

**Central Administrative Tribunal
Principal Bench**

OA No. 3177/2017

Order reserved on : 10.10.2019
Order pronounced on: 05.11.2019

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Nitin Joon
S/o Late Sh. M.S.Joon, (Group 'C'),
Aged about 26 years
C/o Sh. Preet Ram,
Village & PO Dhool Siras,
New Delhi-110021.

... Applicant

(By Advocate: Sh. Rajesh Sharma)

VERSUS

1. Union of India
Through Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Director General,
Intelligence Bureau,
Ministry of Home Affairs,
North Block, New Delhi.

... Respondents

(By Advocate: Sh. Hanu Bhaskar)

ORDER

One Sh. M.S.Joon had joined BSF on 01.12.1963 and served there till 01.12.1978. Thereafter, he was transferred to Intelligence Bureau and was posted as JIO-I/MT in Intelligence Bureau under Ministry of Home Affairs. He unfortunately died of cancer on 30.05.2003. The last salary

drawn by said Sh. M.S.Joon was Rs.8660/-. His date of birth was 01.01.1945 and as such would have superannuated on 31.12.2004.

2. Applicant pleads that said Sh. M.S.Joon had contracted a marriage with one Smt. Sunita Devi on 10.12.1989 and while this marriage was solemnised and even his till his death on 30.05.2003, it was not disclosed by Sh. M.S.Joon that he was already married to some other woman. Sh. M.S.Joon and Smt. Sunita Devi have two sons, namely, Sh. Nitin Joon and Sh. Sushil Joon. Sh. Nitin Joon is the applicant in the instant OA and he is aggrieved that his request for consideration of his case for compassionate ground appointment, arising out of demise of his late father Sh.M.S.Joon on 30.05.2003, has been rejected by the respondents vide letter dated 29.09.2016. The ground taken is that applicant is the son from a second marriage, when the first marriage was still subsisting. The operative part of his rejection letter reads as under:

“The relevant record of W.P.(C) 765/2010, W.P. No.16632-33/2004, W.P.(C) 2576/2007 and TA No.57/2013 was placed before the Compassionate Appointment Committee. The Committee in its meeting held on 18-12-2014 considered the directions of the Hon’ble Tribunal in the light of decisions of Delhi High Court passed in W.P.(C) 765/2010, W.P. No.16632-33/2004, W.P.(C) 2576/2007 in the light of Rules, instructions and Case Laws relevant to the issue. The Committee in their minutes recommended that Shri Nitin Joon is not fit for compassionate appointment. The recommendation of the CAC has been accepted by the Competent authority.”

3. Instant OA has been filed seeking relief to quash this order dated 29.09.2016 with directions to respondents to reconsider his case for compassionate ground appointment.

Following specific pleadings have made in the OA:

“(i) That it is relevant to point out that Smt. Satbiro Devi, the first wife of Applicant’s deceased father has no children born out in the life time and in the last 20 years she had neither visited the house of the Applicant nor does her name or any spouse figures in the CGHS card or any other documents which accords benefits to the spouse and the children i.e. of the Govt. servant.

(ii) That had the Applicant’s mother ever knew that the Applicant’s late father was already married as alleged, she would not have ventured to marry the late Sh. M.S.Joon. It is further submitted that during the entire period of 17 years of married life, never had late father of the Applicant informed that he had another wife. That in case, Smt. Satbiro Devi who claims to have been married to late Sh. M.S.Joon, in that even, when Sh. M.S.Joon was suffering from cancer, at least at that stage, Smt. Satbiro Devi would have come to meet the late M.S.Joon, but Smt. Satbiro Devi did not do so.”

