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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 757/2002

and

O.A. 763/2002

NEW DELHI THIS 15TH DAY OF NOVEMBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. Roshini W/o Late Shri Balwan Singh
 2. Surendar Kumar S/o Late Shri Balwan Singh
 3. Suman D/o late Shri Balwan Singh
- (All residents of Village & PO Roshan Pura, Near
Ice Factory Najafgarh New Delhi.)

(By Shri S K Gupta, Advocate)Applicants.

VERSUS

1. Govt. of NCT of Delhi through Chief Secretary,
Delhi Secretariat, IG Stadium, IP Estate,
New Delhi.
2. Principal Secretary (Home)
Govt. of NCT of Delhi
Delhi Secretariat,
IG Stadium, IP Estate,
New Delhi
3. Chief Fire Officer,
Delhi Fire Service
Fire Headquarters,
Connaught Circus, New Delhi
4. Municipal Corporation of DelhiRespondents
through its Commissioner,
Town Hall, Chandni Chowk, New Delhi

.....Proforma Respondent.

(By Shri Ajay Gupta, Advocate)

O R D E R

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

This combined order disposes of two ^{identical} OAs filed by
the same applicants, seeking the reliefs - grant of

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pensionary benefits to the family as well as compassionate appointment to one of the dependents of a deceased Govt. employee.

2. Heard S/Shri S K Gupta and Ajay Gupta learned counsel for the applicants and the respondents respectively.

3. MA 636/2002 in OA 757/2002 and MA 639/2002 in OA 763/2002 for joining are allowed.

4. Shri Balwan Singh husband of applicant No. 1 and the father of applicants 2 & 3 joined Delhi Fire Service as Fireman on 2.4.79 and was confirmed w.e.f. 1.11.90, vide order dated 16.11.91. He fell ill sometime in 1985 and the enquiries from the respondents about his absence had also been replied to. He passed ^{away} on 23.4.99, no action at all having been initiated against him for the absence, as the fact ^{of his illness} had been intimated to the respondents well in time. Delhi Fire Service where the deceased was working was transferred from Municipal Corporation Delhi's - (DMC) to Govt. of NCT w.e.f. 10.11.94, by notification dated 31.5.95, and the applicant became an employee of the GNCT Delhi. A number of representations were thereafter filed by the applicants after the demise of Balwan Singh seeking the benefit of pension and compassionate appointment. A representation was made to the Hon'ble Chief Minister also, following which certain enquiries were made though no final results emerged. Delhi Fire Service having become a part of the Govt of NCT, w.e.f. 10.11.94, by notification dated 31.5.95, the deceased at the time of his passing away in 1999, was a Delhi Govt Employee and his family on his death in harness had become

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entitled to the family pension and compassionate appointment to one in the family. It was the duty of the respondents to provide compassionate appointment to one of the applicants, as the deceased individual was an employee of the respondents and was in service from 2.4.79 to 23.4.99 and no action had been taken against the deceased employee, till his demise in '99. His family was also entitled for getting family pension in terms of CCS (Pension) Rules, in view of the service rendered by him.

4. Sh. S K Gupta, learned counsel appearing on behalf of the applicants forcefully reiterated his written pleadings.

5. In the reply filed on behalf of respondents, duly reiterated by Shri Ajay Gupta, their learned counsel during oral submissions, the applicants' pleas are strongly rebutted. It is pointed out that Sh. Balwan Singh had joined as a Fireman on 2.4.79 with Delhi Fire Service when it was functioning under MCD and that he had remained on duty only upto February 1985 and had been absent since then. No information about his illness or indisposition has been brought on record. He continued to be on unauthorised absence which was the position at the time when the administrative control of DFS was taken over by the GNCT Delhi. On account of his unauthorised and wilful absence, Balwan Singh could not be presumed to have acquired the status of an employee of GNCT Delhi and benefit if available to the employee of the GNCT cannot be granted to him. Even treating him as an employee of MCD in November 1994 his part~~s~~ service performed with them have to be treated as forfeited on account of his absence. OA therefore ^{is} ~~was~~ not ^{to be} considered, according to the

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respondents maintainable. An individual who had chosen to remain absent without any permission or ~~un~~authorisation from the controlling authorities cannot claim that he was continuously under employment so as to give him or his family the retiral benefits. On account of the fact that he was away from duty for the entire period from 1985 till his death it would be wrong to assume that by the transfer of the administrative control of DFS from the MCD to GNCT Delhi the individual would have acquired a right as an employee so as to extend to him the necessary pensionary benefits and compassionate posting to his dependents on his demise in harness. Under the circumstances the OAS ^{CANNOT} be allowed, pleads Shri Ajay Gupta.

6. I have carefully considered the matter. The applicants who are the wife and children of one Shri Balwan Singh, who had joined as a Fireman with DFS in 1979 are seeking pensionary benefits and consideration for compassionate appointment following the demise of Balwan Singh in 1999. According to the applicants for having worked for nearly 20 years i.e. first with MCD when DFS was functioning under its administrative control and thereafter with GNCT under whom the Department of Fire Service was attached, the ^{deceased} individual has acquired rights for pensionary benefits which could be given to them on the deceased employee's demise in 1999. On the other hand, the respondents point out that the applicant had been on unauthorised absence from 1985 and the position continued till his death in 1999. Therefore he could not be treated as having become an employee of GNCT Delhi at the time when DFS was taken over by GNCT. It is pointed out that the applicant was on unauthorised absence from March 1985 but no penal proceedings is found have been initiated by

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the respondents i.e. either MCD or GNCT Delhi. It is also shown by the applicants that he was confirmed as a Fireman by letter No. XI.F2(140) Estt/DFS/81/604 D dated 16.11.91. If this be so the respondents cannot take a view that he was not under their employment in 1990. The presumption therefore would be that he was under the employment of the DFS till 1999 when he passed away. It would therefore mean that he had become an employee of GNCT on the absorption of the DFS by GNCT Delhi. Some pensionary benefits should therefore follow keeping in mind the number of years service that rendered with the DFS i.e. 1979 to 1999. To that extent consideration of grant of family pension is a natural corollary. However, the applicants' request for grant of compassionate appointment on account of the employee demise while in harness, does not merit endorsement. Compassionate appointment is not a matter of right but as a welfare measure adopted by the Government to provide succour to the dependents of a deceased Govt. employee who are left in indigent circumstances by the sudden passing away of the head of the family who is the bread winner. The same is subject to availability of vacancies the eligibility of the dependents of the deceased employee and other considerations, as laid down by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs State of Haryana [JT 1994(3) SC 525]. It is highly doubtful whether the dependents of an individual who has been away from duty for a long for whatever reasons could claim compassionate appointment.

7. In the above view of the matter the OAs succeed but only partially. The respondents are directed to examine the case of the applicants, dependents of the deceased employee Balwan Singh, for grant of pensionary

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benefits i.e. family pension, treating him as having been in service in the DFS under GNCT Delhi, at the time of his demise in 1999. No order is being passed in respect of his request for compassionate appointment being made by the applicants, leaving it for the respondents to decide upon ~~for grant~~ in accordance with the law and relevant instructions in force. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

Attended

Required

Co.

C.V.