

(2001) 04 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 2147/1998 S.W.P. No. 1889 Of 1999 S.W.P. No. 1805 Of 1999 S.W.P. No. 2193 Of 1999 S.W.P. No. 2571 Of 1999 S.W.P. No. 243 Of 1999 S.W.P. No. 1409 Of 1999 S.W

Jia Lal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) KashLJ 623

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : Tashi Rabstan, Subash Bhat, Shaishta Hakim, S.Kour, S.K.Shukla, S.K.Anand, Roop Lal, Ravinder Gupta, P.N.Raina, Neeru Goswami, M.P.Gupta, K.L.Pandita, J.S.Kotwal, J.P.Gandhi, Gaurav Pachnanda, D.S.Chauhan, Advocates appearing for the Parties

Judgement

Tejinder Singh Doabia, J.—Delay in the matter of making prayer and seeking compassion and compassionate appointment is pleaded as a

bar as difficult to cross as the ""Great Wall of China.

2. ""Compassion"" and ""Reason"" represent two dramatically opposite concepts. Where ""compassion"" has to be shown then ""reason1 has to be in the

back seat. Compassionate and compassion as the words are ordinarily understood, would signify a mental state of affair which give rise to a feeling

and sympathy for sufferings of others. It represents an inclination to give aid or support or even show mercy.

3. Compassionate appointment as the term suggests is made by passing normal rules for entry into public service. Petitioners submit that this

compassion can be shown at any time. Filing of belated application may be one

of the criterion but ultimately, if the appointing authority feels that a person needs support then benoalance can be shown at any time. This is said to be the crux of the matter. Judicial precedents however vary depending upon the rules. Appointments have been allowed and disallowed on the plea of limitation. Learned counsel for the petitioners seeking compassionate appointment submit that what is required to be seen is the situation in which a person seeking compassionate appointment is placed. Counsel for the State however submit that an application seeking compassionate appointment should fall within the frame work of the rules and if there is delay then this delay would stand in the way of a person in getting appointment. Before noticing the Judicial precedents in this behalf the Rules on the subject be noticed.

4. Rules as applicable to State of Jammu and Kashmir J and K Employees (Death in Harness) Dependents Rule 1989 came to be enforce on 18th of May 1989. (SRO 194 was issued). Family consisting of son, daughter, adopted son, adopted daughter, wife, sister brother dependent upon the deceased, were eligible to seek compassionate appointment. Basis factor which was to guide in these appointments was to see that by these appointments the extreme hardship of the immediate family members of the deceased is mitigated. The person to be appointed was supposed to give an undertaking that he would look after the family. This was so provided in Rule 2 of the above rules. Income criteria was also prescribed. There was, however, no stipulation as to time limit within which the appointment was to be made.

5. On 24th of September 1989, Jammu and Kashmir Compassionate Appointment Rules 1991 came on the Statute Book. (This was vide SRO 283). New criteria was indicated. There was no time limit with in which this appointment was to be made. If the income of family was more than Rs. 2000/ then appointment was not to be offered. The rules which are now applicable are the Jammu and Kashmir Compassionate Appointment Rules of 1994. This is popularly known as SRO 43 pf 1994. Rule 3 of the rules provided that appointment was to be made to the lowest rank of nongazetted service or to class IV post if the candidate had acquired qualification upto matric. Rule 3 is relevant and is reproduced below :

3. Appointment under these rules: (1) Notwithstanding any thing contained in

any rule or order for the time being in force regulating the procedure for recruitment in any service or posts under the Government an eligible family member or a person specified in Rule 2 may be appointed against a vacancy in the lowest rank of a nongazetted service having qualification above Matriculation or to a class IV post if the candidate has read upto Matric.

Provided that the applicant is eligible and qualified or acquires eligibility and qualification within a period of six months from the death of the deceased person specified in Rule 2.

(2) Nothing in subrule (1) shall derogate from the powers of the Government in General Administration Department to appoint at its discretion a candidate to a higher post in the nongazetted service.

6. Income criteria was indicated. This was fixed at Rs. 3500/-. There was power reserved with the Government in terms of Rule 7. Government

could relax the rules to some extent in the case of deserving candidates and lower down educational or technical qualifications as the case may be.

7. The stipulation of six months period as mentioned in Rule 3 is being relied upon by the respondent authorities in declining the compassionate appointment.

8. Basic question which has been raised in these petitions is as to whether fixation of limitation in the Rules of 1994 can be made a ground for non

grant of relief of appointment on compassionate grounds in case of person who had applied much earlier to coming into force of the above Rules.