4. The applicant also pleaded that the service record maintained by the department showed both their names; Sh. Nitin and Sh. Sushil as son of late Sh. M.S.Joon and they had also availed CGHS and LTC facility while his father was alive. Through a letter dated 14.10.2003, the retiral benefits were totally denied to Smt. Sunita Devi while family pension was allowed to Smt. Satbiro Devi. In respect of applicant and his brother, family pension was allowed but only after the demise of Smt. Satbiro Devi. Relevant part of his order reads as under:

“As per our records Shri Mohinder Singh Joon is survived by two wives, i.e. Smt. Satbiro (first wife) and Smt. Sunita Devi (Second wife). The second marriage of Shri Mohinder Singh Joon with Ms. Sunita is void but two sons (Nitin Joon and Sushil Joon) born out of this wedlock are eligible for family pension after the demise of first wife Smt. Satbiro as there is no issue of Smt. Satbiro.”

5. Feeling aggrieved on total denial of family pension till Smt. Satbiro Devo was alive, applicant filed CWP No.16632-33/2004 in Hon'ble High Court of Delhi. This was decided on 24.05.2005. The Hon'ble High Court relied upon the judgment by Hon'ble Apex Court in **Rameshwari Devi vs. State of Bihar**, (2000) 2 SCC 431, wherein it was held that legitimate children of the Government servant are also entitled to all the death benefits of the deceased employee on pro rata basis. The Hon'ble High Court directed that the retiral dues including pension will be divided in the ratio of 1/3rd each amongst Smt. Satbiro Devi, Sh. Nitin Joon, the applicant and Sh. Sushil Joon.

6. The compassionate ground appointment request dated 23.06.2003 filed by Smt. Sunita Devi was declined as she happened to be the second wife while the first wife was still alive and the first marriage was still subsisting.

Thereafter the applicant made a request on 03.05.2006 for compassionate ground appointment. Vide order dated 25.07.2006, this request was declined as the applicant was a

minor at that time. Feeling aggrieved, the applicant filed WP (C) No. 2576/2007 in Hon'ble High Court of Delhi. It was dismissed as withdrawn with liberty to applicant to apply for compassionate ground appointment on attaining the age of majority and with liberty to the respondents to decide the application on merits and as per rules.

After passing Class-X and on attaining the age of 18 years, the applicant applied for compassionate ground appointment again on 01.01.2009. Vide memo dated 20.02.2009 this request was declined. This letter reads as under:

“With reference to your application dated 01.01.2009 addressed to the Deputy Director/Estt in connection with your employment in the IB on compassionate grounds, you are hereby informed that your request for grant of employment in IB on compassionate grounds has been considered in consultation with the DOP&T, who has, however, ruled that in the Scheme for compassionate appointment the definition of dependent family member includes spouse, son or daughter of the deceased Government servant. The spouse implies legally wedded wife or husband and son or daughter deemed to be children born out of such legal marriage. As the second wife's status of legally wedded wife has not been established, she or her children will not be covered under the Scheme for compassionate appointment.

2. The request of Shri Nitin Joon for compassionate appointment therefore, cannot be acceded to.”

7. Feeling aggrieved, the matter was agitated before Hon'ble High Court of Delhi in WP (C) No.765/2010. The Hon'ble High Court transferred the case to the Tribunal where it was re-numbered as TA No.57/2013 and it was decided vide

orders dated 19.09.2014. The Tribunal made reference to the two orders passed by the Hon'ble High Court of Delhi in WP(C) No.16632-33/2004 and WP(C) No.2576/2007 and gave following directions:

"4. In view of the specific observations made by the Hon'ble High Court of Delhi, in the above referred writ petitions, we dispose of the present TA by directing the respondents to consider the case of the applicant for compassionate appointment within two months from the date of receipt of a copy of the order, in accordance with law."

8. In compliance, an order was passed by the respondents on 01.01.2015 and the compassionate ground appointment request was declined on the following plea:

"As the second wife's status of being the legally wedded wife has not been established, she or her children will not covered under the Scheme for compassionate appointment."

