

WP.CT. 84 of 2023

(Tuhin Chakraborty & Anr. Vs. Union of India & Ors.)

**Mr. Ujjal Roy
Mr. Arpa Chakraborty
Mr. Ivan Roy
Sk. Abdur Rahim**

..... For the petitioners

**Mr. D. N. Ray
Ms. Amrita Pandey
Mr. Ghanashyam Pandey**

..... For the respondent no. 1

**Mr. Rajib Ray
Ms. Sohini Kundu**

**..... For the respondent
nos. 2 to 4**

1. Affidavit-of-service filed by the petitioners be kept on record.

2. The present writ petition has been preferred challenging an order dated 22nd March, 2023 passed by the learned Tribunal in the original application being OA No. 350/02096/2021. In the said application, the petitioner challenged an order dated 13th August, 2021 passed by the respondent no. 4 rejecting the claim of the petitioner no. 1, namely, Tuhin Chakraborty (in short, Tuhin) for compassionate appointment. The original application was heard upon exchange of reply and rejoinder by the respective parties, copies of which have been annexed to the present writ petition.

3. Mr. Roy, learned advocate appearing for the petitioners submits that Tuhin's father and the husband of the petitioner no. 2, was an employee of the Regional

Office of Employees Provident Fund Organisation (in short, EPFO), who died-in-harness on 23rd January, 2014. To tide over the financial distress due to the loss of the sole bread earner, Tuhin submitted an application for compassionate appointment on 5th March, 2014. As directed, he appeared before the Screening Committee on 30th June, 2014. Though the said Committee recommended his candidature, about three years thereafter by a memo dated 12th July, 2017, he was intimated a decision dated 19th May, 2017 by which his claim was assessed through a system of allocation of points on 100 points scale and rejected. Aggrieved thereby, the petitioners preferred an original application being OA No. 350/01715/2019 which was disposed of on 9th March, 2021 directing the respondents to pass an appropriate order in the light of the judgments delivered in the cases of *Canara Bank & Anr. Vs. M. Mohesh Kumar* reported in *AIR 2015 SC 2411* and *Balbir Kaur & Anr. Vs. Steel Authority of India & Ors.* reported in *(2000) 6 SCC 493*. Pursuant to such direction, the respondent no. 4 passed the order dated 13th August, 2021 impugned in the original application being OA No. 350/02096/2021.

4. Mr. Roy contends that the learned Tribunal passed the impugned order being oblivious of the fact that Tuhin's claim had been rejected on the basis of a purported scheme which was not in existence and was not prevailing on the date of death of the deceased or on

the date when Tuhin had applied for compassionate appointment.

5. He argues that on the basis of the scheme prevailing on the date of death of the deceased, the Screening Committee recommended the candidature of Tuhin to the post of Social Security Assistant on compassionate ground, as would be explicit from the minutes of the meeting dated 30th June, 2014 but appointment was kept in abeyance and abruptly, about three years thereafter, by a memo dated 19th May, 2017, his claim was rejected upon assessment through a scheme/system of allocation of points on 100 points scale. After having found that Tuhin was eligible for compassionate appointment on the basis of scheme prevailing on the date of death of his father, the respondents could not have rejected his candidature by applying the provisions of a different scheme. Such issues, as urged, were glossed over by the learned Tribunal and no finding was returned on the same.

6. Drawing the attention of this Court to the order dated 13th August, 2021 passed by the respondent no.4, Mr. Roy argues that Tuhin's claim could not have been rejected applying a scheme of the Ministry of Communication & IT dated 21st January, 2010, which was allegedly adopted by the EPFO authorities after Tuhin's claim was assessed and recommended by the Screening Committee on 30th June, 2014. Reliance has

been placed upon the judgment delivered in the case of *Secretary to Govt. Department of Education (Primary) and Ors. Vs. Bheemesh Alias Bheemappa*, reported in 2021 SCC OnLine SC 1264.

7. He argues that Tuhin applied within two months after his father's death and no delay is attributable to him and he cannot suffer for any delay on the part of the respondents. Reliance has been placed upon a judgment delivered in the case of *Sourav Sengupta Vs. Union of India & Ors.*, reported in 2023 SCC OnLine Cal 2238.

8. Mr. D. N. Ray, learned advocate appearing for the Union of India denies and disputes the contention of the petitioners.

9. Mr. Rajib Ray, learned advocate appearing for the respondent nos. 2 to 4 submits that Tuhin's claim was rightly rejected on the basis of an objective evaluation of the Relative Merit Points Assessment on a 100-point scale in terms of the scheme for compassionate appointment circulated *vide* letter no. 37-36/2004-SPB-I/C, Govt. of India, Ministry of Communication & IT, Department of Posts dated 21st January, 2010, as adopted by the EPFO. The said scheme, as adopted by EPFO, was prevailing on the date of consideration of Tuhin's application. In view thereof, the learned Tribunal did not interfere with the order dated 13th August, 2021 as he failed to secure appropriate merit points.