9. Rules which are applicable to the employees of the Union of India may also be noticed. Letter No. AR No. 140/04/01/77 Estt. (D) dated 25th

November 1978 as adverted to the Jia Lal's with petition SWP No. 2147/98 reads as under:

The undersigned is directed to say that in supersession of this Department's OM No. 14034/ 1/77Estt. (D) dated 23. May 1978 the following

revised instructions are circulated for information and compliance :

1. A. General Scheme : 1. Ministries / Departments are competent to appoint in relaxation of the procedure of recruitment through the Staff

Selection Commissioner Employment Exchange, but subject to the other recruitments not out below,

2. B. Authority Competent to make the appointment: the son/ daughter/near relative of a Government who dies in harness, leaving his family in immediate need of assistance, in the event of there doing no other earning member in the family to a group 'C' post or group 'D' post, after the proposal for such appointment has been approved by the Joint Secretary, Incharge of the Administration or Secretary in the Ministry Department concerned. In attached and Subordinate offices the power of compassionate appointment may be exercised by the Head of the Department under Supplementary rule No. 2 (b).

4. Where the death took place long ago: It will no longer be necessary for Department to refer to Departments of Personnel and Administrative Reforms cases of compassionate appointments of the words of Government servants merely because a long time, say 5 years has lapsed since the death of Government servant. The Ministries/Departments may consider such application, Ministries/Department may please keep in view the important fact that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on passing away of the Government servant in harness. When several years have passed after the death of a Government servant it would appear prime facie that the family has been able to manage somehow all the years and had some means of subsistence. Ministries/Departments will no doubt deal with such requests with a great deal of circumstances, in order to give due allocation to more deserving cases, if any. The decision in such cases of belated appointments may be taken after the secretary has approved of the proposal.

When there is an earning member:

In deserving cases, even where there is earning member of the family, a son/ daughter/near relative of a Government servants who dies in harness leaving his family in indigent circumstances may be considered for appointment to the post. All such appointments, are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the member of dependents left by the deceased Government servant and liabilities left by him, the income of the earning member as also his liabilities, whether the earning

member is residing with the family of the deceased govt. servant and whether he should not be source of support to the other members of the family"".

10. In SWP No. 1889/99 Raj Kumar Vs. Union of India the scheme for grant of compassionate appointment is as under:

(a) As per OOP and T the scheme of compassionate appointment is applicable to cases where : (i) The family is indigent and deserves immediate

assistance for relief from financial destitution, (ii) Ministry / Department can consider request for compassionate appointment even where the death

or retirement on medical grounds of a Government servant took place long back, say five years or so. While considering such belated requests it

should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the

family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all

these years, should normally be taken as adequate proof that the family had some dependable means of subsistence.

(iii) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on

medical ground of a government servant and not the age of the applicant at the time of consideration.

11. Precedents be noticed. In Gurdip Singh vs. The Haryana State Electricity Board 1997 (4) SCT 833 P and H, the instructions contemplated

giving of compassionate appointment. The concerned employee suffered permanent disability. Instructions were modified. Petitioner's case was

pending when the change occurred. It was held that the case for giving appointment has to be considered under the instructions which were

applicable at the relevant time. As the case stood already recommended under the earlier instructions. It was held that later instructions could not

be made effective.

12. The widow of the deceased employee was asked to opt for additional monetary benefit in lieu of the compassionate appointment. The widow

approached the authorities for compassionate appointment within one months from the date of death of her husband. It was observed that she

cannot be denied appointment on the ground that six years have elapsed from the date of death of the employee. The reasoning that after six years

she would not require a job was held to be a bad reasoning by the Andhra Pradesh High Court in Smt. M. Reddamma Vs. Andhra Pradesh State

Road Transport Corpn. 1997 (3) SCT 86.

13. The dependent of the deceased employee made an application seeking appointment on compassionate grounds. There was alternation in the scheme. This was with retrospective effect. This provided for monetary package to the dependents of deceased in lieu of compassionate appointment.

14. The question as to whether the scheme forgiving appointment on compassionate grounds can be altered with retrospective effect was considered in the case reported as A. Ksheera Sagar Vs. A.P. Dairy Development Coop. Fed Ltd. 1997 (3) SCT 515. It was held that the appointment

would be governed by the Rules or Scheme as in existence on the date of submitting applications and there could not be altered retrospectively.

15. The dependents sought appointment on compassionate grounds. The approval was granted after almost ten years of the death of employee

and after three years of sanction accorded by the government. Actual appointment order was not issued. It was observed that the object of

granting such relief is to mitigate immediate hardship to the grieved family. The respondents were directed to appoint the petitioner forthwith. This

view was expressed in Nisar Ahmad Abdulmiya Vs. State of Gujrat 1997 (1) SCT 812. The view expressed by the Supreme Court in the case

reported as Smt. Sushma Gosain and Others. vs. Union of India and Others. AIR 1989 SC 1976 was taken note of.

16. The widow of a deceased adhoc employee was seeking appointment on compassionate ground was denied the same on the ground that the

compassionate appointment can be granted only in the case of death of an employee who is working on regular basis. The argument raised that as

the deceased has worked for more than two years and was entitled to regularization was taken note of. The directions were given to consider the

case of the petitioner on compassionate grounds in Saroj Vs. State of Haryana and Others. 1997 (1) SCT 229.

