

**(2019) 10 CAT CK 0076**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 133 Of 2019**

Shakuntala Patwal @ Shakuntala Devi

APPELLANT

Vs

Union Of India And Another

RESPONDENT

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**Date of Decision : 31-10-2019**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16

**Citation : (2019) 10 CAT CK 0076**

**Hon'ble Judges : Nita Chowdhury, Member (A)**

**Bench : Single Bench**

**Advocate : A.K. Bhakt, Hanu Bhaskar**

**Final Decision : Dismissed**

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## **Judgement**

1. By filing this OA, the applicant is seeking the following reliefs:-

"(i) To quash and set aside the Impugned Order No.20/Estt./G-1/2011-CG-7537 dated 21.10.2016 (Annexure A/1) and direct the respondents to consider the claim of Compassionate Appointment in terms of Compassionate Appointment Scheme giving weightage of continuous rendered service more than 15 years as Temporary Status and virtually treating the deceased employee (Applicant's son) in similar manner as regular employee.

(II) To direct the respondents to consider compassionate Appointment to the Applicant's elder son namely Sagar S/o Late Sh. Jayendra Singh in accordance with law.

(IV) To direct the respondents to produce the service records of the applicant's husband for proper adjudication.

(V) To award exemplary cost on the respondent for causing undue harassment.

V) To pass any other order or orders which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The grievance of the applicant is against the Memorandum dated 21.10.2016 vide which her application for grant of compassionate appointment was rejected on the ground that her husband was a casual worker at the time of his death and such appointment is to be considered only to a dependent family member of a regular Govt. servant.

3. Brief facts of the case are that Shri Jayendra Singh Patwal (husband of the applicant) was engaged as casual worker on 1.1.1992 and was conferred temporary status w.e.f. 1.9.1993 as per the Scheme of DoP&T issued vide OM dated 10.9.1993. The said temporary status employee expired on 23.3.2011 leaving behind his wife and two children. The representations dated 11.4.2011, 9.5.2011 and 28.9.2016 submitted by the applicants were considered by the respondents and as the husband of the applicant was not falling in the category of Govt. servant, further formalities for processing the case of compassionate appointment were not undertaken and the factual position in this regard was conveyed to the applicant vide Memo dated 28.04.2011, 07.07.2011 and 21.10.2016 intimating her that her case is not covered under rules. Being aggrieved by the Memo dated 21.10.2016, the applicant has filed this OA seeking the reliefs as quoted above.

4. During the course of hearing, learned counsel for the applicant submitted that applicant's husband had rendered more than 14 years of service as Temporary Status casual worker and had died in harness on 23.3.2011 leaving behind applicant and two minor school going sons and old mother in indigent conditions and that the applicant has no source of income to maintain her family members and as such the rejection of the application of the applicant by the impugned Memo is liable to be quashed and the respondents be directed to consider her case or even her son's case for appointment on compassionate ground.

4.1 Counsel for the applicant placed reliance on the decision of Hon'ble Delhi High Court in W.P. (Civil) No.11934/2015 (Kuntesh and Anr. vs. Union of India and another) dated 1.3.2016 as also of this Tribunal in OA 2695/2005 decided on 26.4.2006.

5. On the other hand, learned counsel for the respondents submitted that applicant's husband was working as a casual labour with conferment of temporary status and has rendered only about 14 years service as temporary status casual labour and had died on 23.3.2011. The applicant earlier filed two representations on 11.4.2011 and 9.5.2011 which were duly replied by the respondents vide Memos dated 8.4.2011 and 7.7.2011 intimating her that her case is not covered under the Rules and further application submitted by the applicant dated 28.9.2016 was duly considered and replied vide order dated 21.10.2016 and rejected her claim on the same very ground.

5.1 Counsel for the respondents in support of their stand placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Haryana and others vs. Rani Devi and others, (JT 1996(6) SC 646), wherein it has been held that if

the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad-hoc employees including those who are working as apprentices, then such scheme cannot be justified on constitutional grounds.

5.2 Counsel further placed reliance of the Hon'ble Supreme Court decision on the case of LIC of India vs. Mrs. Asha Ram Chandra Ambekar and others, JT 1994(2) SC 183, wherein it has been held that the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate ground but can merely direct consideration of the claim of such an appointment. He also place reliance on the decision of the Apex Court in Civil Appeal No.6224/2008 (Union of India vs. Shashank Goswami) wherein it has been held that compassionate appointment cannot be claimed as a matter of right and that has to be considered in accordance with the scheme/rules and regulations as formulated and wherein the family of the deceased has got terminal benefits, the dependant of the deceased would not be eligible for employment on compassionate ground.

