IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9904 of 2015

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Geeta Devi wife of Late Sushil Kumar, resident of Company Bag, Danapur Cantt., P.S. Danapur, District Patna.

.... Petitioner/s

Versus

1.Union of India through the Principal Secretary, Ministry of Civil Aviation, Government of India, New Delhi.
2.The Regional Executive Director, Airport Authority of India, Neetaji subhash Chandra Airport, Kolkata.
3.The Airport Director, Airport Authority of India, Jai Prakash Narayan International Airport, Patna.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. ASHISH GIRI, ADV
For the Respondent no.1 :Mr. S.D SANJAY (ADDL. SOC. GEN.)
For the respondent nos. 2 & 3:Mr. Dr. Pankaj, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT
Date: 26- 11-2015

Heard learned counsel for the parties as with regard to the following prayer made by the petitioner in this writ application:-

> *"To issue an appropriate writ/order/direction in the nature of certiorari for quashing the order dated 5.12.2014 passed by the respondent Secretary, Government of India, Ministry of Civil Aviation, New Delhi by which the claim of the petitioner for grant of compassionate appointment has been rejected (Annexure-16).*
>
> *To issue an appropriate writ/order/direction directing the respondent authorities to give compassionate appointment to the petitioner to the post of Safai Wala (Cleaner) in the Jai Prakash Narayan International Airport, Patna in place of her husband who was a permanent employee and/or anywhere else under the Government of India in light of Rule 7(e) read with other rules of the Scheme for Compassionate Appointment."*

2. Mr. Ashish Giri, learned counsel for the petitioner, in support of the aforementioned prayer has submitted that the impugned order passed by the Secretary to the

Government of India, Ministry of Civil Aviation is factually incorrect and legally impermissible. According to him the claim of compassionate appointment of the petitioner could not have been rejected either on the ground that no further compassionate appointment has been made in the Airport Authority of India Ltd., since 2008 or on account of payment of terminal benefits to the family members of the deceased. In this regard, strong reliance has been placed by Mr. Giri on a recent judgment of the Apex Court in Civil Appeal No. 260 of 2008 (Canara Bank & Anr vs M. Mahesh Kumar) and its analogous cases. Mr. Giri, has also laid stress on the aspect that whatever observations had been made by this Court in the earlier round of writ petition filed by the petitioner has not at all be taken into consideration by the Secretary to the Department while passing the impugned order.

3. Per contra, learned counsel for the respondents while supporting the impugned order has submitted that the petitioner is actually pursuing a stale claim, inasmuch as, the bread earner, late Sushil Kumar, is said to be missing since, 05.02.1997 and the family has survived for a period of more

than 17 years, ever since, he was reportedly missing and ultimately declared to be dead by the decree of the Civil Court dated 31.08.2005. It has also been submitted that the Airport Authority of India Ltd., though is an adjunct of the Government of India but then it has got separate existence and appointment on compassionate ground has to be made only in the Airport Authority of India Ltd., but now since, 2008 on account of the complete change in the set up and working of the Airport Authority of India Ltd., wherein, the management of the Airport Authority of India Ltd., is being done under the joint venture it had become difficult to make any appointment on compassionate ground ever since, 2008. It is thus contended that in absence of vacancy, the petitioner cannot claim appointment on compassionate ground as a matter of right.

4. In order to decide, the question as with regard to admissibility of the petitioner for appointment on compassionate ground, few facts have to be taken into account. The husband of the petitioner was working as Safaiwala at Jai Prakash Narayan International Airport,

Patna. He was said to be missing since, 05.02.1997. As a matter of fact a Title Suit No. 22 of 2004, was filed for a declaration that the aforesaid Sushil Kumar, on account of his continued missing for a period of seven years and being traceless, has to be treated to be dead. The said civil suit was decreed on 31.08.2005, wherein, Civil Court had declared that Sushil Kumar on account of his being traceless was now no more alive and would be presumed to have died.

