

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : GWALIOR**Original Application No.202/00756/2017**Jabalpur, this Thursday, the 26th day of September, 2019**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBERDeepanshu Raje @ Monu, S/o Late Shri Ratan Lal Raje
(Deceased MTS – Office of Comptroller Auditor General of
India Gwalior) Age – 30 years, R/o 19 Leather Factory Colony,
Morar Gwalior M.P. Pin – 474006, Mob. No. 9009731459**-Applicant****(By Advocate – Shri S.S. Chouhan)****V e r s u s**1. Comptroller and Auditor General of India, Pocket 9-B,
Deendayal Upadhyay Marg, New Delhi – 110124.2. Principal Accountant General (A&E)-I Lekha Bhawan,
Jhansi Road, Gwalior, Madhya Pradesh – 474002.3. Deputy Accountant General (A&E)-I MP Gwalior, O/o
Principal Accountant General (A&E)-I, Lekha Bhawan, Jhansi
Road, Gwalior, Madhya Pradesh 474002**-Respondents****(By Advocate – Shri P. Shankaran)***(Date of reserving order : 04.02.2019)***ORDER****By Navin Tandon, AM.**The applicant is aggrieved that he has not been granted
appointment on compassionate grounds.

2. He has made the following submissions in this O.A:

2.1 Father of the applicant Shri Ratan Lal Raje joined the respondent department in the year 1989 and died while in service on the post of Multi Tasking Staff on 25.11.2013.

2.2 The applicant submitted his application for appointment on compassionate ground on 04.03.2014 (Annexure A-1).

2.3 He was called for interview vide letters dated 09.12.2014 (Annexure A-2), 03.02.2016 (Annexure A-4) and 24.11.2016 (Annexure A-7).

2.4 After the interview on each occasions, the applicant was intimated vide letter dated 06.01.2015 (Annexure A-3), 29.02.2016 (Annexure A-5) and 30.03.2017 (Annexure A-8) that his name could not be considered due to insufficient vacancies.

2.5 He obtained information from the respondents under Right to Information Act on 18.05.2017 (Annexure A-9).

2.6 The respondents, vide their letter dated 01.06.2017 (Annexure A-10), informed the applicant that his case for compassionate appointment has been closed.

2.7 The applicant submitted his representation on 09.06.2017 (Annexure A-11). In response, the respondents, vide their letter dated 28.06.2017 (Annexure A-12), have again reiterated that his case has been closed.

2.8 The applicant further sought information under RTI to which the respondents vide letter dated 09.08.2017 (Annexure A-14) have deliberately concealed the information in respect of marks of persons considered for compassionate appointment.

3. He has, therefore, sought for the following reliefs:

“8. Relief sought – In view of the facts mentioned in para 4 and the grounds stated in para 5 the applicant prays for-

8.1 That, the decision of respondent to close the case of applicant for compassionate appointment be set aside as mentioned in Annexure – A/10 & A/12.

8.2 That, the clause No.6 of the circular No. 09-staff-Estt.(rules)/C.A.12-2015 dated 28-9-2016 (annexure-A/13) as relied by respondent to close the case of applicant be declared non-est.

8.3 That, respondent be directed to disclose scores of all the candidates since applicant's application for compassionate appointment is being filed.

8.4 That, respondent be directed to reconsider the applicant/case of application for compassionate appointment within stipulated time period and grant appointment accordingly.

8.5 any other order, direction, relief as the Hon'ble Tribunal deem fit may pleased be passed in nature of relief to the applicant along with cost.”

4. The respondents, in their reply, have stated as under:

4.1 Compassionate appointments are made under the scheme formulated by the Government of India, Ministry of Personnel, Public Grievances and Pensions vide No. 14014/6/94 Estt. (D) dated 09-10-1998 (Annexure R-1) and Government of India, Ministry of Personnel, Pension & Public Grievances, Department of Personnel & Training New Delhi circular No. AB-14017/39/2013-Estt./(RR) (3102233) dated 23.12.2013 (Annexure R-2) and other orders issued in this regard from time to time.

4.2 The compassionate appointment is limited to a ceiling of 5% falling under direct recruitment quota of Group 'C' and 'D' posts.

4.3 The Hon'ble Apex Court in several decisions have narrated that right to compassionate appointment is neither a fundamental right nor a legal right.

4.4 Under the scheme of compassionate appointment, the authorities are required to make selection considering the economic status of the family and terminal benefits

received by it, assets and liabilities left by the deceased employee, number of dependants left behind by the deceased employee, number of earning member in the family and number of vacancies available at the relevant point of consideration etc.

4.5 The applicant's case was considered on 16.12.2014, 19.02.2016, 30.08.2016, 09.12.2016, 13.02.2017 and 26.05.2017. The Departmental Screening Committee (DSC) recommended the name of the persons, who were more deserving.

