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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1808/2001

New Delhi, this the 27th day of November, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

1. Shri Pankaj Garg,
S/o Late Shri K.C. Garg,
Resident of EPT-138,
Sarojini Nagar,
New Delhi - 23
2. Smt. Rekha,
W/o Late Shri K.C. Garg,
Resident of EPT-138,
Sarojini Nagar,
New Delhi-23

(By Advocate : Shri R.K. Relan)

... Applicants

Versus

1. Union of India, through
Member (Post), P&T Board,
Office of the Director
General Posts, Dak Bhawan,
New Delhi - 110 001
2. Chief Post Master,
Meghdoot Bhawan,
Delhi Circle, Link Road,
New Delhi
3. Senior Supdt., R.M.S.,
R.M.S. Bhawan,
Kashmerei Gate,
Delhi-6
4. Superintendent,
RMS Sorting Division,
Delhi Main Station,
Delhi-6

(By Advocate : Shri H.K. Gangwani)

... Respondents

O R D E R

Shri K.C. Garg died in harness on 30.10.1998 while working as Sorting Assistant, which is a group 'C' post. He left behind his wife, one son and a daughter as his heirs. The deceased employee's wife and his son are applicants in the present OA seeking a direction for

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quashing and setting aside the respondents' letter dated 24.11.2000 (Annexure A-1) by which the claim of the deceased employee's son, applicant no.1 herein, for compassionate appointment in a group "D" post has been rejected. The further prayer made is for a direction to consider the claim of the applicant no.1 for appointment in a group "D" post having regard to the position explained by the widow of the deceased employee, applicant no.2 herein, in the last representation dated 12.1.2001 filed by her (Annexure A-25).

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing on behalf of the respondents has submitted that the applicant No.1's claim was considered by the Circle Relaxation Committee along with some other cases in its meeting held on 14.8.2000. The applicant no.1's case was not found by the aforesaid Committee as covered under the most deserving category in terms of the DOP&T's latest instructions on the subject dated 3.12.1999. Accordingly, his claim has been rejected by the impugned letter dated 24.11.2001 (A-1). The learned counsel has also submitted that apart from the payment of a lump sum amount of Rs.2.67 lacs to the applicants after the death of Shri K.C. Garg, a family pension of about Rs.4,000/- per month is also being paid to them. The learned counsel further submitted that the widow of the deceased employee, applicant no.2 herein, has a legal share of 50% in the house property left behind by her late father as the applicant no.2's mother has only two daughters and

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no son, and the house property in question is valued at Rs.20 lacs. The applicants are living in the same house.

4. In the Committee which considered the claim of the applicant No.1, the claim of another similarly placed person working under the same respondents was also considered and rejected. OA No. 327/2001 filed by that applicant, namely, K.K. Tripathi against the rejection of his claim was duly considered and dismissed by this Tribunal on 31.10.2001. I have perused the aforesaid judgement and find that the family of the deceased employee in that case consisted of three sons, all of whom were unemployed with one of them being a married person. I have also found that the Circle Relaxation Committee has over time considered the claims of 70 applicants for compassionate appointments but succeeded in offering appointments only to 11 persons. According to the learned counsel for the respondents, each and every case of compassionate appointment is scrutinised by a responsible committee and appointments are offered on a selected basis keeping in view the competing claims of various applicants and having regard to the number of vacancies available under the 5% quota for compassionate appointments. The learned counsel has also submitted that appointment on compassionate basis cannot be claimed as a matter of right. Such appointments cannot be allowed to become an alternative mode of entry into Government service without being subjected to the usual procedure.