5. It appears that after the aforesaid decree of the Civil Court, the petitioner on 18.09.2006, had filed an application for appointment on compassionate ground and on 28.04.2010 a list of a number of persons was prepared and approved for grant of employment assistance, wherein, the name of the petitioner was also included amongst 47 persons all over India. The petitioner after waiting for a period of more than three years, when she was not offered any appointment on compassionate ground, she had moved this court by filing a writ petition being C.W.J.C No. 12827 of 2013, which was disposed of by this Court by an order dated 21.04.2014, wherein all that this court had held was as follows:-

> *"The purpose of scheme for compassionate*

appointment is to relieve a family member of the government servant dying in harness from immediate distress which the family is compelled to suffer consequent upon the death of such employee. Admittedly, the petitioner's husband is missing since 1997. It is too long a period now for the petitioner to wait further for compassionate appointment. The respondents ought to have taken a final decision in this regard in terms of the scheme framed for that purpose. Since a final decision had admittedly not been taken by the respondents I dispose of this application with a direction to the Secretary, Ministry of Civil Aviation, Government of India, New Delhi to take a final decision on the petitioner's claim for compassionate appointment within a period of six months from the date of receipt/production of a copy of this order. While taking any decision the respondent- Secretary, Ministry of Civil Aviation, New Delhi will keep in mind the provisions of Clause 7 (e) (f) of the scheme brought on record by the respondent as Annexure-A. The respondent No.1 shall certainly be required to consider whether the petitioner's claim can be rejected on the ground that she received a sum of Rs. 3,03,776/- as terminal benefits as no such provisions has been pointed out by the learned counsel for the Union of India under the Scheme which according to Union of India is applicable to the employees of Airport Authority of India. If the petitioner's claim does not find favour with the Secretary, Ministry of Civil Aviation, New Delhi, he will be required to pass a reasoned order.

This application is disposed of accordingly."

6. It is in compliance of the aforementioned order that the impugned order had been passed by the Secretary to the Government of India, Ministry of Civil Aviation on 05.12.2014, which reads as follows:-

"**IMMEDIATE**

SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF CIVIL AVIATION
NEW DELHI-110003
December 05,2014

No. ***AV/24027/8/2013-AAI***

To

Smt. Geeta Devi
W/o Late Sushil Kumar
Resident of Company Bag
Danapur Cantt.
P.S. Danapur, Patna-801503

Subject:- C.W.J.C No. 12827 of 2013 titled as Geeta Devi w/o Late Sushil Kumar Vs. UOI & Others in the High

Court of Patna.

Madam,

Please refer to the Hon'ble High Court of Patna Order dated 21.04.2014 on the above subject. The matter has been examined in consultation with Airports Authority of India (AAI).

2. AAI has intimated that consequent upon the restructuring of Delhi & Mumbai airports and handing over the same to Joint Venture Companies (JVCs), a large n umber of employees had reverted back to AAI and it has to be ensured that all such employees are gainfully deployed at other establishments of AAI. In view of this, no Employment Assistance Committee meeting has been conducted since September, 2008. Thus no recruitment has been done after 2008 on compassionate ground.

3. It is also, intimated that an amount of Rs. 303776/- was paid to you by AAI towards terminal benefits. Moreover, Hon'ble High Court has also directed in its judgment dated 21.04.2014 that Ministry shall consider the amount of terminal benefits while considering her claim. In this regard, recently, the Supreme Court of India has ruled in the case of UOI & Anr vs. Shashank Goswami & Anr. (Civil Appeal Nos. 6224 of 2008) that if the compensation on death of an employee to his/her family is five lakhs in case of Group B, three lakhs in case of Group C and two lakhs in case of Group D then no case is made out of for appointment on compassionate grounds.

4. In view of above, it is not possible to appoint you in AAI on compassionate grounds.

Yours faithfully
(V. Somasundaran)"

7. Mr. Giri, learned counsel for the petitioner in fact has assailed the aforementioned impugned order primarily on the ground that the same definitely is not in keeping with the spirit of the direction given by this Court. In this regard, he has submitted that even when there was a specific direction for considering Clause-7(e) and (f) of the policy of appointment on compassionate ground in the Airport Authority of India Ltd., not a word has been said about the same. He has also questioned the impugned order on the ground that a subsequent decision of the Government of India as with regard to refusing compassionate appointment

on the ground of payment of terminal benefit cannot be made applicable in the case of the petitioner, inasmuch as, such decision of the Government of India is dated 19.02.2003, whereas the death of the husband of the petitioner will be deemed to have taken place on 05.02.1997 ever since, he was missing. It is in this regard that he has sought to rely on the judgment of the Apex Court in the case of Mahesh Kumar (supra).