4.6 While considering each case on merit, the parameters as directed in the Headquarter Circular No.34 dated 28.09.2016 (Annexure R-4), was taken into consideration. As per para 6 of the circular, the marks obtained in the evaluation system cannot be the only criteria for recommending a case for appointment on compassionate grounds. The marks in the evaluation system only help the DSC to prima facie judge the applicants being considered under the scheme for compassionate appointment.

5. The applicant, in his rejoinder, has questioned the vacancies as has been communicated to him through RTI.

Further, by his own calculations as per the evaluation system provided by the respondents, he submits that those who have been offered appointment, were having less merit points than the applicant.

6. While hearing the case on 04.02.2019, the department has submitted proceedings of the Departmental Screening Committee which met on 26.05.2017 for screening the cases of applicant for appointment on compassionate ground in Group 'C' cadre for the year 2016-17.

7. It has been indicated that the respondent department is following the scheme for compassionate appointment as issued by DoPT vide OM dated 09.10.1998 (Annexure R-1) and 23.12.2013 (Annexure R-2) and other orders issued in this regard from time to time. The parameters provided in HQ circular dated 28.09.2016 (Annexure R-4) are taken into consideration.

8. Heard learned counsel for the parties and perused the pleadings and documents available on record.

9. Learned counsel for the applicant submitted that the respondents are not transparent in their selection. Any information asked for is not given under the pretext of third

party information. Those having lesser merit points are selected and case of applicant having higher merit points is ignored.

10. Learned counsel for the respondents submitted that all the relevant guidelines issued by Department of Personnel and Training (DoPT) as well as Headquarter instructions are followed while granting compassionate appointment.

FINDINGS

11. The respondent department in Headquarter circular no.34 dated 28.09.2016 (Annexure A-13) has circulated a revised model evaluation system based on a number of parameters prescribed in the Scheme with suitable weights assigned to each for consideration of the candidates in a fair and objective manner. The said evaluation system has seven parameters, and each parameter has been given maximum marks (MM), as under:

(i)	Family Pension (Normal basic FP)	(MM 25)
(ii)	Terminal benefits (DRCG+LE CGEGIS+DLIS)	(MM 25)
(iii)	Dependent children	(MM 25)
(iv)	Other dependent family member	(MM 25)
(v)	Immovable Property	(MM 30)
(vi)	Job	(MM 15)
(vii)	Service Left	(MM 20)
	Total Marks	165

11.1 The said circular dated 28.09.2016 further says that marks obtained in the evaluation system cannot be the only criteria for recommending a case for appointment on compassionate ground.

12. The contents of the Headquarter letter No.09-Staff Entt. (Rules)/C.A/12-2015 (Circular no.34) dated 28.09.2016 (Annexure A-13)) regarding appointment on compassionate grounds read as under:

“I am to invite a reference to this office circular No. 05 issued vide letter No. 109-Staff (App.II)/87-2011/Vol.I dated 09.02.2012 forwarding therewith a parameter based model valuation system based on a number of parameters prescribed in the scheme with suitable weights assigned to each for consideration of the applicants in a fair and objective manner for use by the Departmental Screening Committees.

2. As per the existing model evaluation system circulated by this office vide letter dated 09.02.2012, out of 200 marks, weightage for suitability for the post was 20 marks which were given on the basis of interview.

3. The DoPT vide OM No.39020/01/2013-Estt (B)-Part dated 29th December, 2015 has discontinued interview for Group ‘C’ posts in the Government of India.

4. Accordingly, the model evaluation system of 200 marks circulated by this office vide aforesaid circular letter dated 09.02.2012 has been reviewed. A revised model evaluation system based on a number of

parameters prescribed in the scheme with suitable weights assigned to each for consideration of the applicants in a fair and objective manner is enclosed for guidance (Annexure – I & II). The same may be used by the Departmental Screening Committee to judge the applicants being considered under the scheme for compassionate appointment.

5. *Awarding marks by conducting interview is not required for appointment on compassionate grounds. In place of interview, personal interaction with the candidate would be conducted; however no marks in this regard will be awarded.*

6. *Further, the marks obtained in the evaluation system cannot be the only criteria for recommending a case for appointment on compassionate grounds. The marks in the evaluation system only help the DSC to prima facie judge the applicants being considered under the scheme for compassionate appointment. Ultimately, recommendation or rejection of a case by the DSC should be through a speaking order only. Accordingly, the screening committee should give specific and reasoned recommendations in each case considered by it.*

7. *The receipt may be acknowledged.”*

13. Department of Personnel and Training (DoPT) has issued Scheme for compassionate appointment under the Central Government dated 09.10.1998 (Annexure R-1) with the object to grant appointment to the dependent family member of a Government servant dying in harness thereby leaving the family in penury and without any means of livelihood. In continuation

to OM dated 09.10.1998, DoPT has issued consolidated instructions on the subject on 16.01.2013.

