

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 1997/99

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New Delhi this the 23rd day of March, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. Smt. Sheela Rani
W/O late Sh. Chhotu Ram Dahiya
R/O V&PO Jharoth, Teh. Kharkhoda,
District, Sonapat.
2. Master Ravikant Dahiya
S/O Late Sh. Chhotu Ram Dahiya
through his mother Smt. Sheela Rani
R/O V&PO Jharoth, Teh. Kharkhoda,
Distt. Sonapat.
3. Master Kamal Kant Dahiya
S/O Late Sh. Chhotu Ram Dahiya
through his mother Smt. Sheela Rani
R/O V&PO Jharoth, Teh. Kharkhoda,
Distt. Sonapat.

.. Applicants

(By Advocate Sh. S. R. Parashar, learned
counsel through proxy counsel Sh.
Harvir Singh)

Versus

1. The Commissioner of Police
PHQ MSO Building, I.P. Estate,
New Delhi.
2. The Joint Commissioner of Police,
PHQ, MSO Building, I.P. Estate,
New Delhi.
3. The Deputy Commissioner of Police,
North East P.S. Welcome, Shahdara,
Delhi-32.

.. Respondents

(By Advocate Sh. Rajinder Pandita,
learned counsel through proxy counsel
Ms. Sumedha Sharma alongwith Sh. Prem
Singh, Head Constable on behalf of
respondents)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicants are the widow and minor children of late Sh. Chhotu Ram Dahiya who was working with Delhi Police as Sub-Inspector. This OA has been filed by them seeking a direction to appoint applicant No.1 on compassionate grounds to any suitable Group 'C' or 'D' vacancy as per her qualifications and to grant her monthly pension which was due to her late husband, alongwith other financial benefits.

2. The applicant had filed an earlier application (OA 2584/92) which was disposed of by Tribunal's order dated 12.11.1997.

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In this order, it was noted that by virtue of the Tribunal's initial ex-parte order dated 1.10.92, respondents were restrained from passing any final orders in the departmental enquiry initiated against the applicant, Sh.C.R.Dahiya. It was also noted that the applicant had died during the pendency of the OA. Under the circumstances, it was ordered that in the event that the departmental enquiry still survives even after the death of the applicant, the respondents shall pass a detailed and speaking order on the Enquiry Officer's findings in accordance with law. It was further ordered that while doing so they will keep in view the fact that at the time of his death, the original applicant left behind his wife, who is stated to be unemployed and two minor children. The present applicants have relied on the observations made in paragraph 6 of this order which reads as follows:

" If any grievance still survives after the statutory remedies have been exhausted it will be open to applicants LRS to agitate the same through appropriate original proceedings in accordance with law."

3. The applicant No.1 has stated that her husband, Sh.C.R. Dahiya was dismissed from service by order dated 1.9.1992. He died on 31.1.1993. The respondents have stated that during this period of four months the original applicant had not filed any appeal against the dismissal order. The applicants have alleged that the respondents have failed to consider the representation of applicant 1 for necessary relief on compassionate grounds so that she can continue to live with her two minor children. The applicants have challenged the findings of the Enquiry Officer's report and the order of the dismissal passed by the respondents as being arbitrary and unjust and have prayed that these may be set aside. Applicant 1 has submitted that the findings of the authority are baseless and not based on facts and evidence and more so, no opportunity was given to her late husband. However, the main relief prayed for by the applicants is for a direction to the respondents to appoint applicant No.1 on compassionate grounds to any suitable Group 'C' or 'D' post and for monthly pension which was due to her late husband. Learned proxy counsel

for the applicants have also submitted that this OA has been filed in terms of the liberty granted by the Tribunal in paragraph 6 of the order dated 12.11.1997, reproduced in paragraph 2 above. (11)

4. I have seen the reply filed by the respondents and heard Ms. Sumedha Sharma, learned proxy counsel for the respondents. According to the respondents, in terms of the Tribunal's order dated 12.11.97 in OA 2584/92, they have passed a detailed and speaking order in accordance with the rules and law. They have taken a decision to dismiss the original applicant on 1.9.92 against which Sh. C. R. Dahiya did not file any appeal during his life time. They have also submitted that all the grounds taken by the applicant No.1 in her representation were taken note of while passing the impugned order dated 3.7.98 (Ann.A.1). In this order, it has been stated that after the dismissal order was passed on 1.9.92, at the relevant time since the notification dated 29.6.94 giving power of review had not been issued, ¹⁸ and hence this power could not have been exercised. They have also submitted that the wife of the deceased cannot also seek any redressal of the orders passed by the department against her husband which has been done in accordance with law in disciplinary proceedings ¹⁸ held under Section 21 of the Delhi Police Act. In the circumstances, learned ^{proxy} counsel for the respondents has submitted that as the original applicant, Sh. C. R. Dahiya, has been dismissed from service, applicant No.1 is not entitled for any compassionate appointment or any financial benefits as this would be contrary to the relevant law and rules.

5. I have carefully considered the pleadings and the submissions made by the learned proxy counsel for the parties.

6. The main relief claimed by the applicants in this OA is for a direction to the respondents to appoint applicant 1 on compassionate grounds to any suitable Group 'C' or 'D' vacancy as per her qualifications and to give her monthly pension on account of the death of her husband who was earlier working with the Delhi Police. It is settled law that compassionate

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appointment should only be done in accordance with the relevant rules and instructions. Sympathy alone cannot override law.

(See the judgement of the Hon'ble Supreme Court in LIC of India Vs. Mrs. Asha Ramachandra Ambekar and Anr. (JT 1194(2)SC 183). (12)

In this case, the applicant's husband has been dismissed from service w.e.f. 1.9.92. Under the rules, an order of dismissal passed against the employee will have the consequence that the applicant's family will not be entitled to any relief as would be normally available to any employee, for example, who dies while in service etc. In this case the dismissal order passed against late Sh.C.R.Dahiya has not been set aside by any higher authority nor was appeal pending with the respondents before his death. The Tribunal by order dated 12.11.97 had directed the respondents to pass a detailed and speaking order in the disciplinary proceedings against him in accordance with law, taking into account the fact that he had left behind his wife and two minor children.

7. Applicant 1, in the present OA has not sought the relief of either quashing the disciplinary proceeding or the penalty order dated 1.9.92 but has sought compassionate appointment as well as other financial benefits due to her deceased husband after his dismissal. The main claims are not tenable in accordance with law. The consideration for compassionate appointment to the dependant or ward of a Govt. servant who dies in harness is not applicable to the facts in the present case. As applicant 1 does not fulfil the terms and conditions for consideration for appointment on compassionate grounds as per the relevant rules and instructions, her claim for compassionate appointment cannot be accepted. Similarly, as the applicant's husband had admittedly been dismissed from service, her claim for monthly pension is also rejected as not tenable.

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However, in case any financial amounts due to her late husband, Shri C.R.Dahiya, till the date of his dismissal from service, is not already paid, the respondents may arrange to pay the same within two months from the date of receipt of a copy of this order. No order as to costs.

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Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

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