17. The petitioner was three years of age at the time his father died. His mother remarried. He was left at the mercy of his relations. Applications

were submitted for compassionate appointments. There was no denial of the fact

that an application stood submitted. The view expressed was that

merely because respondent authorities did not take notice of the application, this could not be made a ground to deny appointment in *Dharam Pal*

vs. State of Haryana State Electricity Board, 1996 (2) SCT 300.

18. The father of the claimant died when he was 6/7 years of age. Limitation in the case of minors for compassionate appointment was held to

start from the date of attaining majority by the dependent. He was held entitled to file application on attaining majority. *Daya Kaur vs. Haryana*

State Electricity Board 1996 (2) SCT 447. Reliance was placed by the petitioner on the decision of Punjab and Haryana High Court in *Chiandro*

Devi vs. State of Haryana and another 1994

(1) SCT 9 (PandH) and also a decision reported as *Ratni Devi vs. Secretary H.S.E.B.* 1987 (2) P.LR 374.

19. In *Hakim Singh vs. H.S.E.B. and another*, 1995 (4) SCT 746 (PandH), once again a similar question was considered. It was held that a minor

dependent cannot be deprived of employment on compassionate ground only because he could not submit the application within three years of the

death. In *Vishal Sharma vs. Haryana State Electricity Board and another* 1995 (4) SCT 801 (PandH) another Division Bench of Punjab and

Haryana High Court reiterated the same principle.

20. The dependent of the deceased employee was held entitled to compassionate appointment on the date of death. The policy of compassionate

appointment was changed later on. It was held that the dependent has a legal right to get appointment as per the policy existing v.: the time of death.

Tarun Chakaraborty vs. State of West Bengal and Others. 1996 (2) SCT 799.

21. In *Smt. Sushma Gosain and others Vs. Union of India and others* reported in AIR 1989 SC 1976 the Supreme Court of India held :

She had then a right to have her case considered for appointment on compassionate ground under the affirmed government memorandum. In

1983 she passed the trade test and the interview conducted by the DGBR.

22. In *Phoolwati vs. Union of India* reported in AIR 1991 SC 469, the Supreme Court following its earlier decision in *Sushma Gosain's* case

directed Union of India to provide employment to the second son of the appellant.

23. In *Asif Hameed and others vs. State of Jammu and Kashmir* reported in AIR

1989 SC 1899, the Supreme Court of India observed :

When the Constitution gives power to the executive Government to lay down policy and procedure for admission to medical colleges in the State

then the High Court has no authority to divest the executive of that power. The State Government in its executive power, in the absence of any law

on the subject, is the competent authority to prescribe method and procedure for admission to the medical colleges by executive instructions.

Ultimately in para 22 it was said :

Had the petitioner applied for appointment on compassionate grounds prior to 30th April 1992, his application would have been considered on

the basis of the scheme as then existing. Only because the petitioner filed the application after the new scheme came into force, his right under the

old scheme, in my opinion, cannot be taken away. For the reasons aforementioned, this application is allowed.

24. Application for seeking compassionate appointment was made as per the prevalent Govt. instructions in the month of May 1994. Later on, in

the month of May 1995, the instructions were issued afresh. These were to the effect that the married dependents of the deceased employee will

not be entitled to compassionate appointment. It was observed that these instructions cannot be given retrospective effect. The fact that a post was

in existence before instructions came, was taken into consideration. It was accordingly held that the case of the petitioner should be dealt with as

per the existing instructions. This view was expressed by the Division bench of Punjab and Haryana High Court in the case of Surinder Singh Vs.

State of Haryana and Others. 1996 (1) SCT 767. In this case it was further observed that the criteria based on the status of married or unmarried

is without any basis. This has no nexus with the object. The object is of providing a relief to the members of the deceased family. The only criteria

which should guide the authorities is the economic and financial condition of the family.

25. The person seeking appointment was a minor. He was held entitled to compassionate appointment on attaining majority. Jagdeep Kumar Vs.

State of Haryana 1996 (1) SCT 731. An employee of Haryana Electricity Board died in harness. He left a widow and minor child. The widow

also died. It was observed that if there is no period of limitation prescribed under

the rules, then appointment has to be given to the minor Vishal

Sharma Vs. Haryana State Electricity Board 1995 (4) SCT 801.

26. Charanpreet Singh Vs. Punjab State, 2000 (2) SCT 445 is another decision. In this case application was preferred after 9 years of the death

of the deceased and six months after attaining the age of majority. It was held that Punjab Govt. Circular dated 08.08.1998 does not provide for

relaxation of the limit of six months period within which the minor has to submit application after attaining majority. The said rule would not come to

his rescue as there was no provision for condoning the delay. Piyush Harit Vs. State of Haryana, 1999 (3) SCT 395 is a case where application

was filed after four years and 5 months. This was held to be belated. Another case is on reported as Fayaz Ahmad Wani Vs. State of J and K,

1993 (2) SCT 332. In the said case death took place in 1981. Application was preferred after 13 years. The claim was rejected by this court.

