

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.3014/2001

Hon'ble Shri Shanker Raju, Member(J)

Wednesday, this the 7th day of August, 2002

Subhash Yadav
s/o late Shri Ram Bharosa
r/o 26/383, Trilok Puri
Delhi - 110 091. ... Applicant

(By Advocate: Shri S.L.Hans)

Vs.

1. Union of India through
Secretary
Ministry of Urban Development
Govt. of India
Nirman Bhawan
New Delhi.
2. Chief Engineer
C.P.W.D.
Nirman Bhawan
New Delhi. ... Respondents

(By Advocate: Mrs. Avnish Kaur)

O R D E R (Oral)

By Mr. Shanker Raju, M(J):

Applicant is one of the sons of the deceased Government servant, who had worked as Assistant Painter in Parliament Works Division No.1 died in harness on 29.5.1998. Earlier the claim of the applicant for compassionate appointment was rejected by the respondents by an order dated 1.8.2000 as one of the family member is an earning member, the case of the applicant cannot be considered for compassionate appointment as per the Scheme.

2. Later on, the respondents themselves reconsidered the issue on the application made by the mother of the applicant and rejected the case as the

-2-

9

same has not been found in accordance with the rules, the applicant cannot be considered for appointment on compassionate grounds.

3.. Shri S.L.Hans, learned counsel appearing on behalf of applicant, referring to the Clause 10 of the DoPT's OM dated 9.10.1998, Scheme for Compassionate Appointment, contended that it is incumbent, in deserving cases, to consider the case of a dependent family member for compassionate appointment even there is already an earning member in the family but this is to be done with the approval of the Secretary of the Department/Ministry concerned. However, it is laid down that the same is to be done after ascertaining the economic stress of the members of the family of 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 a source of support to other members of the family.

4.. In this background, placing reliance on a Co-ordinate Bench of this Tribunal in OA 1815/2000, decided on 29.9.2000 wherein on the basis of Clause 10 of the Scheme ibid has been remanded back for reconsideration on the ground that there is nothing in the order to indicate that the matter has been considered at the level of the Secretary, who is the competent to take a decision regarding compassionate appointment, as per Clause 10 of the Scheme for Compassionate Appointment.

5. Shri Hans states that elder son of the deceased was previously living with family but in 1996 he had separated and thereafter his name was also struck down from the ration card. Applicant has also filed an affidavit of Shri Kalyan Yadav, wherein it has been stated that he has no objection if the applicant is appointed on compassionate grounds.

6. In this view of the matter, as the order does not indicate reasons and also it has not been gone through Secretary to the Ministry's concerned, the order is liable to be set-aside and the matter is to be remanded back for reconsideration of his claim strictly in accordance with the Scheme *ibid*.

7. On the other hand, Mrs. Avnish Kaur, learned counsel for respondents, denied the contentions of the applicant and stated that the matter has been meticulously gone into by the respondents and on even reconsideration the case has not been found fit as per the Scheme of Compassionate Appointment. However, on being confronted whether the matter has been dealt with at the level of Secretary, it is contended that this has been done at the level of Chief Engineer, who is at the level of Secretary.

8. I have carefully considered the rival contentions of both the parties and perused the pleadings available on record. The contention of the respondents that the Chief Engineer was at the level of Secretary of the Ministry concerned, if it was correct, there was no occasion to have reconsidered this issue once again as the matter has been taken at

11

-4-

the level of Chief Engineer and the claim was rejected. However, it is not transpired in the impugned order that the orders have issued by Superintendent Engineer with the approval of the Chief Engineer and who is at the level of Secretary to the Ministry concerned as such the impugned orders are not passed by the Chief Engineer, i.e., at the level of Secretary.

9. Having regard to the Clause 10(a) of the Scheme ibid, it is apparent that the deserving cases even if one of the member of the family is earning, would not curtail a person to be considered for compassionate appointment, the same is to be approved by the Secretary of the Ministry concerned, after going into the financial constraints and other factors as per the Scheme, and the reconsideration by the respondents is not in accordance with Scheme, the impugned order is liable to be set-aside.

10. In the result, OA is partly allowed. Impugned order dated 8.8.2001 is quashed and set-aside. The matter is remanded back to the respondents for reconsideration strictly in accordance with the Clause 10(a) of the Scheme ibid and pass a detailed and speaking order within three months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)

/rao/