10. He argues that Tuhin himself had submitted a representation on 13th September, 2018 to the competent authority praying for consideration of his claim in terms of the scheme adopted by EPFO authorities. Responding to such application, Tuhin was asked to furnish the necessary documents. Such direction was complied with by Tuhin and thereafter, the matter was placed before the competent authority to be considered in terms of the new scheme. Having applied for consideration afresh in terms of the new scheme and after his claim was rejected, he cannot argue that he is not covered under the said scheme.

11. Drawing our attention to a scheme for compassionate appointment, annexed at page 131 of the writ petition, Mr. Roy submits that for cases where death of the deceased Government servant had occurred on or after 22nd January, 2010 till 31st December, 2015, parameters of terminal benefits would be applicable and such parameters do not stand fulfilled in the instant case.

12. In reply, Mr. Roy, learned advocate submits that Tuhin's claim was considered and recommended by the Screening Committee on 30th of June, 2014 and as such there was no requirement for any fresh consideration. Tuhin, as directed by the EPFO authorities, submitted a fresh representation since he had no other option and on the basis of same his claim could not have been rejected.

In support of such contention reliance has been placed upon a judgment delivered in the cases of *Director of Treasuries in Karnataka & Anr. Vs. V. Somyashree* reported in 2021 (12) SCC 20.

13. Heard the learned advocates appearing for the respective parties and considered the materials on record.

14. Records clearly reveal that Tuhin's application was considered in terms of the earlier direction of the learned Tribunal dated 9th March, 2013 and on 30th June, 2014 it was recommended as follows: -

"The screening Committee, after considering information available on record and discussion held with the candidate during interview unanimously recommend the candidature of Shri Tuhin Chakraborty to the post of Social Security Assistant on compassionate ground."

15. Indisputably, Tuhin applied for compassionate appointment within two months of his father's death. His claim was ultimately rejected by an order dated 13th August, 2021. It is not a case that there was an inordinate delay on the part of Tuhin to submit the application for compassionate appointment. On the date of such application, Tuhin was eligible and was not age barred. The delay which occurred is not attributable to Tuhin. The fact that a person has survived the onslaught of the vagaries of life after the death of a parent, who was the earning member of the family, cannot act to his prejudice at the time of consideration of his claim for compassionate appointment, more so when in the instant

case Screening Committee on 30th of June, 2014 was satisfied that the family was in penury.

16. We are unable to accept the contention of Mr. Roy that Tuhin having made an application for consideration of his claim in response to a EPFO memo dated 12th July, 2017, as would be explicit from Tuhin's representation dated 23rd August, 2017, as annexed at page 68 of the writ petition, comes within the rigors of the scheme subsequently adopted by EPFO. The bargaining power is vested with the employer and Tuhin had no option but to act as directed. Even prior to issuance of the letter dated 12th July, 2017, EPFO applied the provisions of the new scheme and rejected Tuhin's claim on 19th May, 2017.

17. In the case of *Bheemesh (supra)* the Court taking an instance of a hypothetical case where two government servants had died on the same date but their respective dependants applied on different dates, one month apart, observed that '*the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor*'. Such proposition is applicable to the facts of the present case.

18. In the order dated 31st August, 2021, it was observed that after the judgment delivered in a matter by the Central Administrative Tribunal, Bangalore Bench, filed in the year 2015, EPFO authorities adopted the scheme of Ministry of Communication & IT. However, in a

memo dated 29th June, 2018, issued by the Additional Central P.F. Commissioner, annexed at page 125 of the writ petition, it was stated that EPFO had decided to adopt the scheme devised by the Ministry of Communication & IT, Department of Posts *vide* circular dated 21st January, 2010 and the Ministry of Defence circular dated 9th January, 2018. Nothing has been brought on record to establish that such scheme was adopted prior to the date of consideration and recommendation of Tuhin's claim on 30th of June, 2014 or the same had been given any retrospective effect or that the new scheme contained any provision relating to pending applications.

19. In the said conspectus, the learned Tribunal erred in arriving at a finding that Tuhin's case was placed for consideration on 21st December, 2016 and that on the said date EPFO had already adopted the merit points assessment methodology.

20. For the reasons discussed above, the order dated 22nd March, 2023 passed by the learned Tribunal in the original application, being OA No. 350/02096/2021 by the learned Tribunal and the order dated 13th August, 2021 passed by the respondent no. 4 are set aside and the respondents are directed to grant compassionate appointment to Tuhin within a period of four weeks from the date of communication of this order.

21. With the aforesaid observations and directions, the writ petition, being WP.CT. 84 of 2023 is disposed of.

22. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(V. M. Velumani, J.)

(Tapabrata Chakraborty, J.)