Andhra Pradesh High Court in the case of Pancherreddi Ramu Vs. District Judge, 1996 (3) SLR 73 did not consider the case fit for grant of

compassionate appointment where there was a delay of 10 years. In Dhalla Ram Vs. Union of India 1999 (2) SCT 301 the view expressed by the

Supreme Court of India is that appointment on compassionate appointment is not a method for recruitment but is a facility to provide rehabilitation.

Where application was submitted after attaining majority and there was a delay of five years, the prayer for compassionate appointment was

rejected in Mahipal Vs. State of Haryana 1999 (2) SCT 829. Calcutta High Court in the case of Ilia Sarkar Vs. State of West Bengal 1996 (4)

SLR 608 observed that compassionate appointment cannot be granted after a lapse of reasonable period which period should be specified in

Rules.

27. In Ghulam Mohiuddin Vs. Union of India and others 2000 SLJ 1, the rejection of the application by the employer on the ground that it was

filed after ten years of attaining of majority by the dependent was held to be rightly rejected. Similar, opinion has been expressed in another case

reported as Bijender Singh Vs. State of Haryana 1999 (3) SCT 98 (PandH) (DB). This court in Farooq Ahmad Wani Vs. State of J and K 1999

(3) SCT 333 expressed an opinion that where application was preferred after eight years and the prayer was rejected on the ground of delay,

Interference was not called for. *Jegdesb Prasad vs. The State of Bihar* and another 1996 (1) SLR 7 (SC) is another case where Supreme Court

denied the relief on the ground of delay. Three other cases of the Supreme Court where similar view has been expressed are :

i. *State of U.P. Vs. Paras Nath* 1999 (4) SCT 292.

ii. *Haryana State Electricity Board Vs. Naresh Tanwar* and another 1996 (2) SLR 11,

iii. *State of Haryana and others Vs. Rani Devi* and another 1996 (4) SLR 505;

28. A Division Bench judgement of this court in LPA (SW) 127/1998 decided on 30.08.2000 is a decision where the claimant was not held

entitled to compassionate appointment, but at the same, it was observed that nothing said in the judgement would preclude the concerned appellant

from making a representation for consideration of his case in terms of SRO 43 of 1994. Another unreported judgement where the claims were

denied by this court is SWP No. 677/1998 decided on 08.05.2000.

29. In *Eluri Marthamma Vs. Divisional Railways Manager* 2000 (3) SCC 992 a Division Bench of Andhra Pradesh High Court observed that

limitation has got no role to play in the matter of welfare scheme like compassionate appointment.

30. On Examination of Rule 3 of SRO 43 of 1994, it is possible to arrive at the following conclusions:

31. Rule 3 of the 1994 Rules reproduced above does prescribe a period of limitation of six months. This Rule uses the word ""acquire"". When

some one acquires something he makes a conscious effort. ""Death"" is never acquired. Nobody would like to acquire eligibility for compassionate

appointment voluntarily by wishing the bread winner of the family to die. The eligibility to which reference is made in Rule 3 is to be acquired only

after the death. This period is for acquiring eligibility. This period of six months which talks of acquiring eligibility would, apply only to acquiring

educational, technical and other qualifications. The eligibility which a dependent happens to possess on account of death comes in his way without

effort. When the provision to Rule 3 is so read, it would mean that eligibility referred to in Rule 3 is visavis educational and technical qualifications.

So far as the basic rule is concerned a dependent can seek appointment on compassionate grounds and this is right not dependent on the limitation.

Thus I am of the view:

i) That in all cases what is required to be seen is that the hardship which the family is suffering is required to be mitigated. If the family is not

suffering any hardship then notwithstanding the presence of all other criterias, the appointment can be denied. If the family is suffering from hardship

then compassion has to be shown. Rules can be relaxed. State has to show benovolence.

ii). The paramount consideration in the matter of making compassionate appointment is to see that the members of the deceased family are

provided with relief which would mitigate the crisis,

iii. The word ""acquire"" as used in Rule 3 of the Rules i.e. SRO 43 of 1994 devotes a conscious effect. An effort is made to obtain something.

Eligibility on account of death is an event which can never be acquired.

iv. The period of six months limitation prescribed in the Rule 3 would apply only to acquisition of eligibility qua educational technical and other

qualifications,

v. That the rules framed vide SRO 43 of 1994 are not retrospective. This would govern only those cases where death has taken place after

22.02.1994. The old case would be continued to be governed by the old Rules.

vi. That the government is within its rights to relax any of the rules. If the government comes to the conclusion that financial crisis is still being faced

by the family and as that is the basic factor which guides the authorities in making compassionate appointment, the government can still make

appointment notwithstanding the prescription of the period of limitation.

