

22.06.2023
(as/akd)
Ct.No.12
08

WPCT 95 of 2023

Basanti Halдар & Anr.
-vs-
The Union of Inida & Ors.

Mr. Chirantan Sarkar,
Mr. Niraj Kumar Singh,
Mr. Sultan Ahmed Mondal.
... for the Petitioners.

Mr. Sanajit Kumar Ghosh
Mr. K. P. Chatterjee
...for the Respondents.

The petitioner no.1 is the widow and petitioner no.2 is the second son of one Sri. Mongal Krishna Halдар who died on 17.07.2015 at the age of 59 years while he was in service. He left behind his mother, wife and two sons. The petitioner no.1 who is the widow of the deceased employee made an application on 11.07.2016 for appointment on compassionate ground for his second son. Subsequently, she withdrew the said application and made an application on 20.01.2017 for appointment on compassionate ground for her elder son. In the affidavit filed in support of her application she had stated that her elder son completed B.A.(LL.B) (Hons.) from Calcutta University and is practicing as an Advocate in the Calcutta High Court and other courts. He was married and self dependent.

The respondents considered the materials placed and by the order dated 30.11.2018 rejected the request of the petitioner no.1. The petitioners filed OA 157 of 2020 before the Central Administrative Tribunal, Calcutta Bench. The Tribunal by the order dated 13.02.2020 disposed of the Original Application with a direction to the respondent authorities to consider the representation of the petitioners in the light of the order passed in OA 587 of 2019 filed by one Smt. Swapna Barman & Anr, similarly placed persons and other relevant judgments within a period of three months.

As per the orders of the Tribunal the respondents considered the request of the petitioners and by the order dated 29.05.2020 rejected the request of the petitioners for compassionate appointment. The petitioners filed OA 487 of 2020 challenging the said order. The Tribunal by the order dated 14.07.2021 set aside the said order dated 29.05.2020 and granted liberty to the petitioners to make out an comprehensive representation to contradict and controvert the financial situation projected by the respondents in the order dated 29.05.2020 with supporting documents.

On receipt of the said order the petitioners made an application dated 22.07.2021 to the respondents for appointment on compassionate ground for the second son, petitioner no.2 herein, by enclosing the documents. The respondents by the order dated 16.11.2021 rejected the claim of the petitioners.

The petitioner filed OA 1939 of 2021 challenging the said order. The Tribunal by the order dated 21.03.2023 rejected the Original Application holding that there is no need to pursue the case further since there are no new facts.

Challenging the said order the petitioners have come out with the present writ petition.

Heard Mr. Chirantan Sarkar, learned Counsel for the petitioners and Mr. Sanajit Kumar Ghosh, learned Counsel for the respondents. Perused the materials on record.

Learned Counsel appearing for the petitioners submitted receiving terminal benefits and family pension will not be a ground for rejecting the application for appointment on compassionate ground. The respondents failed to comply with the order of the Tribunal which directs the said respondents to consider the request of the petitioners for appointment on compassionate ground but rejected the application taking into account that the elder son is a practicing Advocate. The application of the petitioners for appointment of elder son was not considered by the respondents as per the order dated 14.07.2021 passed in OA 487 of 2020. The rejection of the respondents citing the very same reason that the elder son is a practicing Advocate is erroneous.

Learned Counsel for the petitioners also submitted that the deceased employee suffered cardiac problem. The petitioners had spent huge amount and all the savings of

the deceased employee was spent towards medical expenses.

It is the case of the learned Counsel for the petitioners that the respondents did not consider penury/financial status of the petitioners and erroneously rejected the claim of the petitioners on the ground that the petitioner no.1 is receiving family pension and received entire terminal benefits of the deceased employee and is residing in their own house. It is the further contention of the learned Counsel for the petitioners that on the very same ground the earlier application filed by the petitioners was rejected and the Tribunal failed to consider the financial status of the petitioners while passing the order dated 16.11.2021.

The learned Counsel for the respondents submitted that the petitioner no.1 received entire terminal benefits and is also regularly receiving pension and also enjoying medical facility for the entire lifetime and is residing in their own house and there is no starvation in the family. The elder son is a practicing Advocate in this Court and other courts. The deceased employee died only at the age of 59 years and he would have served for another twelve months.

Learned Counsel for the respondents submitted that the petitioners have submitted the application for compassionate appointment after delay of four years and the compassionate appointment is given only to meet out the indigenous circumstances of the deceased employee.

In this case, the petitioners have survived nearly seven years and hence petitioner no.2 is not entitled for compassionate appointment.

Learned Counsel appearing for the respondents also reiterated his submission before the Tribunal and further submitted that the petitioners are not in financial difficulty. There is no reason for granting compassionate appointment to the petitioner no.2. The respondents have considered all the materials and by a speaking order and giving valid reasons rejected the request of the petitioners and prayed for dismissal of the present writ petition.

From the above submissions of the learned Counsel appearing for the petitioners and the respondents it is seen that the petitioners made application on 22.07.2021 after the order dated 14.07.2021 passed in OA 487 of 2020 as per the liberty given by the Tribunal in the said order seeking compassionate appointment for the petitioner no.2. The said application was rejected on 16.11.2021 on the ground that the petitioner no.1 received terminal benefits on the death of her husband and also receiving family pension. The respondents have also taken into account that her elder son is a practicing Advocate in this Court as well as other courts but the respondents failed to take into account the statement of the petitioner no.1 by an affidavit that her elder son is a practicing Advocate, married and independent. The reason for rejection of the application of the petitioners that the petitioner no.1 is receiving family pension and

has received entire terminal benefits is not a valid ground for rejection of the request of granting appointment on compassionate ground.

It is well settled that receipt of terminal benefits and family pension cannot be a ground to hold that the family is in financial sound position. It is the case of the petitioners that the petitioner no.2 is a B.Com Graduate with computer knowledge. The said claim before the respondents was not considered while rejecting the application.

The contention of the learned Counsel for the respondents that the petitioners have submitted representation after delay of more than four years and the petitioners survived. Hence, request of the petitioners cannot be accepted.

From the materials on record, it is seen that the employee died on 17.07.2015 and the petitioners made application 11.07.2016. Subsequently, she withdrew the application and made another application on 20.01.2017. Subsequently, as per the orders of the Tribunal dated 13.02.2020 and 14.07.2021, she made a comprehensive representation dated 22.07.2021.

In view of the same, there is no delay in submitting the application as contended by the learned Counsel for the respondents.

The contention of the learned Counsel for the respondents that the deceased employee will receive only twelve months salary and the widow of the deceased

employee received all the terminal benefits and is regularly receiving monthly family pension and also enjoying medical facility given by the Railways is not a ground for rejection of request for granting compassionate appointment.

Accordingly, we set aside the order of the Tribunal and the order of the respondents dated 16.11.2011 rejecting the application of the petitioners and the matter is remanded to the respondents for fresh consideration.

The respondents are directed to conduct an independent enquiry to find out the financial status of the petitioners and pass necessary orders without taking into consideration the terminal benefits received and the family pension granted to the petitioner no.1 within a period of three months from the date of receipt of a copy of this order.

With the aforesaid directions, the writ petition is allowed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(V. M. Velumani, J.)

(Rai Chattopadhyay, J.)