9. Feeling aggrieved, applicant preferred CP No.125/2015. During the pendency of the CP, the respondents passed a detailed order running into 8 pages on 29.09.2016 and rejected the request of compassionate ground appointment. CP No. 125/2015 was thereafter closed vide judgment dated 16.11.2016. The operative part of this order reads as under:

"5. The direction issued by this Tribunal was to consider the claim of the applicant in the light of the judgments of Hon'ble High Court of Delhi referred to in the preceding Para. From perusal of para 13 of the order dated 29.09.2016, it is evident that the record of writ petitions referred to by the Tribunal in its order dated 19.09.2014 was placed before the Compassionate Appointment

Committee and had been examined by the said Committee. The direction in the case of Rameshwari Devi's case as also the writ petitions relate to pensionary benefits in favour of the illegitimate child and does not deal with the question of compassionate appointment. The respondents while passing the order dated 29.09.2016 have relied upon a Division Bench judgment of High Court of Jharkhand in the case of Basanti Devi in WP(S) No. 4461/2008, wherein the question of compassionate appointment has been considered by the Division Bench of the said court and it is stated that the compassionate appointment is to be granted on the basis of the policy of the Government. The respondents in their wisdom rejected the claim of the applicant for compassionate appointment. We do not find any contravention of the directions of this Tribunal. The direction was to consider the case of the applicant in the light of the aforesaid judgments of the Hon'ble High Court. The respondents have considered it and rejected his claim. Therefore, no contempt is made out. However, the applicant is at liberty to seek remedial measures, in accordance with law. Present contempt proceedings are dropped. Notices issued to the alleged contemnors are discharged."

10. Feeling aggrieved, the applicant filed WP (C) No.3331/2007 before Hon'ble High Court of Delhi. However, it was dismissed as withdrawn vide orders dated 18.05.2017 which reads as under:

"After some arguments, learned counsel for the petitioner, upon instructions, seeks leave to withdraw the present writ petition.

Dismissed as withdrawn."

Even though this dismissal order is silent about any liberty being granted to the applicant to agitate the matter of compassionate ground appointment before the Tribunal, the applicant pleads that withdrawal was on his offer of being granted liberty, hence the instant OA has been filed.

11. Applicant pleads that he is a legitimate dependent son and was accorded the facility of CGHS and LTC during the life time of his father and thereafter the family pension to the extent of one third share. Hence, his request for consideration for compassionate ground appointment needs to be accepted.

In this regard, he took reliance on policy of DOP&T OM dated 09.10.1998, which is claimed to be applicable in his case. This OM governs the conditions of compassionate ground appointment and this is permitted for dependent family members. The dependent family members defined under this rule reads as follows:

“Note I “Dependent Family Member” means:

- (a) spouse; or
- (b) son (including adopted son); or
- (c) daughter (including adopted daughter); or
- (d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

who was wholly dependent on the Government servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

It was pleaded that this list does not put any restriction for consideration of compassionate ground appointment request in favour of children born out of second marriage when first marriage was still subsisting.

12. The applicant also relies upon a judgment by Hon'ble Apex Court in **Union of India vs. V.R.Tripathi** in Civil Appeal No.12015/2018 delivered on 11.12.2018. In this case the father of Sh. V.R.Tripathi, the respondents, was a late employee of Railways who had died in harness on 28.11.2009. The deceased has contracted a second marriage while his first marriage was still subsisting. The respondent was the son from the second wife. His request for compassionate ground appointment was rejected by Railways on 06.03.2012. He agitated the matter before the Tribunal where his OA was allowed. Union of India relied upon the Railway's circular dated 02.01.1992, which prohibited compassionate ground appointment to children born out of such second marriage and preferred a writ in Hon'ble High Court of Judicature at Bombay against this decision of the Tribunal. Hon'ble High Court relied upon the following decisions:

(a) **Namita Goldar vs. Union of India and ors.**, 2010 LAB I.C. 1465 by Hon'ble High Court of Calcutta wherein the said circular dated 02.01.1992 was set aside and

(b) **Rameshwari Devi vs. State of Bihar and ors.**, (2000) 2 SCC 431 wherein right of children born out of

such second marriage for pensionary benefits, was upheld,

and in this background, the Hon'ble High Court upheld the decision of the Tribunal and directed Railways, to consider the request of compassionate ground appointment. This decision of Bombay High Court was challenged before the Hon'ble Apex Court in CA No.12015/2018.

