

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 322 of 2021

Tuesday, this the 18th day of July, 2023

“Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

“Hon’ble Maj Gen Sanjay Singh, Member (A)”

Smt. Sushma, W/o No. 6947790M (Late) Sep Pawan Kumar,
Resident of Village: Jagat Kheda, Near Cent Martin Academy, Kalli
Pashchim, Lucknow.

..... Applicant

Ld. Counsel for the Applicant : **Shri Angrej Nath Shukla,
Advocate**

Versus

1. Union of India through the Secretary Ministry of Defence, New Delhi .
2. Directorate General of Ord Services (OS-8C), Master General of Ord Branch, IHQ of MoD (Army), New Delhi - 110001.
3. Office of PCDA (P), Gts - 4, Section, Drupadighat, Allahabad (U.P.).
4. Senior Record Officer, A.O.C. Records, PIN: 900453, C/o 56 APO.
5. G.O.C. in C, H/Q, Central Command Lucknow Cantt.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal,
Central Government Counsel.**

ORDER (ORAL)

“Per Hon’ble Mr. Justice Ravindra Nath Kakkar, Member (J)”

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

“(a) To direct the opposite parties / appointing authority to consider the case of applicant for compassionate appointment regarding which she has submitted several applications (lastly on 15.06.2020)

(b) to issue direction to the respondents / appointing authority to produce the relevant records to ascertain that how many chances has been given to applicant from the submission of application for compassionate appointment and how many employment has been given to similarly situated persons.

(c) To issue any other appropriate order or direction as this Hon’ble Tribunal deem fit and proper in nature and circumstances of the case.

(d) To allow this application in favour of the applicant with cost.”

2. The brief facts of the case are that the husband of the applicant was granted annual leave for the period 30.06.2016 to 29.07.2016. During leave, he met with an accident on 14.07.2016 and was admitted to Base Hospital, Lucknow and he died on the same day. A Court of Inquiry (COI) was held and death of the husband of the applicant was considered as not attributable to military service. Applicant applied for compassionate appointment but she was not granted compassionate appointment on two occasions due to less marks in the merit list. Since then, applicant gave several applications for compassionate appointment but she has not been given compassionate appointment till date. Being aggrieved, applicant has filed instant O.A. for grant of compassionate appointment.

3. Ld. Counsel for the applicant submitted that husband of the applicant Sep (late) Pawan Kumar was enrolled in Indian Army on 29.11.2003. He was granted 30 days part of Annual Leave (PAL) from 30.06.2016 to 29.07.2016. On 14.07.2016 while going to hospital for treatment of his ill daughter, he met to an accident and died in Base Hospital, Lucknow. A Court of Inquiry was held and death of the husband of the applicant was considered as not attributable to military service. In the accident, the applicant also got injured and her right leg was amputated and she was declared 85% permanent physical disable. The applicant applied for

compassionate appointment vide application dated 25.07.2018 but she was not selected by the Board of Officers due to obtaining 51 points in the merit list whereas the cut off point for GP-'C' in Level-2 was 64. The applicant again submitted application for compassionate appointment vide letter dated 10.12.2019 but no heed was paid by the respondents. Ld. Counsel for the applicant emphasized that husband of the applicant died when he was on Part of Annual leave hence, applicant is entitled for appointment on compassionate ground.

4. Ld. Counsel for the applicant further submitted that in the judgement passed by this Tribunal in the case of **Ex. Nk. Pandu Kumar Reddy**, it has been held that when armed forces personnel are availing casual leave or annual leave, he is to be treated on duty. He also emphasised on the penurious condition of the applicant. Applicant could not come in merit list in first chance in the year 2016-2017 as only 48 points had been allotted to her and it was revised from 48 to 49 and cut off points for Group 'C' post for selected candidate was 61 points. Further applicant could not come in merit list in second chance in financial year 2017-2018 as she was allocated 56 points. Points of applicant were revised from 56 to 51 by Integrated Headquarters of Min of Def (Army) and cut off points for selected candidate was 64 which is against the criteria given in the format of computation of points. Learned counsel for

the applicant prayed that respondents be directed to provide compassionate appointment to the applicant.