8. First of all, this Court will examine as to what was said in relation to the scheme of compassionate appointment and particularly its Clause-7(e) & (f). Let it be kept in mind that Airport Authority of India Ltd., is a separate and independent statutory organization and not a department of the Government of India. It has only adopted the Central Government resolution for the purposes of making appointment on compassionate ground. Admittedly, the husband of the petitioner was not a Government servant but only an employee of the Airport Authority of India Ltd., which may be 'State' within the meaning of Article 12 of the Constitution of India but is not a Government department.

Airport Authority of India Ltd., in fact now has been created as a separate organization for having the better Airport facilities and that is how it has entered into joint venture by forming a Joint Venture Company. Therefore, wherever be the scheme for compassionate appointment adopted by the Airport Authority of India Ltd., the expression Government servant as used in the policy of Government of India will mean the servant of the Airport Authority of India Ltd. In this background, if Clause-7 of the scheme of the Government, which was adopted by the Airport Authority of India Ltd., is examined, it will have to be held that a constructive meaning has to be given to the said clause for making it applicable in the Airport Authority of India Ltd. Clause-7 of the scheme in fact reads as follows:-

> *"7. DETERMINATION/AVAILABILITY OF VACANCIES*
>
> *(a) Appointment on compassionate grounds should be made only on regular basis and that too only if regular vacancies meant for that purpose are available.*
>
> *(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz SC/ST/ OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC*

reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category.

(c) While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments

(d) The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilising any other vacancy e.g. sports quota vacancy.

(e) Employment under the scheme is not confined to the Ministry/ Department/Office in which deceased/medically retired Government servant had been working. Such an appointment can be given anywhere under the Government of India depending upon availability of a suitable vacancy meant for the purpose of compassionate appointment.

(f) If sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/ Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list."

9. Thus, where the expression in Clause-7(e), Ministry/Department/Office is used in the case of Airport Authority of India Ltd., the same will not be applicable, inasmuch as, under the control of the Airport Authority of India Ltd., which is a separate organization, there is no Ministry, there is no Department and only has its Offices all over India at different airports. Thus the offices in the context of the petitioner's compassionate appointment will mean only all the offices of Airport Authority of India Ltd.

The question however would be if the appointment of the petitioner was not permissible at the place where the husband of the petitioner was shown working and in fact as per the order at Lucknow, inasmuch as, in the order of Senior Manager, Airport Authority of India Ltd., dated 28.04.2010, in the list of 47 persons, the name of the petitioner has been shown against Northern Region, Lucknow in the region/station of the deceased has appointment could be made only in any of the office of Airport Authority of India including at Patna. This, however, will make no difference inasmuch as it remains a fact that the husband of the petitioner being an employee of the Airport Authority of India Ltd., and not a Government servant in the Ministry of Civil Aviation for appointment on compassionate ground, only the vacancies in the offices of Airports could have been taken into consideration.

10. It is here that the reason given in the impugned order by the Secretary to the Government of India becomes material and significant inasmuch as, he has recorded a specific finding that ever since, 2008 when Delhi and

Mumbai Airports were handed over to J.V.C a large number of its employees had become surplus and were reverted back to the Airport Authority of India Ltd., and their adjustment itself became the primal concern. The Secretary to the Government of India in his impugned order has thus also gone to hold that there has been no appointment on compassionate ground in the Airport Authority of India Ltd., since 2008 only for want of vacancies.

11. Learned counsel for the petitioner infact is not in a position to demolish this fact, inasmuch as, he himself has produced list of six employees all of whom were appointed on compassionate ground, only in between 02.02.2001 to 01.02.2007. Thus, the plea taken by the Secretary to the Government of India in his order that no appointment on compassionate ground has been made since 2008, and in fact no meeting of compassionate appointment committee has taken place after 2008 only due to want of vacancies will go to show that there is nothing to contradict much less demolish the plea of want of vacancies for appointment of the petitioner or others on compassionate ground to be

factually incorrect.

