

**BEFORE CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM – LABOUR
COURT NO. II, NEW DELHI**

ID No. 223/2018

Smt. Kamlesh and 2 Ors. vs. S.D.M.C.

Smt. Kamlesh and Ors.
Through- MCD General Union,
Room no. 95, Jam Nagar House, Shahjahan Road,
New Delhi-110011.

...Applicants/Claimants

Versus

1. The Commissioner,
South Delhi Municipal Corporation, 9th Floor, Civic Centre,
Minto Road, New Delhi-11002.

... Management/respondent

Counsels:

For Applicants/ Claimants:

Sh. B.K. Prasad, Ld. AR.

For Management/ Respondent:

Sh. Rajiv Bhardwaj, Ld. AR.

Award

11.07.2025

The appropriate government vide letter dated 26.11.2018, sent the following reference to this tribunal in respect of three claimants:

"Whether Smt. Kamlesh w/o late Sh. Ram Kishan, is entitled to be regularized on the post of Mali w.e.f 01-07-2011. Whether Smt. Shakuntala w/o Late Sh. Raj Pal Singh and Smt. Usha w/o Late Sh. Sonder Singh are also entitled to be regularized on the post of Mali w.e.f 03-09-2009, with all consequential benefits including regular pay scale to each of the three workmen instead of Muster roll Mali

by the Management of South Delhi Municipal Corporation. If so, to what relief these workmen are entitled to and what directions are necessary in this respect?"

The particulars of the claimants are as follows:

Sr. No.	Name	Husband's Name	Date of Employment on Muster Roll Mali	Date of Husband's Death
1	Smt. Kamlesh	Late Sh. Ram Kishan	01.07.2011	22.03.2010
2	Smt. Shakuntala	Late Sh. Raj Pal	03.09.2011	29.01.2006
3	Smt. Usha	Late Sh. Sonder Singh	03.09.2009	06.01.2007

The claimants, in pursuance of the reference, filed their claim statement, asserting that all three claimants, whose particulars are given above in the table, are working as daily rated/ muster roll Malis on compassionate grounds under the S.D.M.C., South Zone Green Park, New Delhi. They stated that their respective husbands were regular employees of the management and died in harness. Consequently, the management engaged the claimants on muster roll/ daily wage basis on compassionate grounds. However, they were entitled to appointment on the post of regular Malis, along with all consequential benefits, including regular pay-scale from respective dates of their engagement.

In response, the management filed its written statement, stating that the claim filed by the claimants is false, frivolous, baseless and has been filed with malafide intention to compel the management to accede to the illegal and unlawful demand of the claimants. Hence, the same is not legally maintainable. The management argued that:

- No demand notice was served upon the management, and therefore, the present dispute doesn't fall within the definition of an 'Industrial Dispute'.
- Government jobs are not hereditary in nature and the purpose of compassionate employment is only to help the family of a deceased employee get over the sudden financial crisis and not to provide employment.
- The claimants' application for grant of compassionate appointment is hopelessly barred by delay and suffer from legal infirmities.
- There is only a very limited quota of 5% for appointment on compassionate ground on regular basis as per Government of India Guidelines, only to very deserving candidates.
- Even though, the management is not bound to give the appointment on compassionate ground, when no vacancies are available at the relevant time under the prescribed 5% quota, it has framed a policy to provide immediate help to such candidates who seek appointment on compassionate ground. Under this policy, the eligible candidates are employed on daily wages or a contractual basis. If the vacancies arise later, their regularization is considered based on seniority and financial condition.
- Financial condition of smt. Kamlesh was very poor, she had three daughters, all of them unmarried. Therefore, she was regularized w.e.f. 18.11.2016, while financial condition of Smt. Usha and Smt. Shakuntala were found comparatively stable, having all of their respective children were married and living in good conditions. Due to which, they were not found eligible for regularization under 5 % quota.

From pleadings of parties, following issues were framed:

1. Whether the proceeding is maintainable.

2. Whether the claimant Smt. Kamlesh is entitled to be regularized in the post of Mali w.e.f. 01.07.2011.
3. Whether the claimants Smt. Shakuntala and Smt. Usha are entitled to be regularized in the post of Mali w.e.f. 03.09.2009 instead of being as Muster Roll Mali.
4. Whether the above named workmen are entitled to regular appointment on compassionate ground.
5. To what relief the parties are entitled to.

In order to substantiate the claimants' claim, Sh. B.K. Prasad, president of MCD General Mazdoor Union appeared in the witness box. He deposed the following :

- The deceased were employed as regular Malis, who died in harness, so the claimants, as their legal heirs, are entitled to be appointed as regular Malis on compassionate grounds.
- As per the policy Exhibited as Ex. WW1/1, the claimants are entitled to be appointed as regular Malis instead of Muster Roll Malis from the date of initial engagement.
- The claimants were engaged on muster roll basis w.e.f. their respective joining dates (mentioned in the table above). Among them, only Smt. Kamlesh was regularized in the year 2016. However, she is also entitled to be regularized from the date she joined as a muster roll employee.

