

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice V. M. Velumani
&
The Hon'ble Justice Rai Chattopadhyay**

WP.CT 105 of 2023

**Shri Sourav Sengupta
Vs.
Union of India & Ors.**

For the Petitioner : Mr. P.C. Das,
: Mrs. Soma Chowdhury.

For the Respondents : Mr. S. Basu.

Hearing concluded on: 21/06/2023

Judgment on: 01/08/2023

Rai Chattopadhyay, J.

A. Impugned order and prayers in the writ petition.

- 1.** Impugned, in this writ petition, is the order of the Central Administrative Tribunal, Kolkata Bench, dated November 18, 2022. The Tribunal has delivered the same, to dispose of the original application filed before it by the present petitioner, being O.A No. 350/1769/2017 (Sourav Sengupta vs. Union of India & Ors.).
- 2.** In this writ petition the petitioner has, inter alia, prayed for (i) writ in the nature of mandamus to commend respondent authority to act and proceed in accordance with law [i.e, prayer no. (a) in the writ petition], (ii)

to quash and or set aside the impugned order of the Tribunal as mentioned above [i.e, prayer no. (b) in the writ petition], (iii) also to set aside previous orders of the respondent authority dated November 21, 2017 and July 18, 2012 [i.e, prayer no. (c) in the writ petition], (iv) the writ petitioner has also prayed for a direction to commend the respondents for consideration of his case for giving appointment on compassionate ground and issue a letter of appointment in his favour [i.e, prayer no. (d) in the writ petition], (v) the writ petitioner has also prayed of issuance of writ of prohibition to prohibit the respondent authorities to give any fact to the present impugned order [i.e, prayer no. (e) in the writ petition], the writ of certiorari and also other ancillary reliefs.

- 3.** The matter relates to rejection of petitioner's prayer for compassionate appointment by the respondent Union of India, through its respective department. Parties have had several rounds of litigation as well as personal hearing of the petitioner, before the respondent authorities. The latest of the orders, to the disadvantage and dissatisfaction of the present petitioner, is that dated November 18, 2022, by the Tribunal which is impugned in the present writ petition. While delivering the same the Tribunal has basically dwelt upon the grounds that the claim of the present petitioner was appropriately rejected by the concerned authority on the ground, firstly, that the petitioner had no dependent family member, secondly, and importantly that the family was not in any indigent condition, which could have been prompted imminent necessity for providing him with compassionate appointment, thirdly, that the elder brother or the petitioner happened to be a government employee and finally that the petitioner was living in his own house. According to the Tribunal, as recorded in the said impugned order, that the respondent authorities have done no wrong in rejecting petitioner's prayer, being duly governed under the DoPT office memo dated January 16, 2013. The Tribunal has observed that the said office memo dated

16.01.2013 was the applicable law at the relevant point of time, when the petitioner/his mother made the application for compassionate appointment. Thus, the Tribunal found the decision of the authority, of rejecting petitioner's prayer for compassionate appointment, to be in consonance with the policies settled under the afore stated office memo dated 16.01.2013 and in that way has been just, legal and proper. Hence, the Tribunal found no illegality in the said order of rejection of compassionate appointment of the present petitioner, in its order dated November 18, 2022, as impugned.

B. Facts of the Case

4. The father of the petitioner was an employee with the respondent authorities. He died in harness on January 14, 2012. On May 17, 2012, petitioner made application for compassionate appointment in the prescribed proforma, to the respondent authority. Subsequently on September 2, 2013 the mother of the present petitioner wrote a letter praying for due consideration and early disposal of the prayer as above. Thereafter comes an order of the respondent authority dated July 18, 2012 (communicated under cover of letter dated January 3, 2014). By dint of the same petitioner's prayer was rejected on the ground that after death of his father applicable terminal benefits and pensionary benefits were duly provided to the family member of the deceased.
5. In the meantime, on December 30, 2013, as it has been stated by the petitioner, that one person namely Satyajit Das has been granted appointment on compassionate ground by the respondent authorities. The petitioner says that the said person was similarly circumstance with him and that by considering his case for compassionate appointment

favourably, the respondent authority has acted in discrimination and arbitrariness while considering the prayer of the petitioner.

