

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16510 of 2015

Date of decision: 12.8.2015

Union of India

.....Petitioner(s)

Versus

Central Administrative Tribunal and anr.

.....Respondent(s)

**CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE DARSHAN SINGH**

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

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Present: Mr. Barjesh Mittal, Advocate for the petitioner(s).

DARSHAN SINGH, J.

1. The present civil writ petition under Article 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari, mandamus or any other suitable writ, order or direction quashing the order dated 9.4.2015 (Annexure P-6) passed in OA No.060/00395/2014 by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

2. Late Hakam Singh, the father of respondent No.2-

Sandeep Singh, was working as Senior Auditor in the office of petitioner No.2. He unfortunately expired on 17.9.2012. After his death, the mother of respondent No.2 applied to the office of petitioner No.2 for appointment of respondent No.2, her son, on compassionate grounds vide application dated 4.1.2013 (Annexure A1). The case of respondent No.2 was considered for appointment on compassionate grounds but the status of respondent No.2 was of a married son. Consequently, in view of clarifications issued by the Department of Personnel and Training vide OM dated 30.5.2013, the case of respondent No.2 was not recommended for appointment on compassionate grounds by the departmental screening committee and rejection thereof was conveyed to respondent No.2 vide order dated 7.1.2014. He moved Original Application No.060/00395/2014 before the Central Administrative Tribunal, Chandigarh Bench Chandigarh which was allowed vide impugned order dated 9.4.2014. The present petitioners were directed to consider the claim of respondent No.2 for appointment on compassionate grounds ignoring the aspect of his being married on the date when the application for such appointment was moved.

3. Aggrieved with the aforesaid order, the present writ petition has been preferred.

4. Sh. Barjesh Mittal, learned counsel for the petitioner, contended that the policy which was in force on the date of death of Hakam Singh, father of respondent No.2 shall be applicable to support his contentions, he relied upon case **Krishna Kumari**

versus State of Haryana and others, 2012 (2) SCT 736 (FB). He contended that this fact is not disputed that respondent No.2 was married on 5.10.2012. In this manner, he was the married son of the deceased on the date of filing the application for appointment on compassionate grounds. He contended that as per the clarification issued by DOPT vide OM dated 30.5.2013, the married son was not considered dependent on a Government servant and was not entitled for appointment on compassionate grounds. He further contended that the subsequent clarification dated 25.2.2015 was only applicable prospectively as it was specifically mentioned therein that this clarification will be applicable with effect from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate grounds already settled with respect to the FAQs dated 30th May, 2013 may not be reopened. Thus, he pleaded that the impugned order passed by the Central Administrative Tribunal, Chandigarh Bench Chandigarh is illegal and is liable to be set aside.

5. We have duly considered the aforesaid contentions but we found no substance therein. Annexure A6 is the scheme for compassionate appointment issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) vide memo dated 9.10.1998. This fact is not disputed that this Scheme for compassionate appointment was applicable on the date of death of Hakam Singh, the father of respondent No.2. This scheme was applicable to the “dependent family member” of the deceased. “Dependent Family Member” has

been defined in Note-I of the Scheme which reads as under:-

“Note I “Dependent Family Member” means

(a) spouse; or

(b) son(including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or member of the Armed Forces referred to in (A) or (B) of this para,

who was wholly dependent on the Government servant/member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.”

6. As per this note, the son (including adopted son) falls within the definition of “dependent family member”. The Department of Personnel and Training had issued the clarification dated 30.5.2013 with respect to the frequently asked questions (FAQs) on compassionate appointment. Question No.13 reads as under:-

13	Whether 'married son' can be considered for compassionate appointment?	No. A married son is not considered dependent on a government servant.
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It is not disputed that later on further clarification was issued vide DOP&T's No.14014/02/2012-Estt (D) dated 25th February, 2015 which reads as under:-

<i>S.No.</i>	<i>Question</i>	<i>Answer</i>
60	Whether “married son’ can be considered for compassionate appointment?	Yes, if he otherwise fulfils all the other requirements of the Scheme i.e. He is otherwise eligible and fulfils the criteria laid down in this Department's O.M. Dated 16th January, 2013. This would be effective from the date of issue of this FAQ viz. 25th February, 2015 and the cases of compassionate appointment already settled w.r.t. The FAQs dated 30th May, 2013, may not be reopened. Sr. No.13 of the FAQs dated 30th May, 2013 may be deemed to have been modified to this extent.

7. As per the aforesaid clarification, the married son can also be considered for compassionate appointment if he otherwise fulfills the other requirements of the scheme. The FAQs dated 30.5.2013 dated 25.2.2015 are only the clarifications given by the department on administrative side. These clarifications do not amount to the amendment of the Original Scheme dated 9.10.1998 for compassionate appointment. In the Original Scheme “son (including adopted son)” falls in the category of the “Dependent Family Member”. In the scheme, it is nowhere mentioned that only “unmarried son” will fall within the category of the “dependent family member” and “married son” shall be excluded. So, there is no categorisation of married or unmarried son in the scheme. The subsequent clarifications do not amount to amendment of the original scheme.

8. The Central Administrative Tribunal has rightly relied upon case **Satgur Singh versus State of Punjab 2013 (3) SCT 629**. In that case also, there was analogous note defining the "Dependent Family Members". In Note I, only son was mentioned and this Court held that the married son would also be eligible for appointment on compassionate grounds provided he fulfills the other requirements. Case **Krishna Kumari versus State of Haryana** (supra) relied upon by the learned counsel for the petitioners is entirely on different footing because in that case, the question for consideration was as to whether the policy applicable on the date of death of the employee will apply or the one applicable on the date of consideration of application would apply. But in the instant case, it is not the case of the petitioner that some different scheme was applicable on the date of death of the father of respondent No.2. It is the case where only the different clarifications have been issued on the same policy by the Department which does not amount to any amendment in the Original Scheme dated 9.10.1998.

9. Thus, we do not find any illegality in the impugned order dated 9.4.2014 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh.

10. Before parting with this judgment, it will be pertinent to mention that even as per the admitted case of the petitioners as per para No.2 of the petition, Hakam Singh, the father of respondent No.2 has died on 17.9.2012 and respondent No.2 was married on 5.10.2012 which means that he has married after the death of his

father. Thus, on the date of death, he was unmarried.

11. Thus, keeping in view our aforesaid discussion, the present petition has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

August 12, 2015
ps

(DARSHAN SINGH)
JUDGE