

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

**LIBRARY**

No. O.A. 726 of 2014

Reserved on: 20.9.2019

Date of order: 20.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

***(Dulati Khatun & anr. v. Union of India & ors.)***

For the Applicant : Mr. S. Biswas, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

**ORDER**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(i) To direct the respondent authority to issue appointment letter in favour of 1<sup>st</sup> applicant on compassionate ground to the vacant post of Skilled Work Assistant on the basis of the recommendation of the Screening Committee being Annexure A/12;

(ii) Leave may be granted to file this joint petition under Rule 4(5)(a) of CAT (Procedure) Rules, 1987;

(iii) To pass such order or further orders as deem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record. The respondents have cited this Tribunal's orders in **O.A. No. 1142 of 2010** dated 1.8.2011 in the matter of **Gopa Ganguly v. Union of India & others** in support.

3. As prayed for by the applicants, leave to jointly pursue this O.A. is granted under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987 on grounds of commonality of interest and common cause of action.

4. The submissions of the applicant, as made through Ld. Counsel is, that the applicant's father worked as a Boatman under respondent No. 4, who died in harness on 28.2.2005, leaving behind his wife and three

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daughters. The applicant is one of the daughters of the ex-employee, and, after his demise, she applied for employment on compassionate grounds immediately thereafter.

The respondent authorities had placed her application in the screening committee meeting held on 6.11.2012 and the committee did recommend appointment to the applicant on compassionate ground. Despite the said decision, the applicant was not favoured with any appointment letter and thereafter the applicant preferred another application on 26.12.2012 which is yet to be decided upon by the respondent authorities.

According to the applicant, she was reportedly first in order of merit in the screening list dated 6.11.2012. Despite the same, ignoring her claim, the candidate empanelled last second in order of merit was appointed and the applicant has been deprived of her employment opportunities.

5. The respondents have refuted the claim of the applicant through their written statement dated 17.12.2015 and further supplementary affidavit as filed on 18.12.2019 in response to directions of the Tribunal. In their supplementary affidavit, the respondents have clarified as follows:-

- (a) The candidate, who was reportedly number two in the merit list, was appointed as per Tribunal's Order dated 1.8.2011.
- (b) That against the criterion of family pension, both the empanelled candidates, No. 1 and 2 in merit, obtained 18 points having received similar amounts in family pension.
- (c) In respect of terminal benefits, the applicant was granted terminal benefits within the Parameter-IV, and hence was allotted 7 marks. The

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candidate No. 2 in merit, being entitled to terminal benefits within the Col. No. I, was eligible to receive 10 points.

(d) In respect of monthly income, with the applicant as well as the other candidate were initially allotted 5 marks. The applicant, however, was engaged by the Damodar Division, Central Water Commission, Asansol and received @ Rs. 11,400.00 per month a fact which was not brought on record before the Screening Committee held on 6.11.2012. Subsequently, Review Screening Committee held on 28.12.2012 considered and allotted 4 marks to the applicant after considering such monthly income.

(e) In respect of Movable/Immovable property, as both of them had declared nil property, the screening committee considered and allotted 10 marks to both of them as per Rules.

(f) In respect of minor children, the applicant had declared through her application/affidavit dated 26.12.2012 that there were two minor daughters aged about 17 & 15 years respectively in the family and was accordingly allotted 10 marks in the first committee meeting held on 6.11.2012. On enquiry, however, it was found that both the reported minors have attained majority. Subsequently, the Review Screening Committee held on 28.12.2012 rectified the mistake and allotted 0 (zero) marks to the applicant. Accordingly, the applicant obtained 71 marks in the Review Screening Committee's meeting.

The other candidate, initially placed at No. 2 on merit in the Committee meeting dated 6.11.2012, scored 87 marks in the review meeting.

5. The issue to be decided for adjudication in the instant matter is whether the applicant deserves appointment on compassionate grounds.

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6.1. At the outset, the orders of the Tribunal dated 1.8.2011 in O.A. No. 1142 of 2010 referred to by the respondent authorities is examined. The Tribunal, having relied on DOP&T O.M. dated 5.5.2003, its interpretation by **Ahmedabad Bench** of the Tribunal in **O.A. No. 386 of 2007 (Nawaz Mughal v. Union of India & ors.)** as well as the Hon'ble **Allahabad High Court** judgment in **Civil Misc. Writ Petition No. 13102/2010 (UOI -vs.- Smt. Asha Mishra & anr.)**, directed the respondents to reconsider the case of the applicant within three months from the date of receipt of the order, particularly, on the ground that automatic closure after three years of the demise of the deceased employee cannot be sustained.

6.2. The respondents have placed before us the decision of the screening committee dated 6.11.2012 wherein Annexure SA-3 reveals that the applicant in the present O.A. had received highest marks of 83 and had topped the said list, whereas the applicant in O.A. No. 1142 of 2010 had received 82 marks and was placed as No. 2 on merit.

On account of certain anomalies detected subsequently, such as income earned by the applicant from the Damodar Division of the respondent authorities during a certain period and receipt of terminal benefits, the applicant's score was modified. Most importantly, when the applicant had applied in 2005, she had disclosed that there were two minor children in the family. The Screening Committee had taken up her prayer upon availability of vacancies. By that time, the minors had attained majority and, consequently, the applicant was no longer entitled to receive any positive score on ground of minor children. Consequently, in the screening committee meeting held on 28.12.2012, the applicant in O.A. No. 1142 of 2010, having obtained the highest score, was appointed by the respondent authorities.

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6.3. There is no dispute on the issue that, even after revision of the scores, the applicant holds the highest score among the remaining candidates after the appointment of the applicant in O.A. No. 1142 of 2010. The respondents would argue that the applicant could not be offered appointment in the absence of vacancies.

6.4. Judicial pronouncements are categorical to rescue families subjected to deep and abject penury on account of the loss of bread winner of the family.

In ***Haryana State Electricity Board v. Hakim Singh (1997) 8 SCC 85*** the Hon'ble Supreme Court explained the rationale of the rule relating to compassionate appointment in these words:-

"The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

In ***Sushma Gosain v. Union of India 1989 (4) SLR 327*** the Hon'ble Supreme Court pointed out that the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the breadearner in the family and that such appointment should, therefore, be provided immediately to redeem the family in distress.

In ***Umesh Kr. Nagpal v. State of Haryana, 1994 (2) SLR 677*** the principles relating to compassionate appointment emphasized as under:-

".....One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gain employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises."

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6.5. The fact remains that the applicant applied for compassionate appointment immediately after the demise of her father. It is also on record that she did have established eligibility to receive such appointment on the basis of the score sheet as recommended by the screening committee. Respondents also do not dispute that the family is in a penurious situation. Accordingly, we direct the respondent authorities to consider the appointment of the applicant on compassionate grounds upon occurrence of the next vacancy.

7. With these directions, the O.A. is disposed of. No costs.

*(Dr. Nandita Chatterjee)*  
Administrative Member

*(Bidisha Banerjee)*  
Judicial Member

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Parinya Jyoti