6. The petitioner assailed the said rejection order dated July 18, 2012 of the authorities before the Tribunal, in O.A No. 350/691/2014. An order of the Tribunal in the said case directing the respondent authorities to consider petitioner's case in the light of the existing and settled laws, though was challenged by the respondents, before the Hon'ble High Court in a writ petition, was dismissed by the Division Bench thereof, vide order dated on August 24, 2016.
7. Be that as it may, subsequently in compliance with the Court's order, the petitioner was called for a hearing before the authorities, along with his testimonials and he was afforded opportunity to be heard.
8. The second order of rejection of his prayer for compassionate appointment came thereafter on November 21, 2017. The original application before the Tribunal being No. 350/1769/2017, was filed by the present petitioner to challenge the said order dated December 30, 2013, passed by the respondent authorities.
9. As stated earlier, the same was disposed of by the Tribunal by dint of the impugned order dated November 18, 2022, the grounds of which have already been discussed as herein before.

C. Submission made on behalf of the petitioner.

10. Mr. Das, representing the petitioner has submitted that the impugned order of the Tribunal is founded on the wrong premise and erroneous consideration of the settled position of law. He submits further that by rejecting petitioner's prayer for compassionate appointment, the

respondent authority has acted in violation of the principles of equity and acted discriminately. Mr. Das has pointed out to the settled principle of law that receipt of terminal benefits or pensionary benefits, in the event of death of an employee who has not retired from service, would not cause any impediment in obtaining compassionate appointment by any of his legal heirs. It is submitted that while delivering the order as impugned, the Tribunal has proceeded on erroneous consideration of the said settled principles of law and has ultimately come to a finding which is illegal and not maintainable on the premises as above. Mr. Das has made prayer for the setting aside of the impugned order of the Tribunal dated November 18, 2022, and also that an order may be issued for granting compassionate appointment to the present petitioner.

D. Submissions made on behalf of the respondents.

- 11.** Obviously, strong objections have been raised on behalf of the respondent to such contentions and prayer made on behalf of the petitioner. It is submitted on the basis of the records that the office memo No. 14014/02/2012-Estt. (D) dated January 16, 2013, would be the governing rule/law while considering petitioner's prayer for compassionate appointment. It is pointed out that according to the same, only the dire necessity of an applicant on the ground of severe indigence due to death of the sole bread earner in the family, would make out any foundation for an order of compassionate appointment to be passed by the respondent authority. It is submitted that factually no such ground of indigence could be made out by the petitioner, in the event of death of his father. Further argument has been made regarding the alleged discrimination that the factual situation of each case being

different from that of the other, and the decision of the authority being passed on the objective considerations in each case, the question of discrimination does not arise at all. It is also submitted that a well reasoned order has supported the stand of the respondent authorities while rejecting petitioner's prayer for compassionate appointment. It is stated before this Court that there would be no sufficient or cogent ground to interfere with such an elaborate and reasoned order of the authority and also with the speaking order of the Tribunal, as impugned in this case. This Court is reminded of the settled law that appointment on compassionate ground would not be a right for applicant but would only depend on the circumstances in each case to justify the same on the ground of necessity of the hapless family members of a deceased public servant, who faces dire need for a supportive measure, to prevent imminent indigence, due to death of the sole bread earner of the family. On behalf of the respondent, it has been prayed that, the present appeal may be dismissed.

E. Discussion and findings.

- 12.** Some facts are uncontroverted in this appeal, that is, the father of the petitioner being an employee with the respondent authorities and having died during the course of his employment, the petitioner having applied in prescribe form within the stipulated time for compassionate appointment, the family of the deceased having received the terminal benefits and pensionary benefits duly after death of the said person and that the elder brother of the petitioner to be an employee with the government – are the facts admitted by the parties in this case.
- 13.** The petitioner rests his case basically on the point that the factual findings of the Tribunal regarding no dependency and no indigence, to

necessitate his appointment on compassionate ground, are only erroneous and not commensurate with the actual facts in this case. Eventually, according to the petitioner, acceptance of those grounds of rejection, which were earlier formulated by the department, by the Tribunal is also erroneous.