5. On the other hand, Ld. Counsel for the respondents vehemently opposed the submission of the applicant's counsel and stated that the husband of the applicant was enrolled in Indian Army on 29.11.2003. He died on 14.07.2016 due to road accident during currency of leave. Court of Inquiry was held and death of the applicant's husband was considered as not attributable to military service because husband of the applicant died while he was on Part of Annual Leave (PAL). Applicant has been granted ordinary family pension vide PPO dated 22.02.2017 and other admissible terminal benefits. Applicant was considered for appointment on compassionate grounds for First chance in the year 2016-17 in accordance with Integrated Headquarter of Min of Def letter dated 22.08.2014. As per para 12 of Integrated Headquarters of Min of Def (Army) letter dated 22.08.2014 pre Annual Board for compassionate ground appointment was held on 28.07.2017 onwards by the order of Officer In Charge, Army Ordnance Records vide Daily Order 315/CHQ dated 19 April 2017. Applicant was allocated 48 points which was subsequently revised from 48 to 49. She was not considered for appointment due to obtaining only 49 points in the merit list whereas the cut off points for Group 'C' in Level-2 of pay matrix was 61 points.

6. Respondents' counsel further urged that applicant was again considered for compassionate appointment for the year 2017-18. As per allocation procedure of policy dated 22.08.2014, applicant was allocated 56 points which later on revised from 56 to 51. She was not considered for appointment due to obtaining only 51 points in the merit list whereas the cut off point was 64. It is submitted that Army Ordnance Corps Records forwarded blank application form to the applicant for applying for the third time. The application along with relevant documents has not been received to the respondents till date.

7. Ld. Counsel for the respondents submits that the whole objective of granting appointment on compassionate ground is to enable the family to tide over the sudden crisis, which arises due to death of sole bread earner. Mere death of an employee in harness does not entitle his family compassionate appointment. Vacancies to be filled through compassionate appointments are very limited and thus, it is not possible to provide employment to all the applicants. Department has to examine the financial condition of the family and their liabilities to draw merit for grant of compassionate appointment to the more needy family. Applicant could not be considered in two chances because she could not come up in merit list as she secured less points than cut off points.

The applicant has not applied for the third chance; however, she had been requested to submit his application vide Army Ordinance Corps letter dated 18.11.2019. Learned counsel for the respondents pleaded that instant O.A has no merit and deserves to be dismissed.

8. Heard the rival contentions of the Id. Counsel for the parties and perused the records available on file.

9. In this regard, question of law for consideration in this case is whether the applicant who is wife of the deceased soldier is entitled to seek compassionate appointment on the basis of 'dying in harness scheme'.

10. It being well settled that appointments on compassionate ground are granted with a view to relieve the family of the economic distress being faced on account of sudden death of the bread earner and is an exception to the principles of equality of opportunity in public appointment guaranteed by Articles 14 & 16 of the Constitution of India and thus no exception can be created and the rules are to be strictly construed.

11. Law with regard to employment on compassionate ground for dependent of a deceased employee (in this case serving soldier dying in harness) is well settled by the Hon'ble Supreme Court in the

case of **Sushma Gosain & Ors vs Union of India & Ors**, reported in (1989) 4 SCC 468. Para 9 of the aforesaid judgment being relevant is reproduced as under:-

“9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant”.

12. In yet another case reported in (1994) 4 SCC 138-140 titled **Umesh Kumar Nagpal vs State of Haryana**, their Lordships of the Hon’ble Apex Court has held as under:-

“The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to

such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned”.

13. In view of the submissions made by learned counsel of both the parties, the applicant's case needs to be examined according to the Scheme applicable for compassionate appointment. The Scheme for the Compassionate Appointment (hereinafter referred to as 'the Scheme') has been notified by Integrated Headquarters of Min of Def (Army) vide letter dated 22.08.2014. The selection of candidates on merits to the extent of vacancies was made. Case of the applicant was considered for employment assistance twice on compassionate grounds but applicant could not come in merit due to limited number of vacancies and applicant was informed to submit fresh application with supporting documents for further consideration. In our view, it is just and proper to hold that only two Boards had been held for considering the applicant's case, though her case was required to be considered by three Boards and applicant was advised to submit application with supporting documents vide Army Ordinance Corps letter dated 18.11.2019 but

she did not submit. As such, her case needs to be placed before third Board for reconsideration.

14. In view of the aforesaid, the Original Application is **allowed**. The applicant is directed to submit her application along with supporting documents for grant of compassionate appointment and on receipt of application, respondents shall provide one more opportunity to the applicant and reconsider her case for appointment on compassionate grounds in the light of the Scheme and also, take appropriate decision in the matter as expeditiously as possible, preferably within four months from today.

15. No order as to costs.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 18th July, 2023
Ukt/-