

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No.1247/2002

Date of decision: 3.12.2002

Kulvinder Singh & Anr.

.. Applicants

(By Advocate: Shri R.N. Singh)

versus

Union of India, through

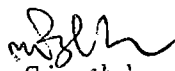
.. Respondents

(By Advocate: Shri B.S.Jain & Shri Ashwni Bhardwaj)

CORAM:

The Hon'ble Shri M.P. Singh, Member(A)

To be referred to the Reporter or not? Yes


(M.P. Singh)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1247/2002

New Delhi, this 3rd day of December, 2002

Hon'ble Shri M.P. Singh, Member(A)

1. Kulvinder Singh
s/o late Shri Ajit Singh
 2. Smt. Nirmal Kaur
I-347, Sarojini Nagar
New Delhi-23
- .. Applicants

(Shri R.N. Singh, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi
 2. Chief of Naval Staff
Naval Hqrs., South Block
New Delhi
 3. Flag Officer Commanding-in-Chief
Hqrs. Western Naval Command
Shaheed Bhagat Singh Road, Mumbai
 4. Secretary
Ministry of Urban Development &
Poverty Alleviation
Nirman Bhavan, New Delhi
 5. Director of Estates
Nirman Bhavan, New Delhi
- .. Respondents

(Shri B.S. Jain, Advocate for R-1 to R-4 and
Shri Ashwini Bhardwaj, proxy for Shri S.K.
Gupta, Advocate for R-5)


ORDER(oral)

By filing this OA, applicants have prayed for (i) quashing the order dated 26.3.2002 by which second applicant has been informed that employment proposal of first applicant has not been considered by the Scrutiny Board and (ii) a declaration to the effect that first applicant is entitled for being provided compassionate appointment as and when his turn matures for the same in accordance with relevant instructions and scheme of the respondents and for retention of Government accommodation allotted to first applicant's father.



2. Briefly stated, Shri Ajit Singh, father of first applicant, while working as Foreman of Stores (FS) died in harness on 30.10.1999 leaving behind his wife (second applicant), daughter and three sons. Late Shri Ajit Singh was also allotted Qr.No.I-347, Sarojini Nagar, while in service. Eldest son of the deceased has been living separately and independently and has not been extending any support to the deceased family. Applicants submitted a representation on 9.11.99 to the respondents for grant of compassionate appointment to first applicant. They also furnished certain information and documents on 16.6.2000 to the respondents as requisitioned by them. By a certificate dated 23.2.2001 issued by R-2, Director of Estates was informed that first applicant is in waiting list of employment which would be provided on compassionate grounds as per rules. By another letter dated 22.3.2001 from R-2, second applicant was informed that "seniority of first applicant in 'C' cadre roster is 97 and his case will be considered for employment assistance as and when his turn comes which will take approx. 4/5 years". After repeated representations, the last one being 25.2.2002, the aforesaid impugned letter dated 26.3.2002 has been issued. That is how the applicants are before us seeking the aforesaid reliefs.

3. Respondents have contested the OA and have stated in their reply that the wife of deceased was allowed to retain the government accommodation upto 1.11.2001 on payment of normal licence fee as per rules. As the family of the deceased did not vacate the quarter before



1.11.2001 a case was filed in litigation branch for initiating eviction proceedings on 3.12.2001. Second applicant represented for retention of quarter beyond 1.11.2001 till employment is given to first applicant. However, the West Naval Command informed that the proposal for compassionate appointment of first applicant has been rejected and consequently the family of the deceased is liable to pay damage rent from 1.11.2001 till the vacation of the said quarter. In terms of DoPT guidelines dated 3.12.99 regarding compassionate appointment, Board of Officers considered the case of first applicant alongwith other waitlisted cases but rejected the same as it is a not a deserving one. It is stated by the respondents that the family of the deceased cannot be termed as indigent in view of the fact the widow (second applicant) has received a sum of Rs.3,87,185/- terminal benefits and she is in receipt of Rs.3275 as family pension per month, elder son of the deceased is employed in Government service and there is no liability such as marriageable daughters, minor children etc. in the family. Citing the judgement of the apex court in the case of Umesh Kumar Nagapi Vs. State of Haryana & Ors. (1994) 27 ATC and other identical cases, respondents have submitted that Tribunal cannot direct compassionate appointment on the grounds of sympathy disregarding the instructions/law on the subject but can merely direct consideration of the claims for such an appointment. In view of this position, the OA is devoid of merit and be dismissed.



4. Reply is also filed on behalf of Respondent No.5 opposing the retention of government accommodation by the applicants beyond the permissible period.