12.1 It is note worthy here that subsequent to the decision in **Namita Goldar** (supra), Railways has issued another circular dated 03.04.2013 wherein the prohibition contained in earlier circular dated 02.01.1992 denying compassionate ground appointment to children from second marriage when first marriage was subsisting, was retained.

12.2 In this context the Hon'ble Apex Court gave the following observations and directions in the case of **V.R.Tripathi** (supra) on 11.12.2018:

“19. We may, however, clarify that the issue as to whether in a particular case, the applicant meets all the stipulations of the scheme including financial need and other requirements are matters which will be decided on the facts of each individual case.

20. Finally, it would be necessary to dwell on the submission which was urged on behalf of the respondent that once the circular dated 2 January 1992 was struck down by the Division Bench of the Calcutta High Court in **Namita Goldar** (supra) and which was accepted and has been implemented, it was not thereafter open to the railway authorities to rely upon the same circular which has all India force and effect. There is merit in the submission. Hence, we find it improper on the part of the Railway Board

to issue a fresh circular on 3 April 2013, reiterating the terms of the earlier circular dated 2 January, 1992 even after the decision in *Namita Goldar* (supra), which attained finality.

21. For the above reasons, we do not find any merit in the appeal. The authorities shall take a decision in terms of this judgment on the application for compassionate appointment in three months from today. The appeal stands dismissed. No costs.”

Thus, even while the revised circular dated 03.04.2013 was not struck down but the directions were issued to Railways to consider compassionate ground appointment in respect of the respondent who was a child from second marriage when first marriage was still subsisting.

13. Applicant also relied upon a judgment by Hon’ble High Court of Bombay in **Yuvraj Dajee Khadake vs. Union of India**, WP No.1564/2017 delivered on 21.02.2019 wherein a similar question arose and the Hon’ble High Court relied upon the judgment of **V.R.Tripathi** (supra) and gave following directions:

“10 Accordingly, we pass the following order:-

ORDER

(i) The impugned order dated 6th December 2016 (Exhibit - C) is hereby set aside;

(ii) We direct the respondent to consider the case of the petitioner afresh for grant of compassionate appointment in the light of what is held in this judgment. Appropriate decision shall be taken within a period of two months from today;

(iii) Rule is made absolute on above terms.”

14. Relying upon the ratio of these two judgments (para 12 and 13 supra), applicant pleaded that even though Railways had a circular in place prohibiting compassionate ground appointment to children from second marriage when first marriage was still subsisting, they were still directed to consider the request for compassionate ground appointment for children born out of such second marriage. As against this in the instant case, it is the instruction of DOP&T which is applicable and DOP&T have not put any such restriction. Hence, respondents need to consider his case for compassionate ground appointment.

15. Per contra, the respondents opposed the OA. It was pleaded that as per service records, the name of Smt. Satbiro Devi was recorded as wife of the deceased officer. Accordingly, she, being eligible claimant as per Family Pension Rules was granted pensionary benefits.

However, the compassionate ground appointment case of the instant applicant was examined by the Ministry of Law and Justice who communicated their decision vide their note dated 13.06.2007. It was advised that issue for ground of compassionate ground appointment in such cases was examined by Hon'ble High Court of Allahabad in **Ramesh Chand vs. Executive Engineer, Electricity** and decided vide

judgment dated 15.10.2003 and they advised to take the views of the nodal agency, namely, DOP&T.

