

**(2008) 02 JH CK 0108**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (S) No. 479 of 2008**

Shailesh Kumar

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 13-02-2008

**Acts Referred:**

**Citation :** (2008) 56 BLJR 1499 : (2008) 2 JCR 6

**Hon'ble Judges :** M. Karpaga Vinayagam, C.J;D.G.R. Patnaik, J

**Bench :** Division Bench

**Advocate :** K.B. Sinha and Nitu Sinha, for the Appellant; Rajesh Shankar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

M. Karpaga Vinayagam, C.J.—The petitioner, seeking for quashing the order dated 31.08.2007 made in O.A. No. 459 of 2006 by the Central Administrative Tribunal confirming the order of the respondent authority dated 12.08.2003 rejecting the prayer of the petitioner for claiming compassionate appointment.

2. The brief facts are as follows:

(i) The petitioner is the son of a Stenographer, who died in harness on 03.04.2001 while working in the respondent Company.

(ii) The father of the applicant left behind his family including his widow, one unemployed son, one unmarried daughter and one divorce daughter, who was totally dependant upon the deceased father.

(iii) The widow was also employed as teacher. Later on she retired.

(iv) Since the family pension relating to her husband's job as well as another pension from the school where she worked was not sufficient to meet the requirements of such a big family, she applied for compassionate appointment of her son, the petitioner.

(v) The claim was rejected by the respondent authorities on several occasions. Each occasion, the petitioner filed original application before the Central Administrative Tribunal, which in turn remanded the matter for fresh consideration.

(vi) Ultimately, by the order dated 12.10.2003, the respondent authority rejected the claim for appointment on compassionate ground by giving reasons.

(vii) Challenging the same, he filed an original application before the Central Administrative Tribunal, which in turn, confirmed the rejection order and dismissed the original application.

Hence this writ petition.

3. The main ground urged by the counsel for the petitioner is that the mere fact that the mother, the widow getting two pensions cannot be a ground to reject the claim of compassionate appointment and even though the petitioner's mother received a lump sum amount of rupees five lakh and odd through the retrial benefits, which is not sufficient to meet the requirements of the family, that should not be taken into consideration for rejecting the claim for compassionate appointment. In support of his plea, he cited the decisions of the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and Mohan Mahto Vs. Central Coal Field Ltd. and Others,

4. In reply to the said submission Mr. Rajesh Shankar, learned Counsel appearing for the respondents would cite Punjab National Bank and Others Vs. Ashwini Kumar Taneja, in contending that compassionate appointment cannot be claimed as a matter of right and the impugned order dated 12.08.2003 passed by the authority as well as the order of the Tribunal dated 31.08.2007 have correctly dealt with the aspect and rejected the claim of the petitioner by giving valid lessons and, therefore, the writ petition is liable to be dismissed.

5. We have heard learned Counsel appearing for the petitioner and the respondents and have given our anxious consideration.

6. At the outset it shall be mentioned that the citation referred to by the counsel for the petitioner, namely, Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, could not be made applicable to the present case as in the said judgment it was held that the compassionate appointment cannot be denied merely on the ground that family pension scheme was available in view of 1983 agreement entered into between the parties.

7. Similarly, in the other citation, namely Mohan Mahto Vs. Central Coal Field Ltd. and Others, it was decided that the party is entitled to have a claim for appointment on compassionate ground which emanates from the agreement. Both these decisions would indicate that a conclusion has been arrived at by the Supreme Court that the compassionate appointment cannot be denied on the ground that family pension scheme is available and other persons in the family are employed on the basis of the terms of the agreement entered into between

the parties in those cases. Such a settlement or agreement is not available in this case as in his case the respondents have to follow the CSIR instructions strictly.

8. Therefore, the facts of the present case would not be applicable as the facts in the above Supreme Court decisions are entirely different. On the other hand, the guidelines, which have been given by the Supreme Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, would give the answer for the issue in question. Same thing has been reiterated in other decisions by the Supreme Court, viz. (1994) 1 SCC 138 [Umesh Kumar Nagpal v. State of Haryana] State Bank of India and Another Vs. Somvir Singh,

9. The following are the guidelines emanating from the Supreme Court decision in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, and other decisions:

(i) The appointment on compassionate ground is not a source of recruitment, but merely an exception to the requirement of making appointments on open invitation of application on merits.

(ii) The appointment on compassionate ground cannot be claimed as a matter of right.

(iii) The High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.

(iv) The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood.

(v) The purpose of providing employment to the dependant of employee dying in harness in preference is to mitigate the hardship caused to the family, who suffer from penury, on account of his unnatural death while in service. This exception was to be resorted only in case of penury where the dependent of an employee are left without any means of livelihood.