32. So far as policy framed by the departments of Union of India as noticed in writ petitions preferred by Jia Lal and Raj Kumar are concerned,

these have already been quoted above. This policy does not in absolute terms lays down that the claims are to be negated in all cases where

there is delay. As a matter of fact, in paragraph 4 of the policy in Jia Lals case, it has been indicated that what is required to be considered and

what is required to be kept in view is the need for immediate assistance to the family of the Government servant who died in harness. Decision in

the case of belated prayers can also be taken and there is no absolute bar.

33. Similar is the decision what regard to the scheme framed by the Postal

Department which has been adverted to in writ petition preferred by Raj Kumar.

On examination of the policy framed by the Union India it is again possible to arrive at the following conclusions :

I). That the paramount consideration in the matter of granting compassionate appointment is the situation and circumstances in which the family is placed;

II). Delay can be condoned and in doing so, the matter has to be referred to the Head of the Department.

34. There is yet another category where a member of the family happens to die in a militant related violence or under similar circumstances. In this

case also the State Government and the Government of India has formulated policies. The subject of compassionate appointment would be

governed by these policies. In such case also, it is the need of the family and the question as to whether there are any mitigating circumstances or

not, is required to be taken note of.

35. In view of the above situation, it is observed that wherever there is delay, discretion is still available with the appointing authority to examine the

status of family of the deceased and if it is possible and if the circumstances warrant then compassionate appointment can be made. There are

cases where this power has been exercised by relaxing the rules. The policy framed by Union of India contemplates granting this prayer even after

delay. This appears to be the main thrust of the concept behind making compassionate appointments.

36. Facts in individual cases be noticed. SWPNo. 1409/99

37. Father of the petitioner was working as a Government Teacher. He died in harness on 25.10.1979. After attaining educational qualifications

the petitioner submitted his application on 20.08.1989. At that point of time J and K Employees Death in Harness Rules 1989 were in force. Later

on J and K Compassionate Appointment Rules 1991 came into force on 24.12.1991. Still later SRO No. 43 i.e. J and K Compassionate

Appointment Rule was enforced on 22.02.1994. As the claim of the petitioner remained in the melting pot and as his application were not being

decided, the petitioner preferred a writ petition being OWP No. 618/98. This writ petition was disposed of by taking note of the observations

made in SWP No. 499/ 88 Vijay Kumar Vs. State of J and K and others. Respondents were directed to consider the matter. Respondents

preferred an appeal against the said judgement. Appeal was dismissed on 16.13.1999. The case of the petitioner was considered. It stands

rejected on 16.07.1994. Petitioner challenges that order. The basic reason which has led the respondents to pass the order of rejection is that

application was preferred belatedly. The specific stand taken by the petitioner is that he preferred an application in the year 1991. The requisite

averments are made in para

17 (c). This para is reproduced below:

C. "That it is vehemently denied as incorrect that the case of petitioner was at any stage of the pendency right from 20.08.1991 till the date of

passing of the impugned order on 19.06.1999, ever rejected, more so particularly vide No. DSEJ/ Ang/1625 dated 16.07.1994, as alleged in the

first page of impugned order. This is a concoct story and based on flimsy and after thought grounds. For this purpose the respondents are required

to be directed to produce the original record for perusal of the Hon'ble Court.

It is further submitted that such an order was never served upon the petitioner not it has been passed by respondent No. 2 to the knowledge of the

petitioner. Hence this fact alleged in the impugned order by respondent No. 2 is not only concoct and afterthought, but it is also based on

extraneous reasons the claim/right of the petitioner by manipulating the facts against the petitioners.

38. The State of J and K have preferred detailed objections. Judgements on the points have been made part of the pleadings. The fact however,

remains that the respondents have nowhere denied that the petitioner did not comply and did not seek compassionate appointment in the year

1991. If, the petitioner had applied in the year 1991 then his claims are required to be considered under those rules which were prevalent at that

time. If the state slept over the matter for seven years in deciding the application and if the State which was supposed to show compassion failed to

do so, and forced the petitioner to approach this court again. The question arises as to whether the State is justified in adopting this attitude.

39. In this petition respondents have not gone into the question that the petitioner had applied in the year 1991. His application was required to be

considered under the old rules. This has not happened. Respondents are accordingly directed to reconsider the issue in the light of the observation

made in view of the decisions quoted above and the conclusions indicated at pages 14 to 17 of the judgement.

SWPNo. 1805/99

40. The facts in writ petition No. 18057 99 be noticed. Father of the petitioner was an employee in the Department of Weight and Measures,

Bhaderwah. He was gunned down by the militants on 07.02.1996. His family consists of his wife petitioner and two daughters. Petitioner made a

prayer that he be given compassionate appointment. This prayer of the petitioner has not been considered.

41. Office report dated 29.09.2000 indicates that respondent No. 1 and 2 stands served but they have not put in their appearance.