15.1 In the said case **Ramesh Chand vs. Executive Engineer**, the Hon'ble High Court gave the following ruling:

"2. Late Satai was employed as 'Petrol Man', in Electricity Distribution Division-II, Allahabad. His wife Smt. Satina Devi had no issue. It is alleged, that in the year 1978, with the consent of Satina Devi, he sought permission of the Executive Engineer, Electricity Distribution Division-II, Allahabad for second marriage, which was given to him on 24.10.1978, with the condition that as soon as a child is born, his relation with the second wife shall cease. With this permission he married one Kaushalya Devi. Petitioner was born to Kaushalya Devi on 30.12.1980. Sri Satai died in harness on 19.11.2000. It is alleged that there was a settlement between Smt. Satina Devi and Kaushalya Devi on 1.7.2002, under which Smt. Satina Devi was made entitled to and is receiving the retiral dues, and that petitioner shall be entitled to compassionate appointment, to which Satina Devi, will have no objection.

3. Petitioner applied for compassionate appointment under U.P. State Electricity Board Appointment of Dependents of Employees of Board (Dying-in-Harness) Rules, 1975. A favourable recommendation was made by the Executive Engineer. The General Manager (Distribution), Allahabad referred the matter to the Head Office at Lucknow. The Personnel Officer, U.P. Power Corporation has, by impugned order dated 25.2.2003 found, that compassionate appointment cannot be given on a settlement. The child born out of second marriage is not a legitimate child, and that the matter requires decision by the competent Court, after which it will be examined by the legal branch of the Corporation.

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10. Right to compassionate appointment is not a right to property of the deceased employee. The parents of a child referred to under Section 16(3) are his parents who have entered into a void or voidable marriage. We are concerned here with void marriage, for which no decree of annulment is required. Such a child does not have a right to property, of any person other than his parents. He, therefore, cannot claim compassionate appointment which is a statutory right of the family of the deceased. There are other reasons for reaching to the same conclusion. There can be a conflict of interest between wife and her children from first valid marriage and the child whose legitimacy is protected

under Section 16 of the Hindu Marriage Act, 1955. A claim may be set up by persons alleging themselves to be children or strangers, causing litigation, delaying and thus, defeating the purpose of such appointment. The object of compassionate appointment is to provide immediate financial help to the family. The child out of void marriage will essentially support his mother who is not included within the definition of 'family', as she is not the widow of the deceased employee, her marriage to the deceased being a void marriage. Further, as found above, such child cannot defeat the right of other persons to the property such as retiral benefits and pension of the deceased, and these other persons will include only the legally married wife and her children.

11. The permission given by competent authority, cannot grant any legal status to the second marriage which was void, being violative of Section 5(i) of the Hindu Marriage Act, 1955. The permission may have protected the deceased employee from the charge of misconduct, but that by itself will not make his second marriage to Kaushalya Devi a valid marriage, or include her and her children in the definition of the word 'family'.

12. A right flowing under the statutory rules cannot be curtailed or enlarged by settlement or compromise between the beneficiaries. The compromise entered into between Smt. Satina Devi and Kaushalya Devi is also a void document, which cannot be the basis of claim for compassionate appointment.

13. For the aforesaid reasons, I find that the petitioner is not entitled to the reliefs. The writ petition is, accordingly, dismissed.”

16. Subsequently, the question of grant of compassionate ground appointment to children of second marriage when first marriage was still subsisting, was considered by DOP&T also and following was noted on 26.06.2007:

“In the first instance, it is clarified that compassionate appointment is not a right, let alone statutory right, even for the dependent family members as defined in the Scheme for Compassionate Appointment.

2. The Scheme for Compassionate Appointment under the definition of dependent family member’ includes spouse, son or daughter of the deceased Government servant. The spouse implies legally wedded wife or husband and son or

daughter are deemed to be children born out of such legal marriage. As such, as per the fact given, as the second wife's status of legally wedded wife has not been established, she or her children will not be covered under the Scheme for compassionate appointment. This point has been reinforced from legal angle in the opinion recorded by the AGC.

