

**Central Administrative Tribunal
Principal Bench**

OA No. 1555/2018

Order reserved on : 17.10.2019
Order pronounced on: 05.11.2019

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

Kushagra, 29 years,
S/o Late Sh. Jagvir Singh,
r/o B-165, Flat-A, Shalimar Garden,
Extn.-II, Sahibabad,
Ghaziabad, U.P.

... Applicant

(By Advocate: Sh. B.S.Mor)

VERSUS

1. Union of India
Through its Secretary Doordarshan,
Ministry of Information & Broadcasting,
Shastri Bhawan, New Delhi, India.
2. Chairman,
Prasar Bharati Secretariat,
(India's Public Service Broadcaster),
2nd Floor, PTI Building,
Sansad Marg, New Delhi-110001.
3. Directorate General,
All India Radio,
Prasar Bharti, Broadcasting Corporation of India,
Civil Construction Wing HQ Level-I,
6th floor, Soochna Bhawan,
CGO Complex,
New Delhi-110003.
4. SSW-1,
Prasar Bharti,
Civil Construction Wing: All India Radio,
6th floor, Soochna Bhawan,
New Delhi-110003.

... Respondents

(By Advocate: Sh. Vikrant Yadav)

ORDER

Sh. Kushagra, the applicant herein, is the son of one Sh. Jagvir Singh, who was appointed as AE (Electrical) on 21.09.1982. He got married to one Smt. Sushma Singh on 16.06.1985. Applicant was born on 06.09.1988 and he has passed B.Tech in 2009, MBA in 2012, M.Tech in 2013 and Diploma in Industrial Safety in 2016. Applicant's younger brother, namely, Sh. Kalpit was born on 05.08.1993. As per certificate dated 10.11.2005 issued by CMO, Bulandshahar, Kalpit is a case of '*Spastic Cerebral palsy with mental retardation resulting into eighty percent 80% handicapped*'.

2. Certain marital disputes arose between Sh. Jagvir Singh and his wife Smt. Sushma Singh in 2002. Applicant's mother Smt. Sushma Singh, the applicant and his brother were all reportedly thrown out of the house by said Sh. Jagvir Singh. Applicant's mother filed a case No.591 of 2005 u/s 9 of Hindu Marriage Act, 1955 on 11.08.2005 seeking restoration of her conjugal rights in Court of Civil Judge, Muzaffarnagar, UP. Sh. Jagvir Singh also filed a case No.755/2005 u/s 13 of Hindu Marriage Act, 1955 seeking divorce on 19.09.2005 in the Court of Civil Judge, Bulandshahar. This divorce petition was dismissed in default vide orders dated 04.01.2007.

The Court of Additional Civil Judge, Bulandshahar passed an order on 03.12.2011 against Sh. Jagvir Singh to pay Rs.8000/- per

month to Sh. Kalpit for maintenance. The Court of Civil Judge, Ghaziabad passed an order in Misc. Petition No.109/2005 u/s 24 of Hindu Marriage Act, 1955 in Original Petition No.591/2005 in favour of Smt. Sushma Singh and directed Sh. Jagvir Singh to pay Rs.20,000/- as litigation expenses and Rs.8000/- p.m. as maintenance *pendente lite*.

3. Prior to family disputes, Sh. Jagvir Singh gave a nomination form in respect of provident fund on 07.12.1990. As per this nomination Smt. Sushma Singh was to get full payment in respect of GPF and in the event of her death, full payment was to be given to Sh. Kushagra, the applicant herein.

4. The applicant pleads that on 15.07.2015 Sh. Jagvir Singh gave details of family in Form-3, as was required under Rule 54(12) of CCS Pension Rules, 1972. In this declaration, three names are indicated, namely, Sh. Chhidda Singh and Smt. Parsandi Devi, who are the parents of Sh. Jagvir Singh and Mr. Kalpit Singh, who is the younger son of Sh. Jagvir Singh. The names of Smt. Sushma Singh and the applicant are omitted in this Form-3.