14. It appears from the orders of the respondent authorities dated November 21, 2017 and July 18, 2012 and the impugned order of the Tribunal dated November 18, 2022, that the finding of the petitioner having no indigence after death of his father, is basically based on the fact that the family/dependents of the deceased employee, have already been provided with the terminal benefits and pensionary benefits, as applicable. In the considered opinion of this Court, this reason for defying the benefit of appointment on compassionate ground to the petitioner, who admittedly is one of the legal heirs of the deceased employee, is not tenable in the eyes of law. The law is well settled in this regard and this Court may refer to the judgment of the Supreme Court reported in (2005) 10 SCC 289 [*Govind Prakash Verma vs LIC of India*], where the Hon'ble Court has relied on the principle that receipt of death benefits would not jeopardise applicants claim to be appointed on compassionate ground, being the other relevant considerations fulfilled. Even previous to the same, similar principle was followed by the said Court in such kind of a matter. A judgment reported in (2000) 6 SCC 493 [*Balbir Kaur vs Steel Authority of India Limited*], may be mentioned in this regard. A recent co-ordinate Bench judgment of this Court on the similar principle may also be mentioned, that is, reported in 2021 SCCOnline Cal 391 [*Gour Sarkar vs. State of West Bengal & Ors.*]

15. The law being settled as above, there could be no two opinions as to the aspect that the respondents as well as the Tribunal could not have based its finding to reject petitioner's prayer as above on the ground that he has suffered no indigence after death of his predecessor as he has

received death-cum-retirement benefit as a member of family of the said deceased employee. It is the mandate of the law that the necessity for appointment of a member of a deceased employee should be considered on objective considerations as to the requirement of financial support and security to the concerned family.

16. At the relevant time, the petitioner was entrusted with the responsibility to look after his mother, who was otherwise deprived of any independent source of income. After demise of the mother on December 15, 2014, the petitioner is the only legal heir of the said deceased employee, who, on the relevant date could be found to be dependent on him. No doubt the elder brother of the petitioner has been a government servant. However, record reveals that the respondent authorities have already been made aware of the fact that the elder brother of the present petitioner being independent of this family, is not taking care of his mother and brother. Under such circumstances the finding of the respondent authorities as well as the Tribunal that the petitioner did not suffer the indigence to obviate an order of compassionate appointment, appears to be not based on the proper appreciation of the facts of the case and only founded on erroneous considerations thereof.

17. Worth mentioning is the other point canvassed by the respondent, that is, much time has already been elapsed from the date of submission of the application for compassionate appointment. The respondent says that by this time the dire necessity of appointment in the department for financial support of the family must have been diluted as the petitioner has been able to survive through all these period, without the appointment. The question of delay should not however jeopardise the petitioner's claim, unless the same is done by the petitioner himself in approaching the authority for an appointment on compassionate ground. This principle has been well elaborated by the Hon'ble Apex Court in a

recent decision reported in 2023 SCC OnLine SC 219 (*State of West Bengal Vs. Debbbrata Tiwari & Ors.*)

18. On the discussion as above based on records regarding the factual aspect of the case, as well as the settled position of law in this regard as envisage by the verdict of the Hon'ble Apex Court as mentioned above, in our considered opinion this writ petition should succeed.
19. Accordingly WPCT 105 of 2023 is allowed. The impugned order of the Tribunal dated November 18, 2022, passed in O.A No.350/01769/2017 is hereby set aside. Eventually the order of the respondent dated November 21, 2017 also stands rejected.
20. Let the respondent authorities issue an appropriate order for appointment of the present petitioner on compassionate ground, as expeditiously as possible. Writ Petitioner No. WPCT 105 of 2023 is disposed of along with application pending, if any.
21. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

I agree,

(Rai Chattopadhyay, J.)

(V.M. Velumani, J.)