3. Apart from the above, 'Y' of page 1/n is also relevant. Under the Scheme, a dependent family Member applying for compassionate appointment must have attained the age of 18 years and there is no provision for relaxation of this lower age-limit."

17. It was pleaded that family pension was granted to the first wife Smt. Satbiro Devi as she was alive. It was only after the Hon'ble High Court's direction in WP No.16632-33/2004 that family pension was distributed between Smt. Satbiro Devi, Sh. Nitin, the applicant and Sh. Sushil. This order for distribution of pension, by Hon'ble High Court is in the context that retiral dues are in the nature of property of the deceased which may need to be shared by legal heirs.

However, compassionate ground appointment is not a property earned by the deceased employee. Compassionate ground appointment in Government is governed by separate rules for Government servant and it is a benevolent consideration extended to the bereaved family to avoid conditions of penury. Moreover, the Hon'ble High Court judgment in WP No.16632-33/2004 made no observations regarding the claims for compassionate ground appointment. Following specific averment was made in their counter reply.

“4.17 xxx xxx It has to be seen that the appointment on compassionate grounds is not a source of recruitment but merely an exception to the appointments being made on open invitation of application on merits. That basic object is to enable the family to get over sudden financial crisis. As per the Govt. scheme on compassionate appointment, the applicant should be eligible and suitable for the post in all respect under the provisions of recruitment. In the instant case, since the second wife's status as legally wedded wife of deceased Govt. servant has not been established, she or her children are not covered under the scheme for compassionate appointment and therefore the request of the petitioner for compassionate appointment is not tenable.”

18. It was pleaded that the judgment by Hon'ble Apex Court in **Rameshwari Devi** (supra) is in the context of one Sh. Narain Lal who died and thereafter certain disputes arose regarding sharing of family pension and DCRG between Smt. Rameshwari Devi, who was the first wife and her son on the one hand and Smt. Yogmaya Devi, who was the second wife and her four sons on the other. It was held that the family pension and DCRG is governed by a separate set of rules and accordingly it was distributed between Smt. Rameshwari Devi and the four sons of the second wife. Feeling aggrieved at this distribution, Smt. Rameshwari Devi approached Hon'ble Apex Court wherein it has been held as under:

“From the first marriage he had one son and from the second marriage four sons born in 1964, 1971, 1972 and 1976. Learned single Judge in his judgment held that children born to Narain Lal from the wedlock with Yogmaya Devi were entitled to share the family pension and death-cum-retirement gratuity and further that family pension would be admissible to the minor children only till they attained majority. He also held that the second wife Yogmaya Devi was not entitled to anything. Appeal by the first wife Rameshwari Devi against the judgment was dismissed by the Division Bench. According to her there

was no marriage between Narain Lal and Yogmaya Devi and the children were, therefore, not legitimate. Aggrieved Rameshwari Devi has come to this Court.

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It cannot be disputed that the marriage between Narain Lal and Yogmaya Devi was in contravention of clause (i) of [Section 5](#) of the Hindu Marriage Act and was a void marriage. Under [Section 16](#) of this Act, children of void marriage are legitimate. [Under the Hindu Succession Act, 1956](#), property of a male Hindu dying intestate devolve firstly on heirs in clause (1) which include widow and son. Among the widow and son, they all get shares (see [Sections 8, 10](#) and the Schedule to the [Hindu Succession Act, 1956](#)). Yogmaya Devi cannot be described a widow of Narain Lal, her marriage with Narain Lal being void. Sons of the marriage between Narain Lal and Yogmaya Devi being the legitimate sons of Narain Lal would be entitled to the property of Narain Lal in equal shares along with that of Rameshwari Devi and the son born from the marriage of Rameshwari Devi with Narain Lal. That is, however, legal position when Hindu male dies intestate. Here, however, we are concerned with the family pension and death-cum-retirement Gratuity payments which is governed by the relevant rules. It is not disputed before us that if the legal position as aforesaid is correct, there is no error with the directions issued by the learned single Judge in the judgment which is upheld by the Division Bench in LPA by the impugned judgment.”