(vi) The consideration for compassionate employment is not a vested right which can be exercised at any time in future. 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, the compassionate employment cannot be claimed after the crisis is over.

(vii) Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the rules for the post. However, this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain in

contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood.

(viii) In *State Bank of India and Another Vs. Somvir Singh*, the Supreme Court, reiterating the above guidelines, would observe as follows:

10. There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate grounds. There is no right whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependents of the employee who died in harness are not in penury and taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

13. ... It is well settled that the hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank. It is not a case where the dependants of the deceased employee are left "without any means of livelihood" and unable to make both ends meet. The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant Bank that the respondent was not living hand-to-mouth.

10. In the light of the above mandate given by the Supreme Court, let us now see the impugned order passed by the authority dated 12.08.2003.

11. The impugned order dated 12.08.2003 would indicate that the claim for the compassionate appointment was considered taking into consideration the facts and circumstances of this case and ultimately rejected by giving number of reasons.

12. The following are the reasons rejecting the claim of the petitioner:

(i) The widow, at the time of death of her husband, was employed as State Government Teacher drawing a basic salary of Rs. 7250/- per month. After retirement, she used to receive the benefits of both the pensions. She got the benefit to the tune of Rs. 5,52,717/- with the family pension of Rs. 5011/-.

(ii) While considering the request for compassionate appointment, an assessment of financial condition of the family members was made with regard to its assets and liabilities and other factors, such as presence of other earning members etc.

(iii) The scheme for compassionate appointment has been given by CSIR constructions. As per the CSIR instructions only against regular vacancies upto a maximum of 5% vacancies falling under direct recruitment quota in Group - C&D are taken into for compassionate appointment. The petitioner's case is not falling under this category.

(iv) In this case, there is no material to show that there is a sudden crisis or penury and to tide over the said sudden crisis and to over come from financial destitution the compassionate appointment has to be given.

13. The above reasonings given by the authority in the impugned order, which was held to be justified by the Tribunal cannot be said to be invalid reasons. In this case the authority, while considering the request for compassionate appointment, made an assessment of financial condition of the family and taken into account its assets and liabilities and other factors. The mother of the petitioner was employed as State Government Teacher drawing a basic salary of Rs. 7,250/- at that time and after retirement she got two pensions besides getting lump sum amount of Rs. 5,62,717/- towards the retrial benefits of her husband. As mentioned above, as per the CSIR instructions, only up to a maximum of 5% vacancies falling under direct recruitment quota in Group - C&D are taken into for compassionate appointment. After assessment, the conclusion has been arrived that at that time the petitioner's category did not fall in the 5%.

14. As indicated above, the only main point urged by the counsel for the petitioner is that the mere fact that the petitioner's mother got a lump sum of rupees five lakh and odd could not be the ground for rejecting the claim for compassionate appointment.

15. As observed by the Supreme Court, the petitioner cannot claim for compassionate appointment as a matter of right. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the rules for the post. However, this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. The whole object of granting compassionate appointment is to enable the deceased's family to tide

over the sudden crisis. It cannot be disputed that the authority is required to consider the request for compassionate appointment only in accordance with the scheme and instructions framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme and instructions. The claim for compassionate appointment and right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the authority in the matter of providing employment on compassionate grounds. As indicate above, there is no right to claim compassionate appointment.

16. In our view the authority, concerned, while considering the application, has taken into consideration each one of these factors and, accordingly, found that the dependents of the employee who died in harness are not in penury and taking into consideration all the pensionary benefits and monthly family income, has concluded that it cannot be said that the deceased's family had been left in penury or without any means of livelihood.

17. As indicated above, it is well settled as laid down by the Supreme Court that the alleged hardship of the dependent does not entitle one to compassionate appointment dehors the statutory provisions, rules or instructions as the case may be. The income of the family from all sources has to be taken into consideration according to the said instructions.

18. It has to be stated at the risk of repetition that it is not a case where the dependents are left without any means of livelihood. As correctly pointed out by the authority, there are other outstandingly poor candidates. The competent authority has to consider all respects and decide as to who is the outstanding poor candidate. In view of the admitted position, that there are other family members who are already employed and mother getting pension from the school as well as from the respondent authority on behalf of her husband, the petitioner cannot come in the category of very poor or outstandingly poor candidate.

Under these circumstances, the reasons given by the authority as well as by the Tribunal in rejecting the claim for compassionate appointment on the facts of this case, in our considered opinion, cannot be said to be unjustified.

19. This writ petition is, therefore, dismissed. However, there is no order as to costs.