

(Reserved on 30.04.2024)

Central Administrative Tribunal, Allahabad Bench, Allahabad

This the 03rd day of May, 2024

Hon'ble Mr. Justice Om Prakash VII, Member (J)

Original Application No. 717 of 2015

Ankur Lal Son of Narendra Kumar, Resident of 232 Nagla Battu
Christian Colony, District Meerut.

..... **APPLICANT**

By Advocate: Shri A P Mishra

Versus

1. Union of India through Controller General of Defense Account
Ulan Batar Road, Palam, New Delhi Cantt – 110010.
2. Controller of Defense Account (Funds) Meerut Cantt – 250001
Through its Assistant Controller (Administration).

.....**RESPONDENTS**

By Advocate: Shri Rajnikant Rai

ORDER

Shri A P Mishra, learned counsel for the applicant and Shri
Rajnikant Rai, learned counsel for the respondents, were present at
the time of hearing.

2. The instant original application has been filed seeking
following relief:

*“(i) Quash the impugned orders dated 13.8.14 as well
as 1.7.08 passed by respondent No. 2 i.e., Assistant
Controller of Defence Account C.D.A. (Fund) Meerut
Cantt.*

*(ii) Direct the respondent No. 2 to make appointment
of the petitioner on compassionate ground in the
department in pursuance of the death of his father Sri
Narendra Kumar.*

*(iii) Passed any other order or direction which may
deem fit and proper in the facts and circumstances of the
case.”*

3. The compendium of the facts narrated in the instant original application is that the applicant is aggrieved by the impugned order dated 13.08.2014 as well as 01.07.2008 passed by respondent no. 2 i.e., Assistant Controller of Defence Account C.D.A. (Fund) Meerut Cantt by way of which applicant's request for appointment on compassionate grounds has been rejected. By way of the OA, the applicant seeks quashing of the above impugned orders with a direction to the respondents to consider his appointment on compassionate grounds.

4. I have heard the rival contentions advanced by the learned counsel appearing for the parties.

5. Disclosing a brief history of the case, learned counsel for the applicant submitted that the father of the applicant namely Narendra Kumar was serving in the respondents' department. He expired in a road accident on 20.06.2005. Papers regarding pension and other post retiral benefits were issued on 30.09.2006. The mother of the applicant preferred an application dated 23.08.2005 seeking appointment of the applicant on compassionate grounds mentioning therein that there is no other source of livelihood. Learned counsel argued that the representation preferred by the applicant's mother was not immediately acted upon and after a lapse of about three years, it was decided by the respondents vide order dated 01.07.2008 and the representation was rejected. Aggrieved by the same, another application dated 21.12.2010 was preferred seeking compassionate appointment. However, the same was rejected vide order dated 19.01.2011. Aggrieved still, the petitioner preferred an application dated 05.01.2013 seeking the same benefit but the same was rejected again. Vide order dated 13.08.2014, it was informed to the applicant that his case does not come under the purview of reconsideration. Learned counsel further submitted that on 26.07.2012, the Ministry of Personal, Public Grievances and Pensions (Department of Personnel & Training) issued an OM dated 26.07.2012 reviewing the three years' time limit which was earlier set for assessing the cases of

compassionate appointment and in terms of the new instructions, the applicant is liable to be considered for grant of compassionate appointment. Learned counsel further submitted that the claim of the applicant was turned down on frivolous grounds and the impugned order suffers from illegality and infirmity. The existing penurious and indigent condition of the applicant and his mother was not taken into consideration while rejecting the claim. Thus, prayer was made that the OA be allowed and respondents be directed to consider appointing the applicant on compassionate grounds.

6. Learned counsel for the respondents vehemently opposed the submissions of the applicant's counsel and by way of his counter affidavit, he has submitted that the contention of the applicant that his initial request for compassionate appointment was considered at a belated stage by the respondents is absolutely false. A welfare officer was nominated during January 2006 itself who submitted his report on 06.01.2006. Request made by the mother of the applicant was considered by the competent authority in view of the departmental rules and statutory provisions. Referring to Annexure No. 2 of counter affidavit, learned counsel argued that the petitioner obtained 24 points out of 100 in Board proceedings held during June 2007 for the purpose of adjudicating the eligibility of the applicant and for the reason that the merit points were not sufficient, the request made by the applicant could not be acceded to. The applicant kept on submitting representations one after another and since his case was already rejected being devoid of merits, no scope was formed to reanalyze or reexamine the claim. Furthermore, all the pensionary benefits have been accorded in favour of the applicant's family and family pension is also being disbursed regularly to them and the claim of the applicant that they are suffering from destitution is absolutely false and therefore prayer was made that the instant OA be dismissed being devoid of merits.

7. Rejoinder has been filed on behalf of the applicant reiterating the same facts and circumstances as have been narrated in the OA.