5. Heard the rival contentions of the contesting parties and perused the records.

6. The main ground taken by applicant's counsel in support of the reliefs prayed for by the applicant is that the instructions of DoPT referred to by the respondents are irrelevant and not applicable in the case of the applicants as these instructions have no retrospective effect whereas the case of applicants is prior to these instructions and the respondents had already considered the case as per the extant instructions. He has drawn my attention to OM dated 9.10.1998 issued by DoPT on the subject of compassionate appointment, particularly to para 10(b) and 16(c) which are extracted below:

10(a): In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be source of support to other members of the family.

16(c) The Scheme of compassionate appointments was conceived as far as 1958. Since then a number of welfare measure has been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government

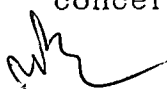
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servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

7. The learned counsel has also contended that the action of the respondents in rejecting the claim of compassionate appointment of the first applicant is barred by 'principle of promissory estoppel'. He has further drawn my attention to the judgement dated 5.5.2000 in the case of Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors. AIR 2000 SC 1596 and contended that benefit of compassionate appointment cannot be negated on ground of introduction of scheme assuring regular monthly income to disabled employee or dependants of deceased employee. He has also submitted that the contention of the respondents that the wait listing of candidates prior to being considered by the Board for compassionate appointment is a normal procedure is unheard of.

8. As regards retention of government accommodation by the family deceased, learned counsel for the applicant has drawn my attention to OM dated 31.8.2001 issued by Ministry of Urban Development, particularly to paras 2(c) and 2(d) which are extracted below:

(c) Only those ward/spouse may be allowed to retain the Govt. accommodation beyond the permissible period of two years, where their cases for compassionate appointment have been approved by the concerned department and appointment could not



materialise for want of vacancies. A certificate to this effect will be produced by the applicant from the concerned department.

(d) The family will be charged three times of the normal licence fee beyond the permissible period of two years till their appointment in Government service take place.

9. On the other hand, learned counsel for the respondents has contended that applicants' case is to be considered by the Board of Officers in accordance with the existing DoPT instructions along with all waitlisted cases. He has further stated that at no stage the respondents gave any promise to the applicant that he would be provided compassionate appointment; instead, it was only intimated to him that his case is registered and would be considered. Accordingly, his case was considered by the Board of Officers and rejected as it lacked merits. The learned counsel has also drawn my attention to the decision dated 27.4.2001 of Calcutta Bench of the Tribunal by which OA No.323/99 touching upon the issue of compassionate appointment was rejected.

10. It is an admitted position that the deceased Government servant died in harness on 31.10.1999 and the applicants submitted their request on 9.11.1999 for compassionate appointment of the first applicant. They have also furnished the requisite particulars/documents asked for by the respondents. Thereafter, vide letter dated 23.2.2001, R-2 issued a certificate (supra) to the effect that the first applicant is in waiting list of employment which will be provided on compassionate grounds as per rules. This position was reiterated by R-2 by another certificate issued on 2.7.2001. There is yet another letter dated 22.3.2001 to the effect that first applicant's seniority in the 'C' cadre roster is 97

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and his case will be considered for employment assistance as and when his turn comes which will take approximately 4/5 years. The fact that the eldest son of the deceased is married and living away separately with his family and is not extending any financial support to the deceased family cannot also be ignored. In other words, the case of compassionate appointment was processed by the respondents in terms of DoPT guidelines issued on 9.10.1998. On the other hand, the respondents have rejected the claim of the applicant in terms of DoPT OM dated 3.12.1999 which would have only prospective effect and not retrospective unless otherwise specifically mentioned in the instructions. Therefore the grounds taken by the respondents in the impugned letter 26.3.2002 in rejecting the request of the applicants are contrary to the ones prescribed by DoPT vide its OM dated 9.10.1998 and thus are not tenable. Also the judgement of the Calcutta Bench (supra) relied upon by respondents is distinguishable and is not applicable to applicants' case in the sense that as per respondents' own admission the name of first applicant was placed in waiting list for compassionate appointment after taking into various factors of the case. Therefore, the respondents cannot be allowed to turn around and reject applicant's claim on entirely different grounds.


11. As regards retention of the government accommodation by the applicants beyond the permissible period, I find that no action has been initiated by R-5 under PPE Act for eviction proceedings and therefore the ruling of the apex court in the case of Rasila Ram would not be attracted in the instant case.

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12. I am aware of the legal position that the Tribunal cannot issue any direction in the matter of compassionate appointment but can only direct consideration of the request for compassionate appointment. However, having regard to the peculiar circumstances of the case as discussed above, I feel that ends of justice would be duly met if the OA is disposed of in the following terms:

"The impugned order dated 26.3.2002 is quashed and set aside. Respondents are directed to reconsider the case of first applicant for compassionate appointment against a suitable post. The applicants are allowed to retain the government accommodation on payment of licence fee in terms of OM dated 31.8.2001 (supra). Respondents shall not disposses the applicant from the government accommodation till a decision is taken on the compassionate appointment of the first applicant".

I do so accordingly, leaving the parties to bear their own costs.


(M. P. Singh)
Member(A)

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