The witness was cross-examined. He admitted that:

- He didn't remember the date on which the claimants approached the union for redressal of his grievance.
- The claimants gave a written representation to the union which is available in his office file but not filed in this proceeding.
- He denied that only 5% of the total vacancies can be filled up on the compassionate grounds.

- He denied that this 5% compassionate appointment are made considering the hardship and acute need of an individual.
- He failed to produce the date of registration of the union representing the claimants, the documents of registration of the union or exact number of the body of the executives.
- He admitted that no meeting of the union was held to espouse the cause of the workmen but the union took a decision for such an espousal. However, no such agenda of the meeting was ever prepared.

In rebuttal, the management examined its witness, Sh. Surendra Singh, who reiterated the facts stated in the written statement. He submitted that after considering economic financial condition of the claimants, appointment letters were issued to them on contract basis on compassionate ground. He relied upon the following documents :

1. A copy of contractual and regular appointment of Smt. Kamlesh (Ex. MW1/A and MW1/B).
2. A copy of contractual appointment of Smt. Shakuntala and Smt. Usha (Ex. MW1/C)

The witness was cross-examined by AR for the claimant, where he admitted that :

- The claimants were engaged on daily wage basis instead of compassionate appointment were discharging the same duties as the regular Malis.
- After death of the said regular Malis, the post remained vacant, and the claimants were engaged on daily basis.
- He didn't know if there was a policy of the Government preventing engagement of daily wagers against regular posts.
- He could not say if the demand notice was mandatory for invoking the provisions of section 2K of the I.D. Act by the claimants.

The whole claim of the claimants is based on the premise that, instead of being appointed as regular Malis on compassionate grounds, they were employed on muster roll/daily wage basis, upon the death of their respective husbands. Since they have been performing their duties similar to those of regular Malis, they submit that they are entitled to be regularized since the date of their joining as daily wagers.

According to the claimants, there is nothing on record, which denies their claim for appointment as regular employees. It is therefore submitted by AR for the claimants, that they should be regularized. In support of his argument, he relied upon a judgment passed by the High Court of Delhi in **Municipal Corporation of Delhi vs. Sh. Rajesh (W.P. (c) No. 12996/2009)** where the High court in similar circumstances granted relief to the claimant, and he was entitled to be treated as regular employee with effect from the date of his initial appointment. Additionally, he relied upon a judgment passed by the Hon'ble Supreme Court of India in **Surinder Singh & Anr. vs. the Engineer in Chief, C.P.W.D. & Ors. (S.C.) A.T.R. 1986 S.C. 76**, where the petitioners and all other daily rated employees were directed to be paid the same salary and allowances as the regular and permanent employees working with the respondent.

On the other hand, the management submitted that for appointments on compassionate grounds, the management has to follow the DoPT guidelines, and they are not a matter of right. In order to help the families of the deceased employees, the management framed a special scheme policy, under which, the dependents of the deceased employees were offered employment on daily wage basis to provide immediate financial help. Moreover, the management argued that appointment on compassionate grounds it is not a right of the claimants, and the same was reiterated by the Hon'ble Supreme Court of India in 2005. The management also distinguished the judgment of **Municipal Corporation of Delhi vs. Sh. Rajesh (W.P. (c) No. 12996/2009)**, mentioning that the welfare measure circular of the MCD was not in existence at that time, and this tribunal had differentiated the same in its award dated 01.05.2023 in

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where claim of the claimants on similar grounds was rejected.

He also relied upon the judgments of the Hon'ble Supreme Court of India in Civil Appeal no. 8540 of 2024 dated 13.11.2024, where the Hon'ble court had held that:

Compassionate appointment is not a vested right as a condition of service of an employee, who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless.

In another judgment of Hon'ble Supreme Court of India in Civil Appeal no. 255 of 2025 passed on 11.02.2025, where similar views were echoed by the Hon'ble court.

I have heard the arguments presented by both parties. In light of above facts, evidence and arguments, my findings on the issues are as follows:

In this respect, DoPT's scheme for compassionate appointment under the central government is applicable to the MCD. The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help them get over the emergency. In the said scheme, Para 2 of *DOPT O.M. No. 14014/6/94-Estt.*

(D) dated 09.10.1998], described to whom it was applicable, the same reads as under:

To a dependent family member –

(A) of a Government servant who –

- (a) dies while in service (including death by suicide);

(b) or is retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group 'D' Government servants);

(c) or is retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group 'D' Government servants); or

(B) of a member of the Armed Forces who – (a) dies during service; (b) or is killed in action; or (c) is medically boarded out and is unfit for civil employment.

Note-I "Dependent Family Member" means:

(a) spouse; or

(b) son(including adopted son); or

(c) daughter (including adopted daughter); or

(d) brother or sister in the case of unmarried Government servant or

(e) member of the Armed Forces referred to in (A) or (B) of this para, -- who was wholly dependent on the Government

servant/ member of the Armed Forces at the time of his death in harness or retirement on medical grounds, as the case may be.

