

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 968/99

New Delhi this the 21st February 2000

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

Jagdish Prashad,
Son of L. Shri Khubi Ram,
B-41B, DDA Slum Quarters,
Paschim Puri,
New Delhi-110 064.

Applicant

By Advocate: Shri M.K. Mada

Vs.

1. Union of India,
Council for Scientific and Industrial
Research,
C.S.I.R. Building, Rafi Marg,
Connaught Place,
New Delhi.

2. The Director,
Publication & Information Directorate,
National Institute of Science Communication,
Dr. K.S. Krishna Marg,
Near Pusa Gate,
New Delhi-110 012.

By Advocate: None

ORDER (Oral)

HON'BLE SMT. LAKSHMI SWAMINATHAN, M(J)

The applicant is the son of late employee Shri Khubi Ram who was employed as Technical Officer 'A' with Respondent 2. He is aggrieved by the order passed by the Respondents dated 9.2.1999 (Annexure A 3) informing him that his request for compassionate appointment has been considered sympathetically but not agreed to by them.

2. I have heard the learned counsel for the applicant and perused the records.

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3. One of the grounds taken by the learned counsel for the applicant is that the impugned order dated 9.2.1999 is not ^{a/b} the speaking order. This argument cannot be accepted because in the order itself the respondents have stated a ground that his request could not be agreed to on account of non-availability of vacancies due to 5% ceiling imposed by the Government of India on Compassionate appointments, at this stage. Learned counsel relies on the judgement of the Supreme Court in Smt. Phoolwati Vs. Union of India & Ors. (1991 LAB. I.C. 392). He submits that in that case the Hon'ble Supreme Court had directed the Union of India to take immediate steps for employing the 2nd son of the appellant in a suitable post commensurate with his educational qualification within a period of one month from the date of his order. The appellant was also permitted to stay in the quarter where she was residing with the members of her family. He also relies on Sushma Gosain Vs. Union of India (AIR 1989 SC 1976) in which it was directed by the Hon'ble Supreme Court that if there was no suitable post for appointment, a supernumerary post should be created to accommodate the applicant. In Sushma Gosain's case (Supra) the Supreme Court had stated that "in all claims for appointment on compassionate grounds, there should not be any delay in appointment..... Such appointments should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years." In those circumstances the Apex Court held that if there is no suitable post for appointment

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supernumerary post should be created to accommodate the son. Another judgement relied upon by the learned p counsel for the applicant is Smt. Radhika Thirumalai A. Vs. Hindustan Aeronautics Limited, (Electronics Division), Hyderabad copy placed on record. Learned counsel has also submitted that the respondents had repeatedly informed the applicant that his case was under consideration and he would be given the appointment and it was only when the aforesaid impugned order was passed that he was informed that the answer is in the negative. Hence, this O.A. He has also submitted that the respondents have also discriminated against the applicant as they have appointed, a ward of another deceased employee in 1998 viz., Smt. Lajo Rani to the post of Lower Division Clerk after the death of her husband, Shri Shailender Kumar, (Helper) who died in harness.

4. The respondents in their reply have submitted that they have acted in accordance with the relevant rules, with regard to considering the applicant's claim for compassionate appointment. They have stated that the applicant has suppressed a basic fact that he had furnished wrong information about his age and educational status etc. They have also submitted that the respondents were well within their right to reject his request for compassionate appointment on this ground alone. The respondents have submitted that the applicant has also suppressed the facts about the quantum of dues which have been received by the family of the deceased and the details of the Family Pension etc. which is being still paid

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to them by the respondents. They have submitted that as they have considered the applicant's request for compassionate appointment in accordance with the rules, which is not a matter of benevolence, they have prayed that the O.A. may be dismissed.

