

J U D G E M E N T

1. The instant application has been filed praying for following relief;

“ (a) Ad-interim order directing the respondents to provide a job to the applicant forthwith in terms of the report of the three members committee and the recommendation of the respondent no.4 or alternatively to keep a suitable post vacant for the applicant according to his qualification for his compassionate appointment till the disposal of the application.”

2. As per the application, his father died on 24.01.2001. Subsequently, he made an application for compassionate appointment. Thereafter, one three-men committee was constituted to recommend the case of the applicant by Memo dated 22.01.02 (P/3). However, as no decision was communicated, he had filed one OA No.2424 of 2005, which was ultimately dismissed by the Tribunal vide Order dated 24.06.2010 on the ground of delay. Being aggrieved with, the applicant preferred writ petition being WPST No. 84 of 2012 before the Hon'ble High Court and the Hon'ble High Court vide their order dated 05.04.2012, after quashing the impugned Order dated 24.06.2010, had directed the Director of Health Services to consider the prayer of compassionate appointment in the light of three-men committee recommendation. In pursuance to the said order, the respondents have passed the impugned order dated 16.07.2012 by way of rejecting the claim of the applicant. Being aggrieved with, he has filed the instant application.
3. Counsel for the respondents has submitted that in compliance to the said order, Director of Health has passed the reasoned order on 16.07.12 showing the reasons and rejected the prayer. Therefore, she has prayed for dismissal of the OA.
4. We have gone through all the relevant documents and averments made in the application and found that as the family received terminal benefits to the tune of Rs.3.94 lakhs and mother was receiving a family pension and already 11 ½ years have been lapsed, the Director of Health felt that there is no immediate financial hardship and hence application was rejected. But as per the applicant's advocate in the case of BALBIR KAUR AND ANOTHER -VS- STEEL AUTHORITY OF INDIA LTD. AND OTHERS, Hon'ble Supreme Court has held that the retiral benefit should not have been taken while calculating the financial distress of a particular family after the death of bread earner.

In the instant case, the three-man enquiry committee was very clear in explaining the financial condition of the family. We felt that if the director was not convinced with the enquiry committee report, he should have opted for re-enquiry with regard to the financial condition by reappointing a fresh Enquiry Committee at least after High Court's order. Instead of that, he himself has become judge ignoring the fact that the terminal benefits are not supposed to be taken into consideration while calculating the financial status of the family and rejected the prayer. Further delay of 11 years is not due to the fault of the applicant as he applied within time, but due to delay on the part of respondent to take decision. Hence, we find that this reasoned order is against the existing principles of law. Therefore, we quash and set aside the reasoned order of the Director of Health with a direction that if the Government feels that re-enquiry is necessary for assessing the financial capability of the family, it may do so and keeping in view Hon'ble Supreme Court Judgement in the case of BALBIR KAUR AND ANOTHER -VS- STEEL AUTHORITY OF INDIA LTD. AND OTHERS as well as Enquiry Report. The entire exercise should be completed within three months from the date of receipt of this order and to take decision and communicate the same by way of reasoned and speaking order.

5. Accordingly, the OA is disposed of with the above observation and direction with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)