18.1 It was pleaded that the question of compassionate ground appointment was not adjudicated in this case and hence no ratio can be drawn by this judgment in the instant case which is for compassionate ground appointment.

It was further pleaded that compassionate ground appointment is not a property earned by the deceased which can be shared by his legal heirs. Instead it is governed by separate set of rules. In this context, reliance was placed on a judgment by Hon’ble High Court of Jharkhand in WPS No.16/2014. While deciding this case, the Hon’ble High

Court relied on another judgment by the same High Court in **Basanti Devi's** case ub WP (S) No.4461/2008 and WP (S) No.4495/2008 and WP(S) No.1083/2010 wherein the Hon'ble Court observed as under:

“the compassionate appointment and right to inherit cannot be equated in any manner.”

Thereafter Hon'ble Court directed as under:

“Firstly, the compassionate appointment and right to inherit properly have no co-relation, nor can be equated in any manner. The compassionate appointment is not a property which can be subject matter of alienation and can be bequeathed where devolving of property of a person is governed by the law, may it be customary or may it be statutory law, whereas the service and benefit arising out of service are governed by the frame of the contract of service or the rules governing the service of the employees and by the scheme, if framed by the employer. The compassionate appointment depends solely upon the frame of contract between the employer and the employee and cannot be made subject matter to be governed by the personal law, when the employer has not provided so.”

19. It was further pleaded that in case the instance of second marriage comes to light during the life time of the said Government servant when first marriage is still subsisting, such instances will actually call for punitive action under CCS (Conduct) Rules and may even attract severe most punishment. When such is the situation, it would be incorrect to consider compassionate ground appointment request for children born out of such second marriages.

20. In view of the foregoing, it was pleaded that a detailed order has been issued on 29.09.2016 and request of compassionate ground request was rejected. The instant OA is without merit and needs to be dismissed.

21. Matter has been heard at length. Sh. Rajesh Sharma, learned counsel represented the applicant and Sh. Hanu Bhaskar, learned counsel represented the respondents.

22. Compassionate ground appointment is not a vested right. It is a benevolent consideration to be extended by the respondents in case of sudden death of a Government employee and to avoid conditions of penury faced by bereaved family. There are specific rules governing such compassionate ground appointment. In the instant case, such rules were issued by DOP&T vide their notification dated 09.10.1998. The dependent family members are listed therein. The same has been reproduced in para 11 above. It is an admitted case that the marriage of the deceased Sh. M.S.Joon to Smt. Sunita Devi was void ab initio, therefore, she does not have the status of spouse as defined in the said rules issued by DOP&T.

22.1 The matter of compassionate ground appointment and whether certain restriction can be put by Government as to the eligibility had been adjudicated by Hon'ble Apex Court

in **V.Sivamurthy vs. State of Andhra Pradesh & ors.** in Civil Appeal No.4210 of 2003 decided on 12.08.2008. While deciding this issue, Hon'ble Apex Court quoted many judgments. One of the case mentioned was **State of Haryana vs. Ankur Gupta**, 2003 (7) SCC 704, wherein the Court had observed:

“As was observed in State of Haryana and Ors. v. Rani Devi & Anr. (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right..... The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

22.2 In yet another case **Food Corporation of India vs. Ram Kesh Yadav**, 2007 (9) SCC 531, the Court had observed:

“There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed dehors the policy. In LIC v. Asha Ramchandra Ambekar (1994) 2 SCC 718 this Court stressed the need to examine the terms of the rules/scheme governing compassionate appointments and

ensure that the claim satisfied the requirements before directing compassionate appointment."

Finally, Hon'ble Apex Court held as under:

"(c) Compassionate appointment can neither be claimed, nor be granted, unless the rules governing the service permit such appointments. Such appointments shall be strictly in accordance with the scheme governing such appointments and against existing vacancies.