12. The question, therefore, would arise that if when the organization has undergone a change of set up and there is complete want of vacancies, can the employer namely, Airport Authority of India Ltd., be compelled by this Court to appoint persons on compassionate ground ? The answer obviously will be in negative because if there is no vacancy for appointment on compassionate ground, such appointment cannot be made by creating a post only for the purposes of compassionate appointment. This aspect of the matter, in fact in relation to the scheme in hand providing limit or sealing of 5 per cent of the vacancies for the purposes of compassionate appointment was gone into by the Apex Court in the case of **Union of India vs Joginder Sharma** reported in **(2002) 8 SCC 65**, wherein, it was held as follows:-

> *"4. Heard the learned counsel for the appellant and the learned counsel for the respondent. The compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sloe breadwineer, who died leaving the family in penury and without sufficient means of livelihood. If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since, this method of appointment is in deviation of the normal recruitment process under the rules,*

where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. This Court as early as in the decision reported in LIC of India v. Asha Ramchhandra Ambedkar reported in (1994) 2 SCC 718 held that the courts cannot direct appointments on compassionate grounds dehors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

5. So far as the case on hand in concerned, both the Tribunal as well as the High Court seem to have fallen into great and same error. A mere recommendation or expression of view by an authority at the lower level that if relaxation is accorded, there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the courts/tribunals can compel the competent authority to grant relaxation. The reasons assigned by the High Court to reject the challenge made by the appellant, seem to be no reasons in the eye of the law apart from they being totally oblivious to the very stipulations in the Scheme and the very object underlying the Scheme of making appointments on compassionate grounds. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the tribunal/Court to compel the exercise to grant relaxation. The two factual instances, sought to be relied upon, on behalf the respondent, have been properly explained by the appellant to be not really and in substance a deviation from the general policy not to relax so as to alter the ceiling and create more than the stipulated number of vacancies, to appoint persons on compassionate grounds."

(underlining for emphasis)

13. Judged, in this background if the reasoning given by the Secretary that since no one has been appointed on compassionate ground in Airport Authority of India ever

since 2008, and the petitioner for herself has found out that the last appointment at Patna Airport was of one Raj Kumar Sah on 01.02.2007, she cannot heard to make any complaint specially when her own application filed in the year 2006, was found to be defective and for which she was given time to make the necessary amendment vide letter of Assistant Manager (P&T), AAI, Patna dated 30.05.2007 as contained in Annexure-4, reading as follows:-

> "सरकार के प्रधान सचिव"
> भारतीय विमानपत्तन प्राधिकरण
> AIRPORTS AUTHORITY OF INDIA
>
> संख्या–भाविप्रा/पट/नि.सं.–सु.क./1333
> दिनांक 30.5.2007
> सेवा में,
> श्रीमती गीता देवी
> पत्नी स्व0 सुशील कुमार
> पूर्व सफाईवाला
> दानापुर, पटना
> विषय– अनुकंपा के आधार पर रोजगार सहायता।
> महोदया,
> क्षेत्रीय मुख्यालय, कोलकाता के दिनांक 22.5.2007 के पत्र संख्या ए.ए. आई/एमई–4(ई/ए) के अनुदेशानुसार निम्नलिखित त्रुटियों को दूर करने के लिए आवश्यक अनुलग्नक सहित आपका आवेदन पत्र आपको लौटाया जाता है। साथ में यह भी सलाह दी जाती है कि पुनः अपना आवेदन–पत्र यथाशीघ्र इस कार्यालय में आवश्यक कार्रवाई के लिए जमा करें।
>
> 1. मृत्यु की तिथि स्व0 सुशली कुमार, पूर्व सफाईवाला के गायब होने की तिथि 05.02.1997 के बदले 02.02.19997 आपके द्वारा प्रस्तुत शपथ–पत्र में दर्शायी गई है।
> 2. चल/अचल संपति प्रमाण–पत्र अभिप्रमाणित होना चाहिए।
> 3. राशन कार्ड की छायाप्रति अभिप्रमाणित होनी चाहिए।
>
> अनुलग्नक – यथोक्त।
> भवदीय
>
> ह0/–
> (प्रदीप कुमार)
> सहायक प्रबंधक (पी.एण्ड ए.)
> कृते निदेशक विमानपत्तन।"

14. Thus having regard to the admitted position that no one has been appointed in any of the Airports on compassionate ground ever since, 2008, this Court cannot find that the reason given by the Departmental Secretary suffers from any vice. Let it be kept in mind, that as a matter of fact, the Departmental Secretary being the head of the Government, has got no direct control over the affairs of the AAI and in fact he has passed the impugned order only because of the direction given by this Court in the earlier writ application filed by the petitioner. As noted above, Airport Authority of India Ltd., is an independent organization in which Government of India can only issue direction in the matter of policy. The appointment of a person in the Airport Authority of India Ltd., cannot be a matter of policy, inasmuch as, after the Airport Authority of India Ltd., has already adopted the guidelines/policy of the Government of India for compassionate appointment, it has to re-modulate its own requirement as per its own assessment on the issue of vacancies.