Applicant pleads that format for Form-3 was modified vide notification dated 20.02.2014 wherein a modified Form-3 came into being. As per this modified Form-3, Note No.1 to 4 were also added on the Form-3 itself to facilitate correct filling by the employees. These notes read as under:

“Note 1. – The original Form submitted by the Government. servant is to be retained. All additions/alterations are to be recorded in this Form under the signature of Head of Office in Col 7. No new Form will substitute the original Form. However, the retiring Government. servant should submit the details of family afresh along with Form 5.

Note 2. – The details of spouse, all children and parents (whether eligible for family pension or not) and disabled siblings (brothers and sisters) may be given.

Note 3. – The Head of Office shall indicate the date of receipt of communication regarding addition or alteration in the family in the ‘Remarks’ column. The fact regarding disability or change of marital status of a family member should also be indicated in the ‘Remarks’ column.

Note 4. - Wife and husband shall include judicially separated wife and husband.”

5. The applicant pleads that since Form-3 does not confirm to the requirements of Note-2 and Note-4 as the names of Smt. Sushma Singh, the wife of Sh. Jagvir Singh and the applicant who is the son of Sh. Jagvir Singh are missing. Applicant pleads that even if Sh. Jagvir Singh and Smt. Sushma Singh were having differences and even if they were to be judicially separated, which is not the case, still the names were required to be included as is clarified in these notes.

6. The said Sh. Jagvir Singh unfortunately died in harness on 08.01.2016 leaving behind his wife Smt. Sushma Singh, the applicant and Sh. Kalpit, who were all dependent on Sh. Jagvir Singh. Upon his death the applicant applied for compassionate ground appointment on 06.02.2016. This was processed by the respondents. However, eventually the request was rejected vide

letter dated 02.11.2016 on the plea that his name is not included in the details of family. This rejection letter reads as under:

“In this connection it is to inform that your application was referred to the concerned Unit of the Headquarters, and it has been intimated vide their letter dated 21.10.2016 that the name of Shri Kushagra is not in the family details dated 15.07.2015, submitted by the Late Shri Jagvir Singh, AE(E) and hence you are not entitled for appointment on compassionate grounds.

Further, your application alongwith related documents in original is returned herewith.”

7. The applicant pleads that the declaration on 15.07.2015 as per Form-3, which is the basis for the rejection of his compassionate ground appointment request, is defective as complete details as were required to be given as per Note-1 to 4 are not given. In respect of compassionate ground appointment, it is the DOP&T's direction dated 09.10.1998 which are applicable and as per these instructions, applicant's case is covered. As per these instructions, the compassionate ground appointment is applicable to a dependent family of a Government servant who dies while in harness, including death by suicide and list of dependent family members include the following:

“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

(e) 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.

(f) married son – provided he fulfils all other requirements of the scheme and fulfil the criteria laid down in the OM, dated 16-1-2013. This is effective from 25-2-2015.”

8. Applicant being a son of said Sh. Jagvir Singh, is eligible as per these instructions. Applicant is aggrieved as his request for compassionate ground appointment has been rejected and he has referred the instant OA seeking relief in the form of directions to the respondents to consider the case of the applicant for compassionate ground appointment.

9. Applicant relies upon the judgment by Hon'ble Apex Court in **G.L.Bhatia vs. Union of India and another**, (1999) 5 SCC 237.

The relevant part of this judgment reads as follows:

“2. The sole question that arises for consideration in this appeal is whether the appellant, who happens to be the husband of the deceased government servant, is entitled to family pension under the provisions of the Central Civil Services (Pension) Rules (for short "the rules") notwithstanding the fact that the deceased wife in her nomination did not include the husband. The forums below have taken the view agreeing with the authorities that since the nomination was not in favour of the husband and the husband was staying separate from the wife, the husband would not be entitled to family pension in question. This view cannot be sustained in view of the provisions contained in Rule 54 of the rules. It is too well settled that where rights of the parties are governed by statutory provisions, the individual nomination contrary to the statute will not operate.

3. Under Rule 54 sub-rule (14)(b)(i) the expression "family" has been defined thus:

"54. (14)(b)(i) Wife in the case of a male government servant, or husband in the case of a female government servant...."

4. Sub-Rule (8)(ii) of Rule 54 states that:

"54. (8)(ii) If a deceased government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed."