8. I have considered the rival contentions advanced by the learned counsel appearing for the parties and gone through the documents on record.

9. As the facts of the case have already been stated above in detail, the same are not reiterated for the sake of brevity. The claim of the applicant for compassionate appointment was rejected by the respondents vide order dated 01.07.2008 for two significant reasons. Firstly, that family pension is being disbursed to the applicant's mother and also, terminal benefits to the tune of Rs. 7,68,287/- have been given to her which marks her to be above the poverty line fixed by the government. And secondly, there were no vacancies available and thus applicant could not be considered for appointment. The applicant's counsel has rebutted both the above reasons submitting that the case of the applicant was not considered properly and the penurious state of the family was not examined.

However, it would be in the fitness of things to record that the applicant's case was considered by the Board of Officers and upon inspection, the applicant could only be granted 24 points out of 100 across various heads the details of which have been furnished by the respondents at annexure 3 of the counter affidavit. For the sake of clarity, the tabular chart showing the marks obtained by the applicant under different heads is reproduced below:

a)	Family pension (Rs. 5831/- + DA)	06 out of 20
b)	Terminal Benefits (Rs.768287/-) (CGEIS Rs. 51818/- Leave Encashment Rs. 120995/-, DCRG Rs. 350000/-, GPF Rs. 245474/-	Nil out of 10
c)	Monthly Income (Nil)	05 out of 05
d)	Movable / Immovable Property (House)	01 out of 10
e)	No. of dependents (two)	10 out of 15
f)	No. of unmarried daughter (nil)	Nil out of 15
g)	No. of minor children (Nil)	Nil out of 15
h)	Left over service (09 months)	02 out of 10
	Total marks	024 out of 100

The above chart reveals that there were only nine months remaining for the applicant to attain the age of superannuation. Further, there are no minor children or any unmarried daughter. The applicant's family has been paid all the terminal benefits and is receiving family pension regularly. For all these reasons, the applicant could secure only 24 points out of 100 when his case was evaluated by the board of officers. This leaves no doubt whatsoever that the applicant's case is not a deserving one to be granted the benefit of compassionate appointment. It is also pertinent to record that the instant original application was preferred after a lapse of about 07 years from the date when the initial order dated 01.07.2008 rejecting the representation of the applicant, was passed. Applicant kept on preferring one representation after another instead of approaching before the judicial forum. Also, no delay condonation application has been preferred along with this OA to explain the delay occurred.

10. Furthermore, time and again it has been held by several judicial forums across the country including the Apex Court that compassionate appointment is not a right and the sole motive of granting the compassionate appointment is to enable the bereaved family to tide over sudden crises. This view was reiterated by the Apex Court in the case of ***State of West Bengal Vs. Debabrata Tiwari and Ors. Etc. etc. in Civil Appeal No. 8842-8855 of 2022 decided on 3.3.2023*** in paras 7.1 and 7.2 has held as under::

“7.1. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

- i. In Sushma Gosain vs. Union of India, (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should,*

therefore, be provided immediately to redeem the family in distress.

- ii. *In Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138, this Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. That mere death of an employee in harness does not entitle his family to such source of livelihood; the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that, but for the provision of employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. That the object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, compassionate employment cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome. 5*
- iii. *In Haryana State Electricity Board vs. Hakim Singh, (1997) 8 SCC 85, (“Hakim Singh”) this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.*
- iv. *This Court in State of Haryana vs. Ankur Gupta, AIR 2003 SC 3797 held that in order for a claim for*

compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

- v. *There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide Jagdish Prasad vs. State of Bihar, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea 19 being not to provide for endless compassion, vide I.G. (Karmik) vs. Pahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in Mumtaz Yunus Mulani vs. State of Maharashtra, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis.*
- vi. *In State of Jammu and Kashmir vs. Sajad Ahmed Mir, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The 6 application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.*

vii. *In Shashi Kumar, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:*

“41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the 7 delay on the part of the dependant in seeking compassionate appointment.”

7.2. *On consideration of the aforesaid decisions of this Court, the following principles emerge:*

i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to

enable the family of the deceased to get over the sudden financial crisis.

ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source”.

The father of the applicant passed away in the year 2005 and approximately 19 years have elapsed since then and thus it cannot be held that the penurious condition of the applicant's family, if such existed at the time when the application for compassionate appointment was initially made, still subsists. Thus, the claim of the applicant is not liable to be acceded to at this juncture.

11. Thus, for the above deliberations and analysis, the Tribunal is of the considered opinion that the instant case lacks merit and is liable to be dismissed specifically in view of the law laid down by the Apex Court in the case of Debabrata Tiwari (supra) and the same is accordingly, **dismissed**. The effect and operation of the impugned order stands intact.

12. All associated MAs stand disposed of accordingly.

13. No costs.

**(Justice Om Prakash VII)
Member (Judicial)**

(Ritu Raj)