5. The learned counsel appearing on behalf of the applicants has contended that the applicants' claim has

never been considered with the amount of sympathy and objectivity called for in accordance with the letter and the spirit of the Government of India's instructions in the matter of compassionate appointment issued on 9.10.1998, further modified by DOP&T's Office Memorandum dated 3.12.2000. According to him, the procedure laid down in paragraph 12 of the aforesaid OM dated 9.10.1998 clearly enough lays down the role of the Welfare Officer of the Ministry/Department/Office who is supposed to assist the family of the deceased employee at all stages in securing an appointment on compassionate ground. In order to ensure justice and fair play the Welfare Officer has been made a member of the Committee of Officers which is supposed to examine such cases. The committee itself is supposed to meet every month to consider the pending cases. In appropriate cases, the Committee is expected to grant personal hearings to the applicants for compassionate appointment. The learned counsel submitted that whosoever was the Welfare Officer in the respondents' organisation never played his role in the way he was supposed to. The record shows that the respondents were over zealous in finding out the details of immovable property, if any, possessed by the applicants. They approached the family of the deceased employee's parents and were told that the deceased employee had no share in their property. They thereafter approached the applicant No.2 and her mother and insisted on securing an admission from the applicant no.2 that she owed house property equivalent to 50% share in the house property owned by her mother. She was obviously not in a position to do so in the life time of her mother who is all said and done free to dispose of her house property

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in her own life time in the manner thought fit by her. In the circumstances, the applicant no.2 could not be said to own and possess house property worth Rs.10 lacs being 50% of the value of the house property in question. The learned counsel appearing for the applicants submitted that the respondents have purposely brought in the aforesaid element of house property in order to thwart the claim of the applicant no.1 for compassionate appointment. I have considered this matter and find that there was no need at all on the part of the respondent-authority to go about the task of ascertaining the extent of immovable property possessed by the applicants in the way they have actually done. The hypothetical fact that the applicant no.2 has been found to be a heir to the aforesaid house property to the extent of 50% valued at Rs.10 lacs has been taken into account by the Committee of Officers, has been admitted by the learned counsel appearing on behalf of the respondents. In the circumstances just mentioned, I am convinced that the aforesaid house property should not have been taken into account by the aforesaid Committee of officers for deciding the claim of the applicants. In any case, on respondents own admission, the applicants are, and have been living in the same house, and that being so, it has to be assumed that the property in question cannot be a source for recurring income for serving the needs of the family. The impugned decision of the Committee of Officers is, in the circumstances, found to be based, inter alia, on an extraneous consideration, and to this extent one has to find fault with the same.

6. Paragraph 16 (c) of the aforesaid OM dated 9.10.1998 provides that while considering a request for

compassionate appointment, a balanced and objective assessment of the financial condition of the family must be made taking into account the family's assets and liabilities including, of course, the benefits received under the various welfare schemes 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. The next paragraph, namely, paragraph 16(d) further provides that compassionate appointment should not be denied or delayed and should be given without delay if a vacancy meant for compassionate appointment happens to be available and the applicant is also found to be eligible and suitable for appointment. Such appointments are to take precedence over the absorption of surplus employees and regularisation of daily wage/casual workers with or without temporary status. The Supreme Court has in the case of Himachal Road Transport Corporation v. Dinesh Kumar, JT (1996) 5 SC 319 held that appointments on compassionate grounds can be made if vacancies are available for that purpose. I have carefully considered the aforesaid provisions brought to my notice by the learned counsel appearing on behalf of the applicants. It is not difficult to see that the objective of the policy laid down in the aforesaid OM dated 9.10.1998 is to do all that is possible to secure appointment on compassionate ground subject to a balanced and objective assessment of the financial condition of the family in the manner set out in paragraph (c) already referred to. It is also clear that once the financial needs of the family have been assessed objectively and in a balanced manner and it is found that the applicants' claim deserves to be considered,

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such a consideration should be made without loss of time and on being found suitable the applicant should be appointed against a vacant post.

