

(2023) 11 CAT CK 0031

In the Central Administrative Tribunal

Case No : Original Application No. 990 Of 2015

Ashish Srivastava, S/o Late Arun Kumar, R/o 31M/28,
Mitrapuram colony, Shamshabad, Agra

APPELLANT

Vs

Union Of India, Through Its Secretary, Ministry Of
Communication (Department Of Post), Dak Bhawan, New
Delhi. & Ors

RESPONDENT

Date of Decision : 22-11-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2023) 11 CAT CK 0031

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : Aseem Kumar Rai, Rajni Kant Rai

Final Decision : Dismissed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. This OA, under Section 19 of the AT Act, 1985 is filed claiming relief to quash the rejection order dated 18.01.2012 passed by the respondent no. 2 and to issue a direction to the respondent no. 2 to appoint the applicant on compassionate ground as his father died in harness.

2. The facts of the case, in brief, are that father of the applicant Late Arun Kumar, who was working as Sub-Post Master at Raja Mandi Post Office, died on 02.09.2010 leaving behind his wife, four young daughters and the applicant. Thereafter, the mother of the applicant preferred an application on prescribed proforma on 07.12.2010 seeking appointment on compassionate grounds in favour of the applicant. The said application was considered and the same was rejected vide order dated 18.01.2012.

3. Being aggrieved by the order dated 18.01.2012, the applicant has filed the instant original application on the ground that the said order is non-speaking and

it does not contain any reason. It is further stated that the family is in distress condition and there is no other source of income except the pension Rs. 9450/- per months. It is also contended that the house in which the family is residing, is mortgaged to I.C.I.C.I Bank and from the above pension, Rs. 3592/- per month is being deducted as instalment towards home loan. The applicant emphasises that it is a settled law that the retiral benefits should not be computed towards determination of distress and the liability of five family members out of which four sisters are marriageable, makes him eligible for compassionate appointment and requested that the OA should be allowed.

4. Upon notice, the respondents have filed counter affidavit stating therein that after the death of Late Arun Kumar Srivastava, who expired on 02.09.2010 while in service leaving behind his wife Smt. Shushrita Srivastava, two unmarried daughters and the applicant, the family of the deceased was paid Rs. 13,30,530/- as terminal benefits. Besides this, the family of the deceased employee is getting basic pension Rs. 9,450/- +DA per month. The respondents further contended that the application for appointment on compassionate grounds was considered and total 53 points were allotted to him. It is further contended that the Circle Relaxation Committee met on 05.01.2012 and 06.01.2012 for considering the cases for compassionate appointment for the year 2010 and 2011 but the case of the applicant could not be recommended due to having only 53 points and accordingly, the applicant was communicated the decision of Circle Relaxation Committee dated 18.01.2012 by the SSPOs, Agra vide letter dated 24.01.2012.

5. Learned counsel for the respondents drew attention to page 46 of Counter Affidavit, which is 'additional check list with allocation of points' and submitted that the applicant was awarded 16 points towards family pension, 0 points for terminal benefits, 05 points for monthly income of earning member, 03 points towards moveable/immovable property, 15 points for number of dependents, 10 points for number of unmarried daughters, 0 points for number of minor children, 04 points for left over service which comes to 53 points. He further contended that the request of the applicant for compassionate appointment was considered by the Circle Relaxation Committee keeping in view the availability of vacancies within the ceiling of 5% quota, financial condition of the family and liabilities etc, but the case of the applicant could not be recommended due to having only 53 merit points. Learned counsel for the respondents vehemently stated that from the above, it is clear that the each and every aspect of the case of the applicant has been examined by the respondents and thereafter they have passed the order dated 18.01.2012 giving the reasons.

6. He further contended that the objective of scheme for compassionate appointment is to help the family to get out of the emergency which is due to their indigent condition due to death of bread earner of the family, and deserves immediate assistance for relief from financial destitution and such appointment can be provided only to fill up 5% vacancies that arises for direct recruitment.

Learned counsel for the respondents also places reliance on the judgment of Hon'ble Apex Court in the case of Umesh Kumar Nagpal vs. State of Haryana dated 04.05.1994 -JT 1994(3) SC (525) and stated that in the above judgment Hon'ble Apex Court has held that 'as a rule, appointment in public service should be made strictly on the basis of open invitation of applications and merit and appointment on compassionate ground is an exception to the rule. Any such exception should therefore, be made to the minimum possible extent say one or two percent or maximum of five percent and if it exceed that it will be no longer be an exception.'. Learned counsel for the respondents further stated that the Hon'ble Apex Court has further held that the Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future and in the instant case, the deceased employee expired in the year 2010, hence there is no case for indigence and immediate assistance for relief from financial destitution.