14. The Scheme clearly stipulates that compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any group 'C' or 'D' post, subject to the candidate having the required educational and technical qualifications required for the post.

15. The past experience shows the demand far outstrips the supply. There are always larger number of candidates seeking appointment on compassionate grounds than the number of posts available. We have not been advised if DoPT has issued guidelines on how to select candidates for compassionate appointment in such cases. However, some Ministries and Departments have devised a point based evaluation system to measure indigency. Different parameters like number of dependents, availability of house, jobs, retiral benefits etc. are evaluated and marks given. Selection is done based on the merit points given to each candidates.

15.1 In the instant case, the respondent department has developed an evaluation system as detailed in para 11 above.

16. We perused the minutes of Departmental Screening Committee (DSC) held on 26.05.2017 to recommend names for compassionate appointment. The DSC has recommended the following two names for appointment in clerical cadre:

- (i) Sri Diwan Singh Bhuriya (Marks obtained 100)
- (ii) Ku Divya Bantharia (Marks obtained 85)

16.1 DSC has rejected the claim of the applicant, who has received 105 marks.

17. The justification given by DSC for appointment or rejection for each of the above mentioned three participants (two recommended and one rejected) is given below:

17.1 Shri Diwan Singh Bhuriya, S/o Late Shri M.S. Bhuriya.

(Recommended for appointment)

Justification – Family received Rs. 14.97 Lakh terminal benefits. 8 yrs and 11 month govt. service was left on the date of death of employee. The dependent family members includes two unmarried daughter aged 28 and 26 years and one married son (applicant). Family possesses no immovable property at Gwalior. Keeping in view the liability of unmarried daughters, more than 8 year of govt. service left and with no immovable property the family deserves financial assistance and hence this case is recommended for appointment in Clerk cadre.

17.2 Ku. Divya Bantharia, D/o Late Shri G.K. Bantharia.

(Recommended for appointment)

Justification – Family received Rs.11.88 Lakh as terminal benefit. 3 years 11 month service was left on the date of the govt. servant. The liabilities include two unmarried

daughter aged 24 years and 21 years. Although, one of the daughter is in private job but it is not sufficient to meet out the existing liabilities of the family. Family possesses no immovable property. In view of the existing liability of two unmarried daughters and with no place of residence, the case is recommended for appointment in Clerk cadre.

17.3 Shri Deepanshu Raje, S/o Late Shri Ratanlal Raje.

(Rejected)

Justification – Family received Rs. 7.37 Lakh in terminal benefits. Service left of the deceased employee was 4 years 7 month and liability includes one unmarried daughter aged 31 years and three major unmarried sons (including applicant) Family resides in ancestral house and there share is only two rooms. Keeping in view of the fact that, the children include there major son's in the family thus immediate financial assistance by way of providing compassionate is not required and hence case is rejected and recommended to be closed.

18. We find lot of emphasis being given to para 6 of circular no.34. It has been quoted by the DSC in its minutes and also in the reply submitted by the respondents in this O.A. The same is reproduced again :-

“6. Further, the marks obtained in the evaluation system cannot be the only criteria for recommending a case for appointment on compassionate grounds. The marks in the evaluation system only help the DSC to prima facie judge the applicants being considered under the scheme for compassionate appointment. Ultimately, recommendation or rejection of a case by the DSC should be through a speaking order only. Accordingly, the screening committee should give specific and reasoned recommendations in each case considered by it.”

19. The oft-quoted para 6 clearly states that the marks in the evaluation system are only for helping the DSC. Ultimately, the recommendation or rejection of a case by DSC should be through a speaking order. The so called speaking order by the DSC is the justification given against each candidate as extracted in para 17 above. No new facts have been brought out in the justification other than what has already been considered while awarding the merit points in the evaluation system. How a candidate having received only 85 points in evaluation is more in need of a job than somebody who scored 105 points, has not been explained anywhere in the DSC minutes.

20. The Hon'ble Apex Court, through **Onkar Lal Bajaj and others vs. Union of India and others**, (2003) 2 SCC 6673 has said:

“36. The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into

consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.”

21. Hon’ble Apex Court has held that Government should take decisions based on transparency and consideration of probity. However, what we are seeing here is just the reverse. It is a clear case where favoritism and nepotism is holding sway over the genuine needs of the individuals for grant of appointment.

22. We also find merit in the claim of the applicant that the merit points obtained by individual candidates are cloaked in secrecy and are not being made public. We are unable to understand the logic of taking such steps, except for ulterior motive. In any competitive examination, the marks obtained and merit based ranking of all candidates are available in public domain. The same need to be followed in the case of compassionate appointment also.

