

IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT
BANGALORE

DATED, THIS THE 29^h DAY OF JULY, 2020

PRESENT

HON'BLE Dr. JUSTICE K.BHAKTHAVATSALA, CHAIRMAN
AND
HON'BLE Dr.S.K.PATTANAYAK, ADMINISTRATIVE MEMBER

APPLICATION NO.2531/2020

BETWEEN

A.S.YASHWANTH,
Son of late A.T.Shivaswamy,
Aged about 31 years,
Residing at C/o Basavaraju,
Door No.1503, 'Shri Shakti Nivasa',
Gokul Extension, Hunsoor Taluk,
Mysore District - 571 105

APPLICANT

(By Sri M.T.Jagan Mohan, Advocate)

AND

1. THE STATE OF KARNATAKA,
represented by the Secretary to Government,
Department of Forest, Animal Husbandry and
Environment, M.S.Building,
Dr.Ambedkar Road,
Bangalore - 560 001
2. THE PRINCIPAL CHIEF CONSERVATOR
OF FORESTS (Head of Forest Force),
Aranya Bhavan, Malleshwaram,
Bangalore - 560 003
3. THE ADDITIONAL PRINCIPAL CHIEF
CONSERVATOR OF FORESTS,
Aranya Bhavan, Ashokapuram,
Mysore - 570 008

4. THE RANGE FOREST OFFICER,
Bandipura Range, Bandipura,
Gundlupet Taluk,
Mysore District
5. THE ASSISTANT DIRECTOR OF FORESTS,
(Tiger Project), Bandipura,
Gundlupet Taluk,
Mysore District – 571 126
6. THE ASSISTANT CONSERVATOR
OF FORESTS (Tiger Project),
Bandipura,
Gundlupet Taluk,
Mysore District – 571 126

RESPONDENTS

This Application is filed under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing Endorsement bearing No.Aa.Pa.Ji.15.Huysrumu.2019 dated 24.5.2019 at Annexure A-1 on the file of Respondent No.1 and for direction to Respondents to take necessary steps to give appointment to the Applicant on compassionate grounds on account of death of his father.

This Application coming up for Preliminary Hearing, this day, the **Hon'ble Chairman** made the following

ORDER:

Sri M.T.Jagan Mohan, learned counsel for the Applicant participated in video conference.

2. Learned counsel for the Applicant submits that father of the Applicant (A.T.Shivaswami), who was working as a Forest Guard in Bandipura Forest Range in Mysore District, died on 9.1.1996 while in service; that at that time the Applicant was

a minor (aged about 6 years) and his mother gave an application to Respondent No.5 on 26.11.1996 requesting for providing compassionate job to the Applicant after he attains majority; that on 8.9.2007 the Applicant attained majority; that on 12.11.2007 Applicant's mother gave another representation reiterating her request, but by the impugned Endorsement dated 24.5.2019 at Annexure A-1, Respondent No.1 has rejected the request of Applicant for compassionate appointment relying on judgments of Hon'ble Supreme Court which have no application to the case of the Applicant and also on the ground that according to amendments dated 31.3.1999 and 24.11.2000 made to Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996, dependent of a deceased Government servant seeking appointment under these Rules shall make an application within one year from the date of death of the Government servant and in the case of a minor he must have attained the age of eighteen years within one year from the date of death of the Government servant and he must make an application within one year thereafter; that the said Amendments have no application to the case of the Applicant

and claim for appointment has to be considered according to the Rules prevailing on the date of making application and hence the impugned Endorsement may be quashed and Application may be allowed as prayed for.

3. Admittedly, the Government servant died on 9.1.1996. Applicant, who claims to be his dependent, did not attain majority within one year from that date. At the time of death of his father the Applicant was aged about 6 years. Applicant's date of birth being 8.9.1989, he attained majority on 8.9.2017. Therefore, Applicant's claim is hit by Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996. Rule 5 of the said 1996 Rules as amended by Notifications dated 31.3.1999 and 24.11.2000 reads thus:

"5. Application for appointment:-

Every dependent of a deceased Government servant seeking appointment under these Rules shall make an application within one year from the date of death of the Government servant, in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased Government servant was working.

1[Provided that in the case of a minor he must have attained the age of eighteen years within one year from the date of death of the Government servant and

he must make an application within one year thereafter.]