*Note II. "**Government servant**" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad-hoc or contract or re employment basis.*

*Note III "**Confirmed work-charged staff**" will also be covered by the term 'Government servant' mentioned in Note II above.*

*Note IV "**Service**" includes extension in service (but not re-employment) after attaining the normal age of retirement in a civil post.*

*Note V "**Re-employment**" does not include employment of ex-serviceman before the normal age of retirement in a civil post.*

It also prescribed the authority competent to make compassionate appointment. The same is as under:

- (a) Joint Secretary in-charge of administration in the Ministry/Department concerned.
- (b) Head of the Department under the Supplementary Rule 2(10) in the case of attached and subordinate offices.
- (c) Secretary in the Ministry/Department concerned in special types of cases.

The scheme applies to the group 'C' posts against the direct recruitment quota. There is also a provision for a welfare officer to visit the family of the deceased employee after his sudden demise. Though the said scheme states that appointment on compassionate grounds should be made only on regular basis, that too only if regular vacancy meant for that

purpose are available. However, compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' post. The appointing authority may hold back upto 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds. A person selected for appointment on compassionate grounds should be adjusted in the recruitment roster against the appropriate category viz SC/ST/OBC/General depending upon the category to which he belongs. For example, if he belongs to SC category he will be adjusted against the SC reservation point, if he is ST/OBC he will be adjusted against ST/OBC point and if he belongs to General category he will be adjusted against the vacancy point meant for General category. While the ceiling of 5% for making compassionate appointment against regular vacancies should not be circumvented by making appointment of dependent family member of Government servant on casual/daily wage/ad-hoc/contract basis against regular vacancies, there is no bar to considering him for such appointment if he is eligible as per the normal rules/orders governing such appointments. The ceiling of 5% of direct recruitment vacancies for making compassionate appointment should not be exceeded by utilising any other vacancy e.g. sports quota vacancy.

Issue No. 1:

Neither the claimant has led any evidence, nor has the management rebutted the same, in this respect. However, considering that a reference sent to this tribunal, and the evidence led by the claimant on other aspects, it is safely concluded that the proceeding is maintainable.

Issue No. 2:

AR for the claimants asserted that Smt. Kamlesh is entitled to be regularized to the post of Mali w.e.f. 01.07.2011, when she was initially appointed as a daily wager on compassionate grounds. However, in this regard, it has to be made clear that the MCD is bound by the DoPT

guidelines and directives. In order to help the families of the deceased employees, the management framed a special scheme, under which, the dependents of the deceased employees were offered employment on daily wage basis to provide immediate financial help. Since appointment on regular basis require certain formalities such as assessments of financial condition and other formalities, the scheme was introduced for immediate help. The word 'compassionate' is used in the contract letter, however, it doesn't suggest that the claimants were entitled to regularization without fulfilling the necessary criteria.

Smt. Kamlesh was regularized on the post of Mali w.e.f. 18.11.2016. Therefore, she cannot claim regularization from the date of her initial appointment on contractual basis. The dependents of the deceased employees have no right to seek appointment on compassionate grounds. The authority concerned must look at the other aspects. The management stated that Smt. Kamlesh was found suitable for regular appointment under the 5% quota, so she was regularized in 2016. In these circumstances, Smt. Kamlesh cannot seek regularization for the date of her initial appointment on contractual basis. The claimants' assertion that compassionate appointment was granted to her initially on contractual basis holds no merit, as the scheme was introduced only to assist the dependents through a due process of enquiry enquiry. Consequently, Smt. Kamlesh cannot be regularized from the date of her initial appointment. Therefore, Issue no.-2 goes in favor of the management.

Issue no.-3:

Regarding the claim of Smt. Shakuntala and Smt. Usha, the management stated that both were found comparatively stable, having all of their respective children were married and living in good conditions. Due to which, they were not found eligible for regularization under 5% quota.

Smt. Shakuntala and Smt. Usha failed to bring any evidence demonstrating financial hardship, or that that they were denied regular appointments despite being bad financial condition.

As earlier discussed, the scheme was introduced by the management to provide immediate relief to the aggrieved family and it is not the vested right of the dependents of a deceased employee to be appointed on regular basis. The claimants failed to bring any evidence to demonstrate that they are entitled to be regularized in the 5% quota considering their financial circumstances. Therefore, the rejection of the claims of Smt. Shakuntala and Smt. Usha for regular appointment is held to be just and proper. Consequently, **issue no.-3** is accordingly decided in favor of the management.

In view of the above discussion, **issue no.-4** is also decided in favor of the management.

In light of the above findings, the reference is answered against the claimants and in favor of the management. Accordingly, the claim of the claimants stands dismissed. A copy of this award be sent to the appropriate government for notification under section 17 of the I.D Act. The case file is consigned to record room.

Dated 11.07.2025

ATUL KUMAR GARG
Presiding Officer
CGIT – cum – Labour Court – II