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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 18-01-2019**

+ **W.P.(C) 6523/2018, CM Nos.24939 & 24941/2018**

UNION OF INDIA AND ORS Petitioners

Through: Ms. Shiva Lakshmi, CGSC with
Mr Siddharth Singh, Adv.

versus

PUNITA DEVI AND ANR Respondents

Through: Mr. Sanjeev Yadav with
Mr. D.K.Yadav, Adv. for R-5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K.CHAWLA

J U D G M E N T

VIPIN SANGHI, J. (ORAL)

1. The petitioners have preferred the present writ petition to assail the order dated 24th August, 2016 passed by the Central Administrative Tribunal, Principal Bench in OA No.843/2015. The said original application had been preferred by the respondents to seek compassionate appointment on account of the demise of the husband of Smt. Punita Devi/respondent no.1 on 12.09.2008. Respondent no.2 is the son of the deceased government servant.

2. The application of the respondents to seek compassionate appointment was considered in respect of six vacancies in the year 2009. The respondents

were informed that the applicant had secured 55 points based on the criteria fixed for the said purpose and six candidates selected for compassionate appointment against the earmarked vacancies had secured points ranging from 71 to 84 points. Consequently, the application of the respondents to seek compassionate appointment was rejected. Before the Tribunal, the respondents had placed reliance on the scheme for compassionate appointment and in particular on paragraph 7 (e) and (f) which read as follows:

“(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.”

3. In the light of the aforesaid, the Tribunal directed that the case of the applicant should be considered in respect of the vacancies for compassionate appointment, which may have existed in other Ministries.

4. The submission of learned counsel for the petitioners is that while passing the impugned order, the Tribunal has not taken into account the

Office Memorandum dated 22nd June, 2001 issued by the DOP&T, Ministry of Personnel, Public Grievances and Pensions which reads as follows:-

“New Delhi 110001
June 22, 2001

OFFICE MEMORANDUM

Subject:- Compassionate Appointment – Recommendation by the Committee limited to availability of vacancy.

*The undersigned is directed to refer to paragraph 7(f) of the Department of Personnel and Training (DoP&T) Office Memorandum (O.M.) No.14014/6/94-Estt(D) dated October 9, 1998 read with O.M. No.14014/23/99-Estt(D) dated December 3, 1999 on the above subject and to say that the matter has been further examined. Generally it is seen that in view of the 5% ceiling prescribed for compassionate appointment under the extant instruction, there are not enough vacancies to accommodate even requests for compassionate appointment from family members of Government Servants belonging to the same Ministry/Department/Office. Consequently, there are no spare vacancies left to accommodate requests from other Ministries/Departments/Offices for such appointment. Therefore, while no useful purpose is being served by taking up the matter with other Ministries/Departments/Offices of the Government of India to consider such other cases received by them from other Ministries/Departments/Offices for compassionate appointment, it on the other hand only gives false hope to the applicants as grant of such appointment by other Ministries, etc. cannot be guaranteed. **It has, therefore, been decided that in future the Committee prescribed in paragraph 12 of Office Memorandum dated October 9, 1998 for considering a request for appointment on***

compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year in the concerned administrative Ministry/Department/Office, that too within the ceiling of 5% of vacancies falling under DR quota in any Group 'C' or 'D' post prescribed in this regard in para 7(b) of Office Memorandum dated October 9, 1998 referred to above.

The instructions contained in the Office Memoranda referred to above stand modified to the extent mentioned above.

The above decision may be brought to the notice of all concerned for information, guidance and necessary action.

Hindi version will follow.” (emphasis supplied)

5. The submission of the petitioners is that in the light of the aforesaid Office Memorandum, it was not obligatory for the petitioners to consider the application for compassionate appointment made by the respondents, by circulating the same to all other Ministries. Reference is made to the counter affidavit filed by the petitioners before the Tribunal wherein it had been *inter alia* stated:

“The application after necessary verification was forwarded to the Asstt. Director (Recruitment & Establishment), Office of the Chief Postmaster General, Delhi Circle by SSRM, Airmail Stg. Dn., New Delhi – 110021 vide letter dated 23.06.2009. A Circle Relaxation Committee (CRC) was constituted for the purpose.

It is submitted that in all there were 27 applicants/cases including of the applicant for consideration. It is to be submitted that

under the existing rules circulated by the Ministry of Communication and IT Department of Posts vide letter No.37-36/2004-SPBI/C dated 20.01.2010 (copy enclosed herewith as **Annexure-R1**), the criteria was fixed considering the overall indigent circumstances like number of dependents particularly minors, amount of pension and terminal benefits received, size of the family, marriageable daughters, education of Children, earning members of the family, liabilities and assets including nature of accommodation whether rented or owned by the family etc.

There were 6 approved vacancies in the year 2009 with limitation upto 5% direct recruitment quota vacancies. As submitted above, there were 27 applicants/cases for consideration.

To ensure complete transparency, the department has worked out a system of allocation of points to various attributes based on a hundred points scale. The bifurcation of the same is as follows:-

- i) 18 points for family pension
- ii) 1 point for amount of terminal benefits received
- iii) 5 points for monthly income of earning member & income from property
- iv) 10 points for moveable/immoveable property
- v) 15 points for number of dependents, and
- vi) 6 points for left over service.

In addition in the cases of widow of deceased employees for appointment on compassionate ground, for herself she will get 15% additional grace point. The Committee also considered in each case the circumstance of the death and also the age of the employee at the time of death.

The CRC so constituted held its meeting on 18/3/2010 to consider the 27 applicants against the 6 approved vacancies for the year 2009. The applicant could score 55 points only AND so fully based on the above criteria. The Committee had not recommended applicant's case for compassionate appointment."

6. Learned counsel for the respondents submits that even if the Office Memorandum dated 22nd June, 2001 were to be made applicable, it was essential for the petitioners to consider the respondents' application in the light of the vacancies which arose in the Ministry of Communication and Information Technology. According to the respondents, the application of the respondents should have been considered at All India Level, since the said Ministry is a Central Ministry.

7. We do not find any merit in the submission of the respondents. The purport of the said Office Memorandum dated 22nd June, 2001, clearly, was to limit the consideration of applications for compassionate appointment in respect of the 5% DR vacancies within the concerned Administrative Ministry/Department/Office. The said office memorandum itself notes that such like applications are received in large numbers, and it is not possible to service all such applications even within the concerned office or department. Therefore, it serves no purpose to circulate the applications in other Ministries/Departments/Offices. Thus, the respondents have no basis to claim that their application should be considered on All India Basis. The aforesaid extract from the counter affidavit filed by the petitioners before the Tribunal shows that the respondents' application was considered in Delhi

Circle. In the light of the aforesaid, the impugned order cannot be sustained and the same is set aside.

8. The petition is allowed leaving the parties to bear their own costs.

VIPIN SANGHI, J

A. K. CHAWLA, J

JANUARY 18, 2019
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