Petitioner submits:

(i) That his father died in militant related violence on 07.02.1996

(ii). That he submitted an application seeking compassionate appointment. Petitioner submits that his case has been processed. This is apparent

from the communication dated 07.10.1998. Final decision has not been taken. Case was under process even on 12.01.1999.

iii). There is yet another communication dated 04.03.1999 wherein vacancy position has also been indicated. Another communication dated

22.03.1999 also is on the same point.

iv). Petitioner's case has not been considered so far in as much as no response has been given to him.

42. In this case, the prayer made by the petitioner is still under consideration. This petitioner is entitled to get his claims considered not only interns

of SRO 43/94 and other rules and regulations but also on the ground that his father died in a militant related violence. Respondents would

accordingly consider the claims of the petitioner in the light of the observations made above at pages 14 to 17 of the judgement.

SWP No. 2725/99

43. The claims of the petitioner for seeking compassionate appointment stands rejected vide order dated 11.06.1999. The short and terse

communication is reproduced below:

I am directed to refer your letter No. Es5/NG/99/SRO43/ 18472 dated 26.02.1999 regarding the subject cited above and to say that the case is

not covered under the purview of SRO43 of 1994 and has not been agreed to.

44. The stand taken by the petitioner is that he has been approaching the respondents and submitted an application for seeking appointment. Copy

of this is Annexure A. This was forwarded by the BDO to the higher authorities. The recommendations made in her favour is Annexure 'D'. Yet

another favourable recommendation made is Annexure F dated 26.03.1999. In this it is mentioned that the case of the petitioner is genuine and

therefore, requisite approval be accorded. CMO has also made a recommendation in her favour.

45. Respondents sought particulars of the service profile of father of the petitioner. Claims of the petitioner has ultimately been rejected. This is on

the ground of delay. It is stated that the petitioner was not entitled to compassionate appointment even otherwise. It is the case of the petitioner that

one Behari Lal, who was similarly situated has been given the appointment. As to what prevailed with the respondents not to give the same

treatment is not clear.

46. Petitioner is seeking party with one Bihari Lal. As to what was the distinguishing feature in the case of the petitioner when his case was

examined and considered from that of Bihari Lal is not apparent. As a matter of fact, recommendations were made in favour of the petitioner. As

to what led to rejection of this recommendation is not apparent. Respondents are accordingly directed to reconsider the matter in the light of the

observations made at page 14 to 17. SWP No. 243/97

47. Petitioner has suffered an injury in a cross firing between the militants and security forces. This is apparent from FIR No. 106. Petitioner

submits that on account of the situation in which he has been placed on account of injury sustained by him, he is entitled not only two

compassionate appointment but also the compensation.

48. Respondents have filed their objections. It is submitted that SRO No. 43 is not applicable to the situation. It is further stated that petitioner has

been paid a sum of Rs. 5000/ as exgratia relief. This as per the respondents is the only relief which can be given to him. It is stated that SRO 43 is

not attracted to the facts of this case.

49 Petitioner has suffered in a militant related violence. He has been paid exgratia compensation also. Respondents are directed to consider his claims under the policy which allows the claims of such persons to be considered for compensation and also for appointment. Let a decision be taken in this regard.

SWP No. 1889/99

50. Raj Kumar petitioner seeks compassionate appointment from the Union of India. He came to this court earlier also. As his claims were considered and rejected without passing a speaking order, the respondents were directed to redecide the matter. They have done so. It is submitted that as father of the petitioner died on 11.04.1978 and a request for compassionate appointment has been made now after 18 years, therefore, the petitioner is not entitled to any relief. Petitioner submit that compassionate appointment has been made even belatedly in the case of others. The requisite plea has been taken in para 10 of the petition. Names of two persons namely, Madan Lal; and Jeewan Lal have been quoted.

51. Respondents have filed their reply. In the case of Jeewan Lal; the death took place in 1987. Application was preferred in 1993. Application was preferred in 1993. A letter of appointment was issued after 7 years. In the case of Madan Lal, the death took place in April, 1994. The appointment was made in March, 1998. Petitioner submit that if delay could be condoned in the cases of above two persons then there should be no impediment in condoning the delay in the case of the petitioner also. It is further submitted that the scheme of compassionate appointment is for helping a family which is indigent and which deserves assistance. The communication dated 28.06.1997 lays down that a department can consider request for compassionate appointment where the death or retirement of a govt. servant took place long way back, but there must exist a circumstance which may show that the dependents need rehabilitation. This aspect of the matter can be spelled out from the following paragraph.

After enquiry conducted this office file No. 258/Acctt. of 1996/97. It is certified that family monthly income from all sources of Sh. Raj Kumar S/o

Dina Nath caste Jogi Brahman R/o Village Chakrwallana, Tehsil and District, Udhampur is Rs. 1042/ (Rupees one thousand and forty two).

52. I am of the opinion that above is the right approach. What is required to be

seen is the situation in which the family is placed. If there is a need to help the family and financial situation is such then discretion can always be exercised in favour of such a person.