15. This Court, therefore, does not find any error in

the consideration made by the Secretary to the Government of India, inasmuch as, he had in his mind the complete set up of Airport Authority of India Ltd., under which the appointment were to be made only on the Airports under the control of the Airport Authority of India Ltd., and Clause-7(f) of the policy as quoted above could have only meant in the case of Airport Authority of India Ltd., to be the Airports and nothing more. In other words, the appointment of the petitioner could not have been made on any Government post, inasmuch as, the husband of the petitioner was only an employee of the Airport Authority of India Ltd.

16. As with regard to the applicability of the circular dated 19.02.2003 on which great emphasis was laid by Mr. Giri, it has to be found that the Secretary to the Government of India was only complying the directions given by this Court as with regard to considering the case of the petitioner in the light of payment of terminal benefits made to her. Let it be also kept in mind that the petitioner's application for the first time for compassionate appointment was filed only on 18.09.2006, and by that time the circular of the Government

of India dated 19.02.2003, had already come into force which of course was related to the set up and organization and policy of compassionate appointment in the office of the Comptroller and Auditor General of India (CAG), has been noticed in paragraph no. 13 of the judgment of the Apex Court in the **Civil Appeal No.(s) 6224 of 2008 (Union of India & Anr Vs Shashank Goswami & Anr)** disposed of on 23.05.2012, which reads as follows:-

> *"In the instant case, officer of the Comptroller and Auditor General of India, New Delhi issued a Circular dated 19.02.2003 explaining the scope of such appointments. Relevant part of the same reads as under:*
>
> *"With a view to bring uniformity in our offices regarding parameters for compassionate appointment of a family member in the case of death of a government servant in harness, it has been decided that the total income of the family from all sources including terminal benefits after death, excluding G.P.F., should be taken into account. If the resultant computation works out to a figure less than the parameters given below such cases can be considered for compassionate appointment subject to fulfillment of all other conditions. The limits are given below:*
>
> *Group 'B' Rs. Five lakhs*
> *Group 'C' Rs. Three lakhs*
> *Group 'D' Rs. Two lakhs"*

17. Thus, when this Court itself wanted the Secretary to the Government of India to examine the issue of terminal benefit, he had no other option but to examine the aforementioned circular of the C.A.G, according to which, also since the payment of sum of more than Rs. 3 lakhs has

been made by way of terminal benefit to the petitioner, she stood ruled out of the benefits of compassionate appointment in terms of that circular dated 19.2.2003.

18. This Court in fact does not find any force in the submission of learned counsel for the petitioner that the Circular dated 19.02.2003, has been applied in the case of the husband of the petitioner, inasmuch as, he was missing since 05.02.1997, but the decree of the Civil Court was passed only on 31.08.2005, and the application of the petitioner was filed for compassionate appointment claiming her husband to be dead on the basis of such decree only on 25.09.2006, therefore, reliance by Mr. Giri on the judgment of the Apex Court in the case of Mahesh Kumar (supra) seems to be wholly misplaced. In that case, it was in relation to the employee of the Canara Bank, there was policy of dying in harness scheme dated 08.05.1993, and the application was filed by Mahesh Kumar on 30.11.1998, for appointment on compassionate ground on the ground of death of his father, a clerk in the Canara Bank on 10.10.1998. Such application was filed by Mahesh Kumar, in view of the policy of dying

in harness effective w.e.f. 08.05.1993, and the same was rejected initially on the ground that financial position did not show any indigent circumstances. Such order of the Canara Bank was quashed by learned Single of the Kerala High Court and was also affirmed by the Division Bench, whereafter the appeal was taken to the Apex Court.