(d) Compassionate appointments are permissible only in the case of a dependant member of family of the employee concerned, that is spouse, son or daughter and not other relatives. Such appointments should be only to posts in the lower category, that is, class III and IV posts and the crises cannot be permitted to be converted into a boon by seeking employment in Class I or II posts."

Accordingly, it is necessary to keep the relevant rules in mind before compassionate ground appointment can be considered. Since such appointments are exception to the general principles of public appointment, as brought out above, there has to be an express provision in the rules. It cannot be assumed.

The rules in instant case are those issued by DOP&T and summarised in para 11 above. These do not include that children born out of second marriage, when first was subsisting, are to be considered for compassionate appointment.

23. While pension and DCRG etc. have been distributed and shared with the children from the second marriage, the same right does not extend to the realm of compassionate ground

appointment as this aspect is not governed by Hindu Marriages Act or by Succession Act. Compassionate ground appointment is governed by separate set of rules wherein there is no provision as such to consider the compassionate ground appointment request for children born out of second void or voidable marriage. The nodal Ministry, namely DOP&T have also testified to this position (para 16 supra).

24. The order passed by the respondents dated 29.09.2016 is a detailed order bringing out various judgments when the matter was agitated before the Hon'ble High Court. Hon'ble High Court had not made any observation or directions regarding compassionate ground appointment in the instant case.

25. As to the relevant factors, which can be kept in view while deciding compassionate ground appointment cases, the matter was adjudicated by Hon'ble Apex Court in **State of Himachal Pradesh and anr. vs. Shashi Kumar** in judgment dated 16.01.2019 in CA No.988 of 2019 [arising out of SLP (C) No.7079 of 2016]. It was held that family pension and terminal benefits are required to be taken into account while adjudging the requests for compassionate ground appointments. The Court had observed as under:

“43. In the circumstances, we allow the appeal in the following terms:

(i) The Writ Petition (CWP No.3652 of 2015) filed by the respondent before the High Court shall stand dismissed and the direction of the High Court for reconsideration of the application for compassionate appointment shall stand set aside;

(ii) The direction issued by the High Court to the appellants to desist from taking into account the family pension and other terminal benefits is unsustainable in law and is accordingly set aside;

(iii) While we confirm the decision of the State Government to fix income limits in order to satisfy the terms of eligibility for compassionate appointment, we expect that the State Government shall, in compliance with the Policy, revisit the income limits at intervals of three years or earlier and consider whether a revision is warranted having regard to the cost of living, inflation and other relevant facts and circumstances.”

The applicant is in receipt of his share of family pension and retiral benefits.

26. Compassionate ground appointment is to be considered in the immediate aftermath of the death of concerned employee and to avoid conditions of penury for the bereaved family. The underlying conditions, which necessitate consideration of compassionate ground appointment, are not there in instant case. Compassionate ground appointment scheme is not a scheme to take care of unemployment. In the instant case, the father of applicant died in the year 2003, and the applicant is in receipt of family pension and other share of retiral dues. They have themselves been able to sustain for the last more than 15 years after death of Sh. M.S.Joon and for a period of more than 10 years after applicant attained age of majority.

27. The relied upon judgment in **V.R.Tripathi** (para 12 supra) is in the context of Railways who have their rules. It is noted that even though the Railway circular dated 03.04.2013 was considered improper but it was not quashed. The Hon'ble Court had also made certain observations in para 19 of judgment (para 12.2 supra). Accordingly, the relief granted therein was for specific case. Accordingly, it may not be appropriate to attract the ratio of that judgment to all such cases. Moreover, in instant case, there is considerable time lapse of more than 15 years since death and 10 years since applicant attained majority status and applicant has sustained himself all this while.

28. In view of the foregoing, the pleas put forth by the applicant for compassionate ground appointment, are not gaining acceptability and the same are held without merit. Accordingly, OA is dismissed. No order as to costs.

(Pradeep Kumar)
Member (A)

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