53. Respondents would accordingly reconsider the issue. If delay could be condoned in the case of Jeeven Lal and Madan Lal, then what were the factors in not adopting this approach is not apparent. Respondents are directed to reconsider the matter.

SWPNo. 2147/98

54. Father of the petitioner died in 1993. A representation was made for compassionate appointment. This has been rejected on the ground that the elder son is already employed. Petitioner came to this court earlier also. He preferred writ petition No. SWP No. 74/97 Directions were given

to the respondent to consider the case of the petitioner. This has been done. His claims have been considered and rejected on 09.10.1998. He has

approached this court again. Respondents have taken a stand that the widow of deceased is getting family pension. It is also stated that the income

from immovable property is Rs. 2500/ PM. The claims have been rejected inter alia on the ground that the family of the deceased has means of

substance. The source and the amount of income is stated in Annexure E at page 18 of the writ petition. For facility of reference this is reproduced

below:

The undersigned is directed to convey to you the decision in regard to your case for compassionate appointment, in compliance of the order of the

Hon'ble High Court of Jammu and Kashmir, Jammu dated 31.07.1998. In SWP No. 74/97 in the case of Shri Jia Lal Vs. The UOI and others.

The documents submitted in the case have been reconsidered, keeping in view the observation and rulings, as quoted in the said order. It has been

observed that the monthly income of your family from all sources as assessed by the Revenue Department and as per record is as under: a).

Sources: Family pension sanctioned to Smt. Ranoo Devi W/o Late Sh. Prem Chand Amount : Basic Pension @ Rs. 1275/ Medical Allowance of

Rs. 100/ and DA thereon as applicable from time to time.

b). Income from all sources as assessed by the Tehsildar, Udhampur for the property situated in Udhampur District. Amount: Rs. 10247P.M.

c). Income from immovable property i.e. shops located in Village Kanyala, as

assessed by the Tehsildar Jandrah, District Jammu for the property situated in Jammu District. Amount: Rs. 2500/ P.M.

It has also been observed that your father Prem Chand had purchased a piece of land in his own name near the depot perimeter before his death

and constructed three shops thereon, in which you and your brother Sh. Rakesh Kumar are running the businesses.

The above does not include the income of your elder brother Shri Govind Ram earning Rs. 36257P.M., but living separately. 3. Taking the totality

of the facts into consideration, it is observed that appointment on compassionate grounds is not merited in this case. The financial condition of your

family is sufficiently robust to tide over the crisis caused by the death of your father late Sh. Prem Chand.

55. I am of the opinion that family pension is paid to the family of every deceased govt. employee and if this factor is to be taken into consideration

then family members of the Govt. servant would not be entitled to compassionate appointment. So far as the family income is concerned as to how

this figure has been arrived at and what is the basis for this and whether the petitioner was put to notice regarding is not apparent.

56. Respondents would make available the material which is available with them for arriving at a conclusion that the family is not facing any financial

crisis. They would also make available the material gathered indicating the income of the family of the petitioner. After this is done, the petitioner

would be at liberty to rebut that. After completing these formalities, the issue be decided again.

SWP No. 306/99

57. In this writ petition preferred by Chaman Dev Singh, the prayer of the petitioner stands rejected on the ground that it was belated. Petitioner

submits that his father expired in the year 1983. It is submitted that in terms of Jammu and Kashmir Civil Services (Decentralization of and

Recruitment to NonGazetted Cadres) Rules, 1969, the petitioner was entitled to compassionate appointment. It was in pursuance of this rule, the

petitioner was given a monthly scholarship of Rs. 1007 so that he is in a position to pass Matriculation examination. The relevant clause II (c) is

reproduced below :

(c) for grant of suitable scholarships not less than Rs. 1007per month in each

case by the Education Department to the minor children left behind by the deceased Govt. employee till such time as they pass the Matriculation Examination and thereafter be considered for appointment.

58. There is a provision to subclause (IV) that the case of compassionate appointment shall be finalized within a period of three months from the date of the death of government employee under the orders of the Minister in charge. This rule as per the petitioner has not been complied with.

Petitioner submits that after completing his Matriculation examination he made a request of compassionate appointment. This has been rejected

vide order Annexure E. Five pages of this order is devoted to preliminaries. Last two lines are to the effect. :

.....after thorough examination and close scrutiny of the case of Sh. Chaman Dev Singh is hereby rejected, having not been covered under rules and being time barred.

59. As to in what respect, the petitioner lacked qualification and what stood in his way has not been indicated. It has not been elaborated as to

how much was the delay. It has again not been indicated whether the case of the petitioner was to be examined under the old rules or the new rules.

