16/01/2013 & DOP&T OM No. 14014/02/2012-Estt. (D) dated 30/05/2013 by the Board of Officers constituted for the purpose. Board of officers pointed out that the, Welfare officer, nominated earlier, vide report during March 2012 has mentioned in his report that the family of the deceased Govt. servant had repaid a loan of Rs.2,00,000/- which was borrowed by the wife of the deceased for her husband's illness. The same fact was mentioned by the applicant in Part-A Form at that time also. Subsequently, when the case was reopened as per the orders of Hon'ble tribunal dated 20/01/2014, the Welfare Officer, as nominated afresh, vide her report dated 18/06/2014 also did not mention about loan taken for medical expenses of the deceased employee. However the fact that a sum of Rs.12,00,000.00 expended for the medical treatment of the deceased Govt. Employee (Date of Death : 19.03.1999) for which Rs.7,50,000.00 was borrowed, is a new fact presently revealed by the applicant in Part-A Form, which was not mentioned in earlier occasions. However, the applicant has mentioned that loan amount has been refunded from pension amount.

WHEREAS, the family of the deceased Govt. servant was having their own house at Jagacha P.O. GIP Colony, Howrah - 711 321 which was subsequently sold and a new flat was purchased at Tollygunge during 2002 admeasuring area 780 sq ft. Bank loan has been taken by the family for this purpose. As such, the family of the deceased Govt. servant is presently in a position to maintain its livelihood as well as to repay the bank loan through monthly installment with the family pension, the widow is getting now. As per Dept. of Pers. & Trg No. 14014/6/94-Estt. (D), dated 9th October, 1998 the objective of Compassionate Appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency. Since the department has no direct access in the financial as well as family affairs of a deceased employee unless the family reveals the information with evidence, the Board can only draw logical inferences in assessing the desirability of the extension of the benefit of compassionate appointment to the applicant with reference to the provisions of the Scheme of Compassionate Appointment. If logical inference is drawn, a destitute family may not be able to survive through years incurring such monthly expenses.

- WHEREAS, in the present case the Board of Officers has observed that the applicant being 44 years of age, should not be considered as dependent since a family in financial destitution cannot afford to allow a man of sound health of the age of 44 years to remain dependent on his old parents. Such dependence of a fully adult person on parents is possible only when the family has enough affordable means to afford such a luxury and such a family logically cannot be treated as without any means of livelihood. Moreover, the family, as per declaration of the applicant, has no dependent and it consists of the widow i.e. the family pension holder and an educated adult son of the age of 44 years possessing a Bachelors of Information Technology Degree from Sikkim Manipal University. It is not logically justified that being a technical degree holder, the applicant is still unemployed and the reason for not being engaged in any job is his strong desire to get an appointment on compassionate ground in this department. The Welfare Officer has also raised doubts to the facts that the applicant is

stated to be unemployed as he expects that he would certainly get the job in this department on compassionate ground. As per available records, at the time of visit of the Welfare Officer on earlier occasion the applicant informed that he was working in a computer related institution but despite repeated insistence the applicant did not reveal the name of the institution, amount of his remuneration and the period of his employment. This fact was mentioned in the Speaking Order No. 778/AN-II/Comp.Appt./RG issued on 12.08.2014 in this regard.

WHEREAS, a sum of Rs. 8, 57,359/- was paid as terminal benefits to the widow during 1999 as per available records. The widow is in receipt of monthly family-pension to the tune of Rs. 1448/- as on date. The Welfare Officer, in his Objective Report, has categorically mentioned that he did not find any distressed condition in the family while enquiring the genuineness of the claim for compassionate appointment.

WHEREAS, it is to be noted that Hon'ble Supreme Court in its judgment dated May 04, 1994 in the case of Umesh Kumar Nagpal v. State of Haryana and others directed that Compassionate appointment cannot be granted after lapse of reasonable period and it is not a vested right which can be exercised at any time in future. The objective of Compassionate appointment is to relieve the family from financial destitution and to get it over the emergency. The fact remains that the family has already survived for long 17 years after the death of the Government servant. Now, after 17 years when the applicant of 44 years age claims to be unemployed, the emergency caused by the death is no more there and there is no apparent proof before the Board that the family is in financial destitution. Hence, extension of the benefit of compassionate appointment to the applicant would be an acknowledgement of a vested right only.

WHEREAS, taking into account all the above considerations, the Board has unanimously concluded that extension of the benefit of compassionate appointment to the present applicant in the present financial condition after long 17 years from the death of the Govt. servant will go against the basic objective of the Scheme for Compassionate Appointment and hence, the case has not been recommended as deserving.

AND WHEREAS, the Competent Authority in this regard after careful consideration of the request of the said Smt. Purnima Ghosh, wife of the deceased Govt. servant and taking into account all the aspect relevant to the matter, has agreed to the views expressed by the Board of Officers and decided that the said Shri Rahul Ghosh, son of the deceased is not deserving for appointment on compassionate ground in the department and the undersigned accordingly informs the said Smt. Purnima Ghosh that her request for appointment in respect of her son Shri Rahul Ghosh on compassionate ground has not been acceded to.

4. At hearing, Ld. Counsel for the applicant would bring to my notice the following discrepancies in consideration:

1. The department has recommended the following cases as deserving:

(i) Moutushi Mukherjee, where;

Terminal benefits received is Rs. 7,63,809/-.

(ii) Danish Khan, son of Late Parvez Khan (Date of death 2.2.2011) where;

Family Pension = Rs. 11,955/-

Terminal benefit= Rs. 15,51,865/-

Score= 46.

(iii) Suman Mazumder, son of late Subrata Mazumder (Date of death 20.10.2011) where;

Family Pension = Rs. 11,095/-

Terminal Benefit received = Rs. 13,85,688/-

Daughter is married yet considered a liability.

(iv) Ayan Bhattacharya, son of Amereshwar Bhattacharya (Date of death 29.5.1999)

No. of dependents = Widow and Son

Family Pension = Rs. 3250/-

Terminal Benefits = Rs. 4,37,061/-

His case was recommended in 2012, i.e. after 13 years, on the ground that "at the time of his death the age of the child was 7 yrs only. The terminal benefit obtained by the widow has been expended by way of education of her child and medical expenses on her own as she was suffering from various diseases. The family somehow managed with the meagre amount family pension. Considering the financial condition, the case is recommended for compassionate appointment".

Whereas the case of the present applicant was rejected on the ground

that it is 17 years old, they have a flat to reside and family pension to sustain and Rs. 8,57,359/- was paid as terminal benefits. Whereas, the applicants have been representing since 1999 and litigating since 2009 and every time they were directed to be considered in accordance with 1998 scheme, and at least on three occasions the department was directed by this Tribunal not to take into consideration the terminal benefits or family pension, both of which have been taken into consideration while rejecting the case.

5. In the aforesaid backdrop, the speaking order dated 12.07.2016 is quashed. The matter is remanded back to the appropriate authority to pass orders strictly in terms of the directions in earlier O.A., i.e. 1214 of 2014, particularly with reference to paragraphs 8 and 9 thereof.
6. O.A. is disposed of accordingly without any order as to costs.

(Bidisha Banerjee)
Member (J)

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