23. From the above, we are of the considered opinion that the case of the applicant has been treated in unjust manner and relief needs to be granted to him.

24. We may like to add that this Tribunal is flooded with litigation relating to compassionate appointments of the respondent department. There is serious need for respondents to look into the system and take steps to streamline the process which promotes transparency and level playing field for all the candidates.

25. Now, we will dwell on the legality of para 6 of the circular dated 28.09.2016 (Annexure A-13).

26. The said circular states that a parameter based model evaluation system was circulated in the year 2012, wherein out of 200 marks, weightage for suitability for the post was 20 marks, which were given on the basis of interview. DoPT vide OM dated 29.12.2015 has discontinued interview for Group C posts in the Government of India. Accordingly, the model evaluation system of 200 marks circulated on 09.02.2012 has been reviewed and revised system was introduced for consideration of the candidates in a **fair and objective manner**. The same was to be used by the DSC to judge the candidates considered under the scheme for compassionate appointment.

26.1 The next part of the circular dated 28.09.2016 talks of **‘Personal Interaction’** to be conducted in place of interview, for which no marks were to be awarded. It goes on to say that the marks obtained in the evaluation system cannot be the only criteria for recommending the case of appointment on compassionate ground. The marks are only to help the DSC but ultimately, recommendation or rejection is to be done through a speaking order.

27. The basic idea of the Government for abolition of interview for lower level Government jobs was to ensure that the avenues for corruption and nepotism are cut down while merit is respected. However, in gross violation of the guidelines of the Government, the respondent department have continued with the concept of interview, albeit with a different name **‘Personal Interaction’** and no marks are awarded for the same. Further, the DSC was made all powerful with no checks and balances to recommend any candidate of their choice for appointment and similarly reject any case.

27.1 The effect of this circular has been that instead of interview being given a weightage of only 20 out of 200, now it

assumes an overbearing influence and it has the power to disregard entire merit system to evaluate indigency.

27.2 The provisions in para 6 of the circular No.34 dated 28.09.2016 does away with the merits (of measuring the indigency level in fair and objective manner) and permits favoritism, nepotism, corruption.

27.3 We have, therefore, no hesitation in quashing and setting aside para 6 of the circular dated 28.09.2016.

28. Before parting, we need to mention that Government has conceived of the Scheme of compassionate appointment in the year 1958 to provide relief to the family in financial distress. The Tribunal receives a large number of applications regarding unfair treatment meted out to the applicants. The common thread running through almost all the grievances is lack of transparency and non-sharing of information. The following steps will go a long way to alleviate the grievances of the needy:

- (i) The application for compassionate appointment should be acknowledged with a registration number within a specified time, of say 15 or 30 days. We had observed that in the case of **Rambha Vastrakar vs.**

Union of India & through Secretary, Ministry of Information & Broadcasting & Ors. (Original Application No.203/00706/2016, decided on 25.04.2018), the first response to the application was after five years.

(ii) To put in place a merit point based system to evaluate indigency. While some Ministries/Departments have implemented it, there are some who don't have such a system. This should be implemented across all organisations.

(iii) Every candidate should be provided with a copy of the said merit point based system to evaluate indigency. The merit points obtained by him/her should be provided to him/her alongwith breakup of merit points obtained against each parameter.

(iv) The merit points earned by each candidate should be in public domain through internet/RTI.

(v) Merit points of the candidate should be the only basis for recommendation of the Committee.

(vi) Prior to every meeting of the Committee, the number of vacancies of each grade proposed to be filled should be communicated to the candidates.

(vii) The qualifications and procedure for filling up higher grade vacancies through compassionate appointment needs to be in public domain. This is an area which requires attention and improvement.

(viii) The result of each round of selection should be communicated to the candidates.

(ix) The minutes of the Selection Committee should be in public domain through website/RTI.

28.1 In cases where the number of appointments to be made on compassionate ground are small, [in the present case only two (2010), one (2014), one (2016) and one (up to 28.04.2017) were appointed on compassionate grounds in the respondent department], the need to have a meeting every month needs to be reviewed.

29. Secretary, Department of Personnel and Training (DoPT) is directed to issue necessary guidelines on the points raised in para 28 above which will bring in more transparency and probity in the system.

30. As discussed in the preceding paragraphs, the O.A is allowed. Para 6 of the circular No.34 dated 28.09.2016 is

quashed and set aside. We also direct respondent No.1 to immediately stop all appointments on compassionate ground on the basis of para 6 of the said circular. An affidavit to this effect should be submitted in the Registry within 30 days from the date of receipt of certified copy of this order. Further, respondents are directed to reconsider the case of the applicant for compassionate appointment within 60 days from the date of receipt of certified copy of this order

31. Registry is directed to send a copy of this order to Secretary, DoPT bringing para 28 of the order to his notice.

32. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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