7. The learned counsel appearing on behalf of the applicants has stated that while 25 vacancies in group "D" posts existed in the respondents' set up at the time the applicant no.1 filed his claim, after several appointments made against the aforesaid vacancies, 17 vacancies still exist in group "D" posts and the claim of the applicant can be considered against one of the aforesaid 17 vacancies. He has placed on record Annexure AA-3, being copy of a Memo dated 12.12.2000 which would show that 17 vacancies were indeed available on that date. The learned counsel appearing on behalf of the respondents has not disputed the aforesaid position as regards the availability of vacancies. He has, however, once again stressed that the claim of the applicant has been considered by a Committee and rejected after proper consideration keeping in view the comparative merits of the various claims examined by the Committee. He has reiterated that the applicants cannot have a right to appointment and, therefore, this Tribunal will not be within its rights to direct the applicant's appointment against any of the aforesaid vacancies. That this Tribunal does not have a right to direct appointments of such persons in such circumstances has been laid down, according to the learned counsel, by the Supreme Court and this aspect of the matter has to be kept in view. The learned counsel, however, did not see any objection to the applicant being considered for a casual job in due course as and when such a job becomes available.

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8. The applicants have claimed that one Shri Dharam Singh has been appointed on compassionate basis by the respondents even though his father, who too was employed with the respondents died after the death of the applicant no.1's father. This is not disputed. The learned counsel for the respondents submits that the said Shri Dharam Singh was appointed on the basis of the recommendations of the Committee of Officers who found that Shri Dharam Singh's claim had better merit than the claim of the applicant no.1. On this basis, according to the learned counsel for the respondents no purpose will be served by relying on the aforesaid plea.

9. The learned counsel appearing on behalf of the applicants, while dilating on the failure on the part of the respondents in complying with the letter and the spirit of the OM dated 9.10.1998 has pointed out that the applicant no.2's claim was duly recommended by the Pravar Adhikshak, Rail Dak Vyavasta on 17.2.1999, but the Head of the Circle simply avoided endorsing his personal recommendations on the same Form (Part-III enclosed with the reply). According to him, it would have made all the difference if only the Head of the Circle had cared to endorse his personal recommendations as laid down in the aforesaid Form Part-III. Such recommendations, according to him, are expected to be duly considered by the Committee of Officers. In the absence of the personal recommendations of the Head of the Circle, the Committee was deprived of the opportunity to consider the applicant no.1's claim in a proper perspective.

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10. The learned counsel further submitted that the applicant no.1's claim has been rejected essentially because, all said and done, his case was not found to be covered by the category of most deserving cases in the manner mentioned in the last paragraph of the impugned letter (A-1). According to him, the instructions issued by the DOP&T on the subject have not created any such category and, therefore, the respondent-authority placing the applicant no.1 outside the controversial category of most deserving cases is totally meaningless. He has drawn my attention to the OM dated 3.12.1999 which refers to really deserving cases. However, the same Office Memorandum also provides that in such cases the Committee of Officers could make a recommendation for taking up the matter with other Ministries/Departments/Offices of the Govt. of India. This would imply that in accordance with the true spirit of the Govt. of India's instructions on the subject, in a really deserving case, the matter could be taken up with other Ministries etc. as well if no vacancy is available in the respondents' set-up. The aforesaid Office Memorandum dated 3.12.1999 also provides for the disposal of such claims within a year. In the present case, the respondents who were supposed to consider such claims month after month considered the claim of applicant no.1 nearly two years after Shri K.C. Garg died. This delay is abnormal and no explanation is forthcoming in this regard. Thus, respondents' sincerity in pursuing the applicants' claim in accordance with the true spirit of the relevant instructions is liable to be questioned.

11. For all the reasons mentioned in the preceding paragraphs, I find merit in the applicants' case.

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Accordingly, the impugned letter dated 24.11.2000 (A-1) is quashed and set aside. The respondents are directed to review the matter consistently with the letter and the spirit of the various instructions issued by the Govt. of India on the subject of compassionate appointments. They are also directed to keep in view the various observations made in the preceding paragraphs. The exercise involved will be completed by the respondents in two months' time. If the respondents propose to take adverse decision once again, they will pass a detailed speaking and a reasoned order within the same period of two months.

12. The OA is disposed of in the aforesated terms. No costs.

S.A.T. Rizvi

(S.A.T. RIZVI)
Member (A)

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