

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 138/95
T.A. No.

199

DATE OF DECISION 19-9-96

Smt Shakuntla Devi and Anr. Petitioner

Shri Yogesh Sharma Advocate for the Petitioner(s)

Versus

VOI and ORS.

Respondent

Shri V.S.R. Krishna

Advocate for the Respondent(s)

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, M(J)

The Hon'ble Mr. _____

1. To be referred to the Reporter or not? Y

2. Whether it needs to be circulated to other Benches of the Tribunal? X

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. NO. 138 of 1995

New Delhi on this 19th day of September, 1996

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

1. Smt. Shakuntla Devi,
Wd/o late Shri Nathan Singh.
2. Harish Kumar,
S/o late Shri Nathan Singh.

(Both R/o Vill & PO - Nurpur,
District - Ghaziabad (UP))

.. Applicants.

By Advocate Shri Yogesh Sharma.

Versus

1. The Union of India, through
The Secretary,
Ministry of Defence, Sena Bhawan,
New Delhi.
2. The Director General,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta.
3. The General Manager,
Ordnance Factory, Muradnagar,
Distt. Ghaziabad (UP)

.. Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

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

The applicants are aggrieved by the order dated 29.10.1994 rejecting the request made by the widow of the late employee Shri Nathan Singh, for appointment of the 3rd son, applicant No.2, on compassionate grounds. In this application, the applicants have prayed for the following reliefs:

"(1) That the O.A. of the applicants may be allowed with the costs of litigation.

(2) That the Hon'ble Tribunal may be graciously pleased to pass an order of quashing the impugned order dated 29.10.1994 by which applicants have been denied for the appointment on compassionate grounds and declares that the applicant No.2 is entitled for the appointment on compassionate grounds. It is further pleased to direct the respondents to consider the applicant No.2 for the appointment on compassionate ground to any post. Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants."

2. The main ground taken by Shri Yogesh Sharma, learned counsel for the applicants, is that the impugned order is not in accordance with the relevant instructions dealing with the request for compassionate appointment and, in particular, with the instructions contained in para 2 of O.M. dated 28.9.1992 which is reproduced below:

"It is clarified that the intention behind the instructions contained in para 9(d) of this department's O.M. dated 30.6.87 referred to above is not that application for compassionate appointment should be rejected merely on the ground that the family of the deceased Government servant has received the benefits under the various welfare schemes. While these benefits should be taken into account, the financial condition of the family has to be assessed taking into account its liabilities 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. so that balanced and objective assessment is made on the financial condition of the family while considering a request for appointment on compassionate grounds".

3. Shri Sharma, learned counsel for the applicants, submits that the respondents have only taken into account the financial condition of the family based on the terminal benefits and have not taken into account the other relevant factors as per the above referred O.M. He has also relied on the

judgements of this Tribunal in Man Singh Vs. Union of India & Ors (O.A. 122/94) and Smt. Savitri Devi & Anr. Vs. Union of India & Ors. (O.A. 497/94) and Mohammed Haniff and Anr. Vs. Union of India & Ors. (ATJ 1995(1) 218).

4. The respondents have filed a reply and I have also heard Shri V.S.R. Krishna, learned counsel for the respondents. He submits that following the judgement of the Supreme Court in LIC of India Vs. Mrs. Asha Ramchandra Ambedkar & Anr. (JT 1994(2) SC 183) and Umesh Kumar Nagpal Vs. State of Haryana & Ors. (JT 1994(3) SC 525), since the respondents have considered the financial and other conditions of the family in accordance with the relevant instructions and as the applicant has no right for such an appointment, the application lacks merit and may, therefore, be dismissed. He has also submitted that the first and second sons are earning members and even if they have their own family to look after, they are supposed to look after the aged parents also. He has also mentioned that the widow has her own house which has not been denied by the applicants, apart from the pensionary and other terminal benefits paid to the family of the deceased employee. In the circumstances, the learned counsel has submitted that this application may be dismissed.

5. After careful consideration of the facts and circumstances of the case and the submissions made by the learned counsel for the parties, I am unable to persuade myself to come to a conclusion that this is a fit case to direct the respondents to reconsider the applicant's request for compassionate appointment. The Supreme Court in Umesh Kumar Nagpal's case (Supra) has held that one of the reasons on which compassionate appointment is made is with the object of relieving the family of the financial destitution and help it to get over the emergency.

B:

For these reasons, it was further held that the compassionate appointment cannot be granted after a gap of reasonable period. The consideration for such employment is not a vested right which can be exercised at any time in future.

6. In another case of Asha Ramchhandra Ambedkar (Supra), the Supreme Court has held that the High Courts and the Administrative Tribunals are not to confer benediction impelled by sympathetic consideration. In this case, the Court further held:

"13. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case, itself, there are Regulations and Instructions which we have extracted above. The Court below has not been examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the Circular dated 20.1.1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered".

7. From a perusal of the impugned rejection letter dated 29.10.1994, it is seen that apart from the fact of the family receiving pension and other benefits under the Welfare Scheme, the other relevant factors regarding the family status have also been considered by the competent authority before issuing that letter. In the circumstances of the case, it is, therefore, not possible to conclude, as contended by Shri Yogesh Sharma, learned counsel for the applicants, that the competent authority

has not considered the other relevant factors mentioned in the O.M. In the other cases relied upon by the applicants, the Tribunal had, in the facts and circumstances of the case, come to the conclusion that the impugned orders are not based on valid grounds and it had accordingly ordered the competent authority to reconsider the same, which is not the situation here. The competent authority has applied his mind to the various relevant factors while rejecting the request of applicant No. 2 for compassionate appointment which is in accordance with the relevant instructions and cannot be faulted and there is no justifiable ground to interfere in the matter.

4. In the result, the application fails and is accordingly dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'