5.3 Counsel further emphasized that length of service for grant of compassionate appointment is not a criteria and the same will be considered in the case of an employee, who dies in harness, and who had a regular status. Counsel also submitted that this Tribunal also considered the similar issue in OA No.460/2015 and this Tribunal vide Order dated 20.7.2018 held that "...it is seen that the deceased employee was a temporary employee only and cannot be defined as a regular Government servant. Hence, the scheme of compassionate appointment is not applicable in the instant case. Moreover, the application was considered twice by the department and the case was not found acceptable..."

6. We have heard learned counsel for the parties and perused the pleadings available on record. It is observed that Compassionate ground appointments are an exception and cannot be made the rule. The exception can be maintained only by strictly adhering to the pre-conditions of the appointment in a strict fashion. A relaxation in the aforesaid pre-conditions would open a floodgate of appointments on compassionate grounds. It will turn the compassionate ground appointments into a regular source of recruitment.

The constitutionally accepted mode of appointment to public office or any other post under the State Government or its instrumentalities is by open and transparent recruitment process. Such recruitment process would invite eligible persons from the open market to compete for appointment.

This process is consistent with the mandate of Article 14 and Article 16 of the Constitution of India.

7. As such keeping in view the constitutional mandate in mind, the Hon'ble Supreme Court in the case of Mumtaz Yunus Mulani v. State of Maharashtra, reported at (2008) 11 SCC 384, cautioned that compassionate appointment were not an alternative mode of recruitment to public employment, by laying down the law thus:

"However, it is now a well-settled principle of law that 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."

The Hon'ble Supreme Court reiterated the purpose and limitations of compassionate ground appointment in the case of *State of Haryana v. Ankur Gupta*, reported at (2003) 7 SCC 704 held thus:

"6. As was observed in *State of Haryana v. Rani Devi* [(1996) 5 SCC 308 : 1996 SCC (L&S) 1162 : JT (1996) 6 SC 646] it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi* case [(1996) 5 SCC 308 : 1996 SCC (L&S) 1162 : JT (1996) 6 SC 646] it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *LIC of India v. Asha Ramchandra Ambekar* [(1994) 2 SCC 718 : 1994 SCC (L&S) 737 : (1994) 27 ATC 174] it was pointed out that 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. It was noted in *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. 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. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. In *Director of Education (Secondary) v. Pushpendra Kumar* [(1998) 5 SCC 192 : 1998 SCC (L&S) 1302] it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out

of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions, it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

8. The Hon'ble the Supreme Court in the case of Bhawani Prasad Sonkar Vs Union of India and Others, reported at (2011) 4 SCC 209, observed as under:-

"Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

9. It is further relevant to mention that while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial

condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

10. Having regard to the above, it is observed that admittedly applicant's husband was a casual labour with temporary status and was not holding any regular post and rendered about 14 years of service as such when he expired on 23.3.2011 and rejection of application of the applicant for grant of appointment on compassionate ground was solely on the ground that her husband was a casual worker at the time of his death and compassionate appointment is to be considered only to a dependent family member of a regular Govt. servant. Reliance is placed by the applicant in support of applicant's claim on the decision of the Delhi High Court in the case of Kuntesh and another vs. Union of India in Writ Petition (Civil) No.11934/2015, which was decided on the basis of earlier decision rendered by the Hon'ble Delhi High Court in Writ Petition (C) No.10382/2015 (Union of India vs. Babita decided on 4.11.2015 wherein a temporary employee had worked for 20 years whereas in the instant case husband of the applicant's total service as casual worker with temporary status was about 14 years and it is settled law that only 50% of the service rendered under temporary status would be counted for the purpose of retirement benefits after regularization. Since applicant's deceased husband was never regularised and was initially appointed in 1992 and conferred temporary status in 1993 and died in 2011, meaning thereby her husband has not rendered at least 10 years of eligible service for grant of pension. Moreover, the respondents have categorically stated that as per DOP&T order dated 26.4.2014 regarding introduction of New Pension Scheme - Modification of Scheme for grant of temporary status directing stoppage of GPF subscription w.e.f. 1.1.2014, GPF contribution of husband of the applicant was stopped and accumulated GPF amount of Rs.40738/-including interest, as GPF final payment, had been sanctioned/paid to late Jayender Singh vide No.8/GPF/2004 dated 06.08.2004. Therefore, the said decision of the Delhi High Court is not applicable to the facts of this case. Further the Hon'ble Supreme Court in Rani Devi case (supra) held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. Further in LIC of India v. Asha Ramchandra Ambekar (supra), the Apex Court pointed out that 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.

11. In the result, and for the foregoing reasons, this Tribunal does not find any

merit in this case and the same is accordingly dismissed. There shall be no order as to costs.