7. The applicant has filed rejoinder affidavit wherein he has reiterated his facts as in the OA. He re-emphasized that no time limit for compassionate appointment is there and hence his case should be considered again.

8. The case came up for final hearing on 17.11.2023. Shri Aseem Kumar Rai, learned counsel for the applicant and Shri Rajni Kant Rai, learned counsel for the respondents were present and heard. I have gone through the record and have carefully examined the rival contentions.

9. From the pleadings of the case, it is evident that the main case of the applicant is that the order dated 18.01.2012 is not a speaking order and not based on any sufficient reason hence, the same should be quashed and he should be again considered for compassionate appointment. From the impugned order dated 18.01.2012, which is at page 15 of the OA, it emerges that the case of the applicant was examined in detail and as per the merit points computed, he was awarded only 53 points, hence in comparative merit, could not be recommended by the Circle Relaxation Committee. The respondents have also annexed additional check list which was placed before the Committee with allocation of points at page 46 of Counter Affidavit where they explained how this 53 points are computed. Hence, it is clear that the Circle Relaxation Committee has exercised its duty with diligence and this fact has been suppressed by the applicant in the OA.

10. Further, the argument of the applicant that his case was also rejected based on the family pension given to the mother and the terminal benefits paid is not correct. In this regard, the judgment of Hon'ble Supreme Court in the case of The state of West Bengal vs. Debabrata Tiwar and ors etc. etc. - Civil Appeal No. 8855 o 2022 dated 03.03.2023 is quite relevant, wherein catena of earlier judgments have been quoted. The relevant part of the said judgment is quoted below:-

"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. 7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration."

11. It is emphasised that it is wrongly construed by the applicant that terminal benefits and pension cannot be considered for the purpose of considering that the family has indigence, although they can't be the sole basis. In the present case it may be wrong to say that terminal benefits and pension was the sole basis for the rejection of compassionate appointment, as all the parameters have been tabulated and assessed by the committee before giving the recommendation, as is evident on page no. 46 of the Counter Affidavit. Hence, the above quoted ruling is very clear that pension and terminal benefits are also to be considered. Hence, I do not find any irregularity in the impugned order. Authorities have given ample opportunity to the applicant to furnish all relevant data and based on all the relevant information on record, the authorities have taken judicious and sound decision and the same is also clearly mentioned and emphasized in the impugned order.

12. Further in the case of *Umesh Kumar Nagpal vs. State of Haryana* - 1994 SCC (4) 138 (supra) the Hon'ble Supreme Court has laid down following important principle regarding compassionate appointment:-

"(i) Only dependents of an employee dying in harness leaving his family in penury and without any means of livelihood can be appointed on compassionate ground.

(ii) The posts in Group 'C' and 'D' (formerly classes III and IV) are the lowest posts in non-manual and manual categories and hence they alone can be offered

on compassionate grounds and no other post, i.e., in the Group ?A? or Group ?B? category is expected or required to be given for this purpose as it is legally impermissible.

(iii) The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency.

(iv) Offering compassionate appointment as a matter of course irrespective of the financial condition of the family of the deceased or medically retired Government servant is legally impermissible.

(v) Neither the qualifications of the applicant (dependent family member) nor the post held by the deceased or medically retired Government servant is relevant. If the applicant finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

(vi) Compassionate appointment cannot be granted after lapse of a reasonable period and it is not a vested right which can be exercised at any time in future.

(vii) Compassionate appointment cannot be offered by an individual functionary on an ad hoc basis”.

13. In this case as more than 13 years have passed and the facts before us also do not in any way indicate that the family is in indigent conditions and requires any compassionate appointment as compassionate appointment is not vested right which can be exercised at any point of time in future as it is an exception to the Constitutional rule of public employment, so it has to be given to any person after due process and inquiry and in this case the respondents have done their best to facilitate the applicant to provide information and based on information made available, they have weighed all available facts, and taken right decision.

14. In view of the forgoing discussions, I find no merit in the instant OA and it is liable to be dismissed. Accordingly, the original application is dismissed.

15. All pending MAs, if any, in this O.A are also stand disposed off.

16. No order as to costs.