19. Before the Apex Court, it was canvassed by the Bank that the policy of dying in harness scheme of 08.05.1993, had since been replaced in the year 2005, and as such the appointment of Mahesh Kumar was not possible. It was in this background that the Apex Court in paragraph no. 11 and 12 of the judgment had gone to discuss the fact and law and ultimately issued the following directions in paragraph no. 13 holding that 2005 policy could not be given a retrospective effect in the case of Mahesh Kumar, which reads as follows:-

> *"Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998, while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate*

appointment arose when the Circular No. 154/1993 dated 8.05.1993 as in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant-bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority."

20. As would be noted above, from the reading of judgment in the case of Mahesh Kumar (supra) itself, it would appear that the facts were entirely different and in fact the policy of the Bank was also entirely different. Such policy being not applicable in the case of Airport Authority of India Ltd., this Court is not inclined to say anything more but to hold that the facts of the present case being absolutely distinguishable, the law laid down by the Apex Court in the case of Mahesh Kumar(supra) will have no application

herein.

21. This Court at the cost of repeatition must clarify that applicability of the terminal benefit issue was examined by the Secretary to the Government of India, only on account of the direction given by this Court and in fact, this Court also does not find anything wrong in it, because if the Government of India and the C.A.G. had evolved a policy of examining the financial condition of the family in the light of the guidelines of the Circular dated 19.02.2003, that by itself cannot be held to be bad. As noted above, everything depends in the matter of compassionate appointment on the wordings and prospect of the policy and if the Government of India and its C.A.G., had evolved a policy of examining the financial condition of the family that by itself cannot be held to be bad. It was this aspect of the matter which was also gone into by the Apex Court in the case of Shashank Goswami (supra), wherein, it was held as follows:-

> *"9. There can be no quarrel, to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceases employee. Strictly, such a 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. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment 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 on 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 and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. 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.

*10. This Court in **Govind Prakash Verma v Life Insurance Corporation of India & Ors.,** (2005) 10 SCC 289 while dealing with a similar issue i.e. whether payment of terminal/retrial benefits to the family can be taken into consideration, held as under:*

> *"In our view, it was wholly irrelevant for the departmental authorities..... to take into consideration the amount which was being paid as family pension to the widow of the deceased.... And other amounts paid on account of terminal benefits under the Rules. ...... Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amount admissible under the Rules."*

*11. This Court in **Punjab National Bank & Ors. v. Ashwini Kumar Taneja,** (2004) 7 SCC 265, placing reliance upon the earlier judgment in **General Manager (D&PB) & Ors. vs Kunti Tiwari & Anr.**, (2004) 7 SCC 271, held that compassionate appointment has to be made in accordance with the Rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Whereas the scheme provides that in case the family of the deceased gets the retrial/terminal benefits exceeding a particular ceiling, the dependant of such deceased employee, would not be eligible for compassionate appointment.*

*12. In **Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra & Ors,** (2008) 11 SCC 384, this Court examined the scope of employment on compassionate ground in a similar scheme making the dependant of an employee ineligible for the post in case the family receives terminal/retrial benefits above the sealing limit and held that the judgment in **Govind Prakash** (supra) had been decided without considering earlier judgments which were binding on the Bench. The Court further held that the appointment has to be made considering the terms of the scheme and in case the scheme lays down a criterion that if the family of the deceased employee gets a particular amount as retrial/terminal benefits, dependent of the deceased employee would not be eligible for employment on compassionate grounds."*

22. As a matter of fact, the issue as with regard to examining financial conditions of the family of the deceased employee for making appointment on compassionate ground was gone into by the Apex Court even earlier in the case of **Umesh Kumar Nagpal vs State of Haryana** reported in (1994) 4 SCC 138, wherein, it was held as follows:-

> *2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit-list. No other mode of appointment nor any other consideration is Neither the Governments nor the 140 public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to 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. <u>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. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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</u>. 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."*

(underlining for emphasis)

23. The same view again in fact was reiterated by the Apex Court in the case of **Panjab National Bank & Ors vs Ashwini Kumar Taneja** reported in **(2004) 7 SCC 265,** by examining the policy of the State Bank of India providing for examining of the financial condition of the family, wherein, the amount of family pension, gratuity amount received, Employee's/Employer's contribution to PF, any compensation paid by the bank or its Welfare Fund, proceeds of LIC policy and other investments of the deceased employee, income of family from other sources, employment of other family member and size of the family and liabilities, if any, etc., were to be taken into consideration.