There is total nonapplication of mind. Once the respondents took a decision to mitigate the sufferings of the petitioner by giving him a scholarship

then they should have taken this aim to a logical end and should have considered the request of the petitioner for compassionate appointment. It is

not the case of the State that belated applicants have never been allowed. In this situation, the State is directed to reconsider the matter and in

doing so they would also indicate as to whether there is no such case where delay was of similar nature and compassionate appointment was

declined. They would also take notice of what has been said in the judgement at pages 14,15,16 and 17. It is hoped that mere lipservice would not

be done and the respondents would take note of the realities and thereafter pass the appropriate order. The requirement to mitigate the financial

crises, if any, faced by the petitioner and his family is required to be taken note of. This would be taken note of.

SWP No. 2193/99

60. The claim of the petitioner Sunil Sharma for giving compassionate appointment was considered. An order dated 14.06.1999, copy whereof is

AnnexureC was passed. This is reproduced below :

Government of Jammu and Kashmir Office of the Deputy Director Libraries,
Jammu. Order No. 43 of 1999 Dated : 14.06.1999

61. Whereas Shri Uttar Kumar Sharma, the then Chief Librarian, District Library,,
Kathua died in road accident on 01.06.1999.

Shri Sunil Sharma S/o Late Sh. Uttar Kumar Sharma, ExChief Librarian, District
Library, Kathua R/o Chadwal, Tehsil Hiranagar, District Kathua,

is temporarily appointed as Library Assistant in the grade of 30504590 as
provided in SRO 43. He is adjusted in District Library, Kathua.

Sd/

Deputy Director Libraries

62. This order has been rescinded on 20.07.1999. This is also rereproduced
below : ,

Government of Jammu and Kashmir Office of the Deputy Director, Libraries,
Jammu. Order No. 56 of 1999 Dated 20.07.1999 Order No. 43

of 1999 dated 14.06.1888 issued under endorsement No. 27072/DDJ/JP/99
dated 14.06.1999 in favour of Sh. Sunil Sharma S/o Late Uttar

Kumar Sharma, which was issued on compassionate grounds in anticipation of the
approval of the competent authority is hereby rescinded. Sd/

Deputy Director Libraries

63. As per the petitioner this petition was earlier disposed of but come what how
the file was not available. Second, paper book has been

furnished. From the perusal of the orders reproduced it becomes apparent that
the order, dated 14.06.1999 was issued in favour of the petitioner.

This has been revoked. The Privy Council in the case reported as AIR 1937 PC 27
has expressed an opinion that once an administrative order is

passed conferring certain benefits, then it should not be revoked. Independently
of the above, it is not indicated in the order dated 08.07.1999 that

the petitioner lacked requisite qualification for seeking compassionate
appointment. The father of the petitioner is said to have died on 01.06.1999.

Petitioner was adjusted in the vacancy so arisen. Petitioner was adjusted in his
father's place. The application preferred by him was within the

limitation. In this view of the matter this petition is disposed of with a direction
to afford an opportunity of hearing to the petitioner and thereafter

fresh order would be passed by the respondents. In the meanwhile order dated

20.07.1999 shall not be given effect to. In considering the question, the respondents would be guided by what has been said in the judgement in the proceeding paras.

SWP No. 2571/1999

64. The husband of two petitioner died of lung cancer on 22.12.1996. A request was made by the petitioner to appoint her. Application submitted

by her was forwarded to higher authorities. This is apparent from Annexure 'F'. The Minister incharge of the Industries Department also made a

recommendation in favour of the petitioner. This is Annexure C. Dy. Secretary to Government, Industries and Commerce Department has also sent

a communication in which the respondent Director has been directed to consider the case of petitioner. The grievance of the petitioner is that her

case has not been considered. Respondents have filed their objections.

65. In the objections, it is submitted that one time cash assistance of Rs. 1.00 Lakh has been given to the petitioner, She has accepted the same

and therefrom she is not entitled to any compassionate appointment. Petitioner however, submits that four persons, particulars whereof are given in

paragraph 3 (f) were given appointment. It is accordingly submitted that even if cash assistance is given this would not stand in the way of the

petitioner in getting appointment. Merely because cash assistance has been given would not debar the petitioner for seeking compassionate

appointment. In this regard decision given by the Andhra Pradesh High Court in 1997 (3) SCC 86 (Supra) referred to in paras 6 and 7 of this

judgement be taken note of.

66. Again the paramount consideration should be to see that the financial difficulty which the family is suffering from is mitigated. Petitioner's

husband was suffering from Cancer. Good amount was spent on his ailment. The cash assistance of Rs. 1.00 lakh, if deposited in the Bank would

get the petitioner an interest of Rs. 1000/ per month only. Whether this is sufficient to keep the body and the soul together is a matter to be taken

note of. The respondents would accordingly consider the matter. They would take note of what has been held in the proceeding paras and would

take a decision and pass appropriate orders.

67. All these petitions dealt with in this judgement are disposed of accordingly. Respondents are directed to take a decision within a period of

three months from the date a copy of this Judgement alongwith copy of the writ petition and annexures, is made available by the petitioners to the respondents. Jammu 30042001