10. Drawing reliance on the ratio of above judgment, applicant pleads that the Hon'ble Apex Court has held that the rights which had accrued to the widow of a deceased Government servant to received family pension and retiral dues cannot be denied even if the said deceased Government servant has omitted the name of the wife in the declaration forms. Similarly, the rights that accrue to a dependent son, cannot be denied simply because his name was not mentioned in the family details.

11. Per contra, the respondents opposed the OA. It was pleaded that the present application is barred by limitation as the death took place on 08.01.2016 whereas OA has been filed on 12.04.2018.

12. It was further brought out that as per family details given by late Sh. Jagvir Singh on 15.12.1988, the date of birth of the applicant was shown as 06.04.1987 whereas birth certificate submitted by the applicant while seeking compassionate ground

appointment indicates his date of birth as 06.09.1988. There is contradiction which has not been explained.

13. It was further pleaded that the family details given by late Sh. Jagvir Singh on 15.07.2015 do not include the name of applicant and Smt. Sushma Singh as his dependents. Accordingly, the case of applicant cannot be considered for compassionate ground appointment.

14. It was further pleaded that the old format include Form-3 as well as new Form-3 which came into being on 20.02.2014 are not much different.

15. The respondents also relied upon a judgment by Hon'ble Apex Court in **State of Himachal Pradesh vs. Shashi Kumar**, 2019 (2) SCALE 84 wherein Court has given directions that while considering the compassionate ground appointment request the status of payments being made including the pension and other retiral dues are required to be taken into account to assess the financial conditions of the bereaved family. The Court has also held that the delays between death and application for seeking such appointment, is also a relevant factor to be kept into account and delay can be condoned only in those cases where applicant was a minor at the time of death and he attains majority on a later date. In such cases, the time duration between the date of

attaining such majority and application for employment shall be relevant.

16. It was pleaded that in view of the foregoing submissions, the compassionate ground appointment request is not maintainable in the instant case.

17. The applicant pleaded that the issue in respect of condonation of delay was already decided and condoned by the Tribunal vide order dated 12.07.2018 in reference to MA No.1761/2018 and his request is required to be considered by the respondents.

18. Matter has been heard at length. Sh. B.S.Mor, learned counsel represented the applicant and Sh. Vikrant Yadav, learned counsel represented the respondents.

19. The scheme of compassionate ground appointment has been framed to take care of the bereaved family to avoid conditions of penury and the person so appointed has to take care of the dependent family members which in the instant case comprises of estranged widow Smt. Sushma Singh, the applicant and in addition the disabled son who is presently being looked after by his grandparents as per the family declaration dated 15.07.2015. It is noted that there was no maintenance allowance granted to applicant while the same was granted to his mother and his younger disabled brother.

The sole ground taken by the respondents for rejection of applicant's request for compassionate ground appointment is non-inclusion of his name in Form-3. Form-3 was in respect of grant of pension. The notes of Form-3 specify that the names of all family members including estranged spouse, are required to be included. These details are, however, not given in Form-3. This form is therefore deficient.

The nomination form filled up by late Sh. Jagvir Singh in respect of GPF indicates full payment to be made to his wife and in case of her death to the applicant.

In view of this, total reliance on Form-3, while rejecting the compassionate ground appointment request, is not in order.

20. However, grant of compassionate ground appointment is not a vested right. It is only a benevolent consideration to be extended by the respondents, if underlying conditions are fulfilled. In view of peculiar circumstances of this case, OA is disposed of with the following directions:

(a) Applicant is at liberty to submit a detailed representation with supporting documents which shall also testify that late Sh. Jagvir Singh has not dispossessed the applicant from the rights as his son in his life time, and as to how the applicant intends to fulfil the basic purpose of compassionate ground appointment which is to look after his

widow mother and the disabled brother. The supporting documents shall necessarily include requisite affidavits etc. to this effect, from Smt. Sushma Singh as well as the grandparents who are looking after the disabled son, as per wishes of late Sh. Jagvir Singh, in support of said compassionate ground appointment request. The representation be submitted within a period of three months

(b) In case such a representation is received within the allowed time, the respondents shall consider the same and pass a reasoned and speaking order within six months thereafter and advise the applicant.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

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