24. In fact while doing so, it has approved the judgment in the case of **General Manager (D&PB) & Ors. v. Kunti Tiwari & Anr.,** reported in **(2004) 7 SCC 271,**

having considered the same scheme and law laid down by the Apex Court in the case of Umesh Kumar Nagpal (supra) had held as follows:-

> *"On the basis of the criteria as recommended by the Indian Banks' Association and adopted by the appellant Bank, it could not be said that the family of the late K.N. Tiwary had been left in "penury" or "without any means of livelihood." The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting this criteria of penury to one of "not very well-to-do".*
>
> *In the circumstances of the case, we are of the view that the learned Single Judge was correct in dismissing the writ application of the respondents. The appeal is accordingly allowed and the decision of the Division Bench is overturned and the order of the learned Single Judge is upheld. There will be no order as to costs."*

(underlining for emphasis)

25. Yet again in the case of **State Bank of India & Ors vs Jaspal Kaur** reported in **(2007) 9 SCC 571**, the Apex Court had upheld the bank's policy for judging and examining the claim of compassionate appointment on the ground of financial condition of the family of the deceased by holding as follows:-

> *"Hence a major criterion while appointing a person on compassionate grounds should be the financial condition of the family of the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made. In the present case the financial condition of the respondent's family is not one of destitution, the appellants have already paid a sum of Rs. 4,57,607 as terminal benefits (after deducting Rs. 19,183 towards liabilities); a sum of Rs. 2055 p.m. was being paid towards family pension and monthly income under Staff Mutual Welfare Scheme and in addition the total monthly income of the family comes to Rs. 5855 (monthly pension of Rs. 2055+Rs. 3800 p.m. as notional interest on the investment of Rs. 4,57,607). The competent fact –finding*

authority on the basis of the above financial details had arrived as the conclusion that the financial condition of the family is not penurious and that the family earns sufficient income to maintain themselves. Hence appointment, on compassionate ground was not granted to the respondent. We however, do not fell the necessity to interfere with this order of the Bank Authority on the fact situation of this case."

(underlining for emphasis)

26. The law laid down in this regard by Apex Court in the case of **Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra & Ors.,** reported in **(2008) 11 SCC 384**, can also be made applicable, wherein, it was held has follows:-

"Furthermore, about twelve years have passed. The appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. The appellant herself would be aged about 38 years now. She cannot be given any appointment at this age."

(underlining for emphasis)

27. In the present case also the bread earner husband is supposed to be missing and thus dead since 1997 and a period of eighteen years has lapsed and the writ petitioner aged about 36 years has overcome the tide in this period.

28. Judged, on all these parameters while this Court would not find any flaw in the impugned order also referring to the circular of the Comptroller and Auditor General of India as with regard to the petitioner getting the terminal

benefit and thus being not entitled for compassionate appointment as a matter of right but then it must be clarified here that this reason is not an independent reason rather it has been given only because of the direction given by the this Court in the earlier round of litigation in the writ application filed by the petitioner.

29. The reason given by the authority for denying appointment on compassionate ground infact remains one and only one that in the Airport Authority of India Ltd., since there is a surplus number of staffs on account of joint venture being made by the Airport Authority of India Ltd., and also consequential privatization of the Airports, it is not possible for the Airport Authority of India Ltd.,to make any compassionate appointment and in fact it has also not been done so since the year 2008.

30. That would bring this Court to the merit of the claim of the petitioner. The husband of the petitioner had been missing since 1997. The application for appointment on compassionate ground was filed in the year 2006 and today we are in the year 2015. Eighteen years therefore, had passed

since the presumed death of the husband of the petitioner. The family in the meantime has received the terminal benefits and the age of the petitioner's son Pawan Kumar is 25 years and the two daughters namely, Radha Kumari and Suman Kumari have become major as well as the petitioner herself as per her declaration given in the application for appointment on compassionate ground is aged about 38 years.

31. Thus, on consideration of all these aspects and particularly the lack of vacancy for appointment of the petitioner on compassionate ground in the Airport Authority of India, this court does not find any infirmity in the decision of refusing appointment of the petitioner on compassionate ground.

32. That being so, this writ application must fail and is accordingly dismissed.

(Mihir Kumar Jha, J)

Patna High Court
Dated the 26th November 2015
A.F.R./Ranjan/-

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