5. Respondents have submitted that the applicant through his mother, Mrs. Vimla, widow of the late employee had submitted his application dated 27.9.1994 for compassionate appointment on the death of his father, Shri Khubi Ram. According to them they have informed the applicant twice by letters dated 21.2.1995 and 4.9.1996 about the position and to furnish the certificate of date of birth and educational qualifications which have been subsequently furnished by the applicant. The applicant appears to have submitted his date of birth and School Certificate. In the meantime by letter dated 9.9.1996 the Vice Principal, Govt. Boys Sr. Secondary School No. 1, Madipur, New Delhi, furnished the certain particulars about the applicant, including his date of birth, date of admission and leaving the school. This shows the date of birth of the applicant as 30.9.1979 and date of admission in the School as 5.4.1991 and date of leaving the School as 8.4.1995 in 9th class. The learned counsel for the applicant submits that the applicant had later joined another school in which his Date of Birth has been recorded as 10.2.1978 (Annexure A-4) and this information was given to the Respondents vide his application dated 12.8.1996.

6. From the above facts, it is seen that according to the Certificate issued by the Vice Principal, Govt. Boys Sr. Secondary School No. 1, Madipur, New Delhi, where admittedly the applicant had studied from 5.4.1991 to 8.4.1995, that his date of birth is shown as 30.9.1979 whereas there is a contradictory certificate given by another school where his date of birth is given as 10.2.1978. Apart from this discrepancy in the age, it is seen from the reply filed by the Respondents that the family of the applicant is receiving a sum of approximately Rs. 4,151/- as family pension, and have received retiral benefits amounting to Rs. 1.50 lakhs. In the circumstances of the case, the respondents have submitted that it cannot be said that the applicant's family have been driven to the stage of starvation. I find force in this submission that the applicant's family cannot be considered as indigent or in a financially distressed condition so as to direct the respondents to reconsider the case or agree to their request for applicant's appointment of compassionate grounds. The learned counsel for the applicant had contended that merely because retiral benefits have been paid to the family of the deceased employee does not dis-entitle the applicant from being considered for compassionate appointment. While this position cannot be assailed, nevertheless it is settled law that the facts and circumstances in each case have to be considered, which includes the retiral amounts paid to the deceased family. In the present case, taking into account the amounts paid to the family of the deceased employee by way of retiral benefits and family pension,

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it cannot be stated that the action of the Respondents in taking into account the financial status of the family as extraneous or arbitrary, justifying, any interference in the matter.

7. The contention of the learned counsel for the applicant that a direction may be given to the Respondents to create a supernumerary post so that the applicant can be appointed cannot also be agreed to. The circumstances in which the Hon'ble Supreme Court issued such a direction in Smt. Sushma Gosain's case (Supra) relied upon by the applicant, are not present in this case. Apart from that, it would not be appropriate for this Tribunal to give such a direction to the Respondents to create a supernumerary post, especially as they have indeed considered the applicant's request for compassionate appointment and have not found it feasible for the reasons given by them in the impugned order as well as in the detailed counter affidavit. In Umesh Kumar Nagpal Vs. State of Haryana [JT 1994(3) SC 525} the Hon'ble Supreme Court has held that the mere death of an employee in harness does not entitle his dependents to a job. Financial condition of the family must be taken into account. A job on compassionate ground cannot be offered as a matter of course irrespective of financial condition Another observation of the Hon'ble Supreme Court in The Life Insurance Corporation of India Vs. Asha Ramachandra Ambedkar and another (JT 1994(12) SC 183) is also relevant. In this case the Apex Court had held that the Court should endeavour to find out "whether a particular case in which sympathetic

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considerations are to be weighed fall within the scope of law. Disregardful of law, however, hard the case may be, it may never be done." In a more recent judgement of the Supreme Court in Cochin Docks Labour Board Vs. Leenamma Samuel & Ors. JT 1998 (9) SC 205, the Hon'ble Supreme Court has held that the direction given by the High Court directing appointment of the applicant was not justified and the High Courts order was accordingly set aside.

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8. In the facts and circumstances of the case and taking into account the settled law, I find no merit in this application. The O.A. is accordingly dismissed. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

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