2[Provided further that nothing in the first proviso shall apply to an application made by the dependent of a deceased Government servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998.]”

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1. Substituted by Notification No.DPAR.19.SCA.99 dated 24.11.2000
 2. Substituted by Notification No.DPAR.11.SCA.97 dated 31.3.1999.

As per the first proviso (supra) Applicant did not attain age of eighteen years within one year from the date of death of his father nor was his application pending for consideration as per the second proviso to Rule 5 of the 1996 Rules.

4. The intention of the proviso to Rule-5 of the Rules is that right to claim compassionate appointment cannot be reserved in favour of a minor indefinitely. In fact, validity of the said proviso to Rule 5 was subject matter of challenge before the Hon'ble High Court of Karnataka in several cases. In **K.M.PRAKASH v. STATE OF KARNATAKA AND ANOTHER (reported in 2008(2) KAR.L.J. 222 [DB])** a

Division Bench of the Hon'ble High Court, repelling challenge to the proviso to Rule 5 has held as under:

"...As can be seen from the first proviso the intention of the Rule Making Authority is that the right to claim compassionate appointment cannot be reserved in favour of a minor indefinitely until he attained majority. The Rule Making Authority in its wisdom has stipulated a period of one year from the death of the employee within which the minor should have attained majority and thereafter he should make an application for appointment on compassionate grounds within a period of one year. Such a prescription cannot be regarded as arbitrary or illegal. Nor can it be characterized as one violating Articles 14 and 16 of the Constitution... Provision for appointment on compassionate grounds is made to tide over the sudden crisis caused by the death of a bread winner who leaves the family in penury without any means of livelihood and that such a provision is really in the nature of an exception to the general principle of equality in the matter of recruitment. Such a provision made by way of an exception to the General Rule cannot subsume the main principle. Therefore, there cannot be any reservation of the vacancy indefinitely till such time the minor attained majority after a lapse of several years. Therefore, the provision made prescribing the period of one year within which the applicant ought to have attained majority from the date of death of the employee cannot be termed as arbitrary or illegal...The fact that the mother of the appellant did not choose to seek employment for herself to bring the family out of the alleged penurious condition nor the daughters of the deceased employee came forward to make any such request is a factor which show that the family was not in an immediate crisis, as otherwise the opportunity for seeking appointment on compassionate grounds would have been immediately availed by the family."

5. Further, it is well-settled principle of law that there is no right to compassionate appointment. In the case of **STATE OF HIMACHAL PRADESH AND ANOTHER v. SHASHI KUMAR,**

reported in (2019) 3 SCC 653, the Hon'ble Supreme Court

has held as under:

"Compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependents of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The terms on which such applications would be considered are subject to the policy which is framed by the State. In that sense, it is well-settled principle of law that there is no right to compassionate appointment." (para 18)

Similar is the view taken by the Hon'ble Supreme Court in yet another recent decision in the case of **STATE BANK OF INDIA v. SHEO SHANKAR TEWARI reported in (2019) 5 SCC 600**. Relevant observations therein read thus:

"4. The learned counsel for the Petitioner Bank relied upon decision of this Court in SBI v. RAJ KUMAR (2010) 11 SCC 661, and particularly paras 2, 8, 12 and 13, which are to the following effect:

... ..

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand, it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of

the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

...

...

...

13. Further, where the earlier scheme is abolished and new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

In the light of the above said position in 1996 Rules and the decisions, Applicant is not entitled to claim compassionate appointment. The Government after referring to decision of the Hon'ble Supreme Court in the case of **UMESH KUMAR NAGPAL v. STATE OF HARYANA, reported in (1994) 4 138** and decision of the Hon'ble High Court of Karnataka in **DEEPAK B.KOTHARI v. PRINCIPAL ACCOUNTANT GENERAL, reported in ILR 2001 KAR.17** on the point that

the object of compassionate employment being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered after lapse of time and after crisis is over, during which period the family could manage its affairs and has been possessed of sufficient means of subsistence, has issued the impugned Endorsement rejecting the claim of Applicant for compassionate appointment. We find no illegality in the impugned Endorsement.

6. In the result, we pass the